

# Protection and equal treatment for agency workers

**L**abour backbencher Andrew Miller MP has attracted support from trade unions and MPs for the Temporary and Agency Workers (Equal Treatment) Bill, a Private Members' Bill introduced by him. Such bills rarely become legislation, but they can act as a good platform to gauge opinion and to stimulate debate on a topic.

In February 2008, the largest union in the UK, Unite, held a lobby of parliament at which temporary and agency workers asked MPs to support their campaign to be given the same rights as directly-employed workers. In response to the bill, the Confederation of British Industry argues that any move to give agency and temporary workers equal rights will put jobs at risk. This argument was advanced to oppose the national minimum wage (NMW), but according to the Office for National Statistics, since the NMW was introduced in April 1999, close to 2.8 million jobs have been created. LAG agrees that employers need the flexibility of being able to employ workers on a temporary basis to provide cover for staff absences and because of seasonal or other variations in consumers' demand for products. But we do not accept that giving temporary and agency workers equal rights will lead to job losses.

Currently, temporary and agency workers can be employed on different contractual terms and conditions to their permanent colleagues. Frequently, they do not enjoy the same rights to pay and overtime rates, sickness leave and holidays, and maternity benefits. As a result, a two-tier workforce is created with the potential for indirect discrimination if higher proportions of the sexes or minority groups are employed as temporary or agency workers. For example, an agency might employ proportionately more ethnic minority workers than the main employer.

If the bill is not successful, there will be other opportunities for similar legislation to be introduced. An amendment could yet be made to the European Union (Amendment) Bill, being debated now, or the Employment Bill, currently in the Lords (which repeals the statutory dispute resolution procedures and

replaces them with a new non-regulatory system), to give equal rights to temporary and agency workers. A backbench revolt would be likely if the government were to oppose these measures, as they would be supported by many Labour MPs and MPs from other parties, such as the Liberal Democrats or the Scottish Nationalists.

As with much of the development of employment law in the past 20 years, the controversy over whether to give temporary and agency workers equal rights has a European dimension. In March 2002, a European Temporary (Agency) Workers Directive was proposed, but agreement has yet to be reached between member states. In December 2007, at a meeting of the EU's Employment, Social Policy, Health and Consumer Affairs Council, a minority of states, including the UK, and reportedly supported by Germany, Ireland and Malta, maintained their opposition to the directive as it is currently framed. Reports suggest that there is a will to put the matter to the vote this year, and a common position will be adopted without unanimity if necessary.

Temporary and agency workers are, in general, younger on average than the rest of the workforce and are concentrated in lower paid jobs such as those in the catering, agricultural and care industries. LAG would argue that these are the workers who need greater legal protection desperately. Other European countries with similar levels of temporary and agency workers as the UK allow them to have the same rights as permanent employees. Since such workers make up around two to three per cent of the workforce, it is unlikely that the UK gains any great competitive advantage over these countries, apart from at the edges of reputable business. A recent report from the Gangmasters Licensing Authority illustrates that exploitation is still rife in such businesses. It found that temporary workers, mainly from Eastern Europe, employed to pick daffodils and vegetables, were not being paid the NMW and were also being hit with illegal charges such as having to pay for protective gloves.

The government is trying to head off moves to debate this issue in parliament by appointing an independent commission to look at temporary and agency workers' rights. LAG feels that this could lead potentially to a fudge with neither side in the debate being satisfied. It is our view that any move by the government to water down the provisions of the proposed European directive to give full employment rights to temporary and agency workers will not be due to genuine concerns for the economy. Rather, it will be down to political positioning to appear 'business friendly', which would be putting politics before justice.

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