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**AN BILLE UM CHOSAINT FOSTAITHE (OIBRITHE  
GNÍOMHAIREACHTA) (UIMH. 2) 2008**  
**PROTECTION OF EMPLOYEES (AGENCY WORKERS) (NO.  
2) BILL 2008**

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*Mar a tionscnaíodh*  
*As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Short title.
  2. Interpretation.
  3. Regulations.
  4. Comparable employee.
  5. Conditions of employment for agency workers.
  6. Objective grounds for less favourable treatment.
  7. Information on employment and training opportunities.
  8. Consultation with employee representatives.
  9. Voidance of certain provisions.
  10. Prohibition of penalisation of agency worker.
  11. Complaints to rights commissioner.
  12. Appeal from decision of rights commissioner.
  13. Enforcement of determinations of Labour Court.
  14. Limitation on relief.
  15. Insurance obligations of employment agencies.
  16. Inclusion of agency workers and contractors within terms of registered employment agreements.
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ACTS REFERRED TO

Courts Act 1981	1981, No. 11
Employment Agency Act 1971	1971, No. 27
Industrial Relations Act 1946	1946, No. 26
Industrial Relations Act 1990	1990, No. 19
Organisation of Working Time Act 1997	1997, No. 20
Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
Redundancy Payments Act 1967	1967, No. 21
Transnational Information and Consultation of Employees Act 1996	1996, No. 20
Unfair Dismissals Acts 1977 to 2001	



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5 **BILL**

*entitled*

AN ACT TO PROVIDE FOR THE PROTECTION OF AGENCY  
WORKERS, TO REQUIRE THE PRINCIPLE OF EQUAL  
TREATMENT TO BE APPLIED IN RESPECT OF THEIR  
10 EMPLOYMENT, TO MAKE PROVISION FOR THE  
ENFORCEMENT OF THE RIGHTS, AND TO PROVIDE  
FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15 **1.**—This Act may be cited as the Protection of Employees (Agency Workers) Act 2008. Short title.

**2.**—(1) In this Act, unless the context otherwise requires— Interpretation.

“associated employer” has the meaning assigned to it by *subsection (2)*;

“agency worker”—

20 (a) means a person of any age who has entered into or works  
under (or, where the employment has ceased, entered  
into or worked under) an agreement (an “agency work  
contract”) whether express or implied and, if express,  
whether oral or in writing whereby the person agrees with  
25 an employment agency to do or perform personally any  
work or service for another person (the “end user”),  
whether or not the end user is a party to that contract,

30 (b) does not include a person who works under a contract of  
indefinite duration with an employment agency by virtue  
of which he or she receives regular remuneration both  
during periods when he or she is assigned to perform  
work or services for an end user and at other times;

35 “collective agreement” means an agreement by or on behalf of an  
employer on the one hand, and by or on behalf of a body or bodies  
representative of the employees to whom the agreement relates on  
the other hand;

“comparable employee” has the meaning assigned to it by *section 4*;

“conditions of employment” includes conditions in respect of remuneration and matters relating thereto;

“employment agency” means a natural or legal person—

(a) whether established in the State or another Member State, and 5

(b) whether holding a licence under the Employment Agency Act 1971 or otherwise,

carrying on the business of obtaining or supplying for reward of persons who will, within the State, accept employment from or render services to others; 10

“Minister” means the Minister for Enterprise, Trade and Employment;

“employee” means an employee of an end user who is not an agency worker; 15

“prescribed” means prescribed by regulations made by the Minister under this Act;

“renewal” includes extension and cognate words shall be read accordingly.

(2) Employers are deemed to be associated if— 20

(a) one is a body corporate of which the other (whether directly or indirectly) has control, or

(b) both are bodies corporate of which a third person (whether directly or indirectly) has control.

(3) Nothing in this Act affects the operation of Part III of the Organisation of Working Time Act 1997. 25

Regulations.

**3.—**(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect. 30

(2) Regulations under this Act may make different provisions in relation to different classes of agency workers or employers, different areas or otherwise by reference to the different circumstances of the matter.

(3) A regulation or order under this Act may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient. 35

(4) The Minister may by order amend or revoke an order under this Act (including an order under this subsection).

(5) A regulation or order under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be 40

annulled accordingly, but without prejudice to the validity of anything previously done under the regulation or order.

4.—(1) An employee is a comparable employee in relation to an agency worker if—

Comparable employee.

5 (a) the end user for whom the agency worker performs work or services is the employer or an associated employer of the employee concerned and one of the conditions referred to in *subsection (2)* is satisfied,

10 (b) in case *paragraph (a)* does not apply, the employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant agency worker, to be a type of employee who is to be regarded for the purposes of this Act as a comparable employee in relation to the relevant agency worker, or

15 (c) in case neither *paragraph (a)* nor *(b)* applies, the employee is employed in the same industry or sector of employment as the relevant agency worker and one of the conditions referred to in *subsection (2)* is satisfied in respect of those employees.

20 (2) The following are the conditions mentioned in *subsection (1)*:

(a) both employee and the agency worker concerned perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work; or

25 (b) the work performed by one of them is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each are either of small importance in relation to the work as a whole or occur with such irregularity as not to be significant; or

30 (c) the work performed by the relevant agency worker is equal or greater in value to the work performed by the employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

40 5.—(1) Subject to *subsection (2)*, an agency worker who has completed six weeks of continuous work or service with an end user or associated employer shall not, in respect of his or her conditions of employment, be treated in a less favourable manner than a comparable employee.

Conditions of employment for agency workers.

(2) If treating an agency worker, in respect of a particular condition of employment, in a less favourable manner than a comparable employee can be justified on objective grounds then that worker may, notwithstanding *subsection (1)*, be so treated.

45 (3) A period of service qualification relating to a particular condition of employment shall be the same for an agency worker as for a comparable employee except where a different length of service qualification is justified on objective grounds.

(4) The extent to which any condition of employment referred to in *subsection (5)* is provided to an agency worker for the purpose of complying with *subsection (1)* shall be related to the proportion which the normal hours of work of that worker bears to the normal hours of work of the comparable employee concerned. 5

(5) The condition of employment mentioned in *subsection (4)* is a condition of employment the amount of benefit of which (in case the condition is of a monetary nature) or the scope of the benefit of which (in any other case) is dependent on the number of hours worked. 10

Objective grounds for less favourable treatment.

**6.—(1)** A ground shall not be regarded as an objective ground for the purposes of any provision of this Act unless it is based on considerations other than the status of the worker concerned as an agency worker and the less favourable treatment which it involves for that worker is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose. 15

(2) Where, as regards any term of his or her contract, an agency worker is treated by the end user in a less favourable manner than a comparable employee, the treatment in question shall (for the purposes of *section 4(2)*) be regarded as justified on objective grounds, if the terms of the agency worker's contract, taken as a whole, are at least as favourable as the terms of the comparable employee's contract of employment. 20

Information on employment and training opportunities.

**7.—(1)** An employer shall inform an agency worker in relation to vacancies which become available to ensure that he or she shall have the same opportunity to secure a position as employees. 25

(2) The information referred to in *subsection (1)* may be provided by means of a general announcement at a suitable place in the undertaking or establishment. 30

(3) As far as practicable, an employer shall facilitate access by an agency worker to appropriate training opportunities to enhance his or her skills, career development and occupational mobility.

Consultation with employee representatives.

**8.—**Agency workers shall be taken into account when calculating the threshold above which employees' representative bodies may be constituted in an undertaking in accordance with section 4 of the Transnational Information and Consultation of Employees Act 1996. 35

Voidance of certain provisions.

**9.—**Save as expressly provided otherwise in this Act, a provision in an agreement (whether a contract of employment or not and whether made before or after the commencement of the provision concerned of this Act) shall be void insofar as it purports to exclude or limit the application of, or is inconsistent with, any provision of the Act. 40

Prohibition of penalisation of agency worker.

**10.—(1)** An employment agency or an end user shall not penalise an agency worker— 45

(a) for invoking any right of the worker to be treated, in respect of his or her conditions of employment, in the manner provided for by this Act,

(b) for having in good faith opposed by lawful means an act which is unlawful under this Act, or

(c) for giving in any proceeding under this Act or for giving notice of his or her intention to do so or to do any other thing referred to in *paragraph (a)* or *(b)*.

(2) For the purposes of this section, an agency worker is penalised if he or she—

(a) is dismissed or suffers any unfavourable change in his or her conditions of employment or any unfair treatment, or

(b) is the subject of any other action prejudicial to his or her employment.

**11.—(1)** An agency worker or any trade union of which the worker is a member, with the consent of the worker, may present a complaint to a rights commissioner that the end user has contravened any provision of this Act in relation to the worker and, if the worker or such a trade union does so, the commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a written decision in relation to the complaint, and

(c) communicate the decision to the parties concerned.

(2) A decision of a rights commissioner under *subsection (1)* shall do one or more of the following:

(a) declare whether the complaint was or was not well founded;

(b) require the end user to comply with the relevant provision;

(c) require the end user to pay to the agency worker compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the agency worker's work or service for that end user;

and references in *paragraphs (a)* to *(c)* to an end user shall be read in a case where ownership of the business of the end user changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(3) A rights commissioner shall not entertain a complaint under this section if it is presented to the commissioner after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates or the date of termination of the contract concerned, whichever is the earlier.

(4) Notwithstanding *subsection (3)*, a rights commissioner may entertain a complaint under this section presented to him or her after the expiration of the period referred to in *subsection (3)* (but not later than 12 months after the end of that period) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(5) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(6) A copy of a notice under *subsection (5)* shall be given to the other party concerned by the rights commissioner. 5

(7) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(8) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subsection (1)*. 10

(9) The Minister may by regulations provide for any matters relating to proceedings under this section that the Minister considers appropriate.

Appeal from  
decision of rights  
commissioner.

**12.—(1)** A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *section 11* and, if the party does so, the Labour Court shall— 15

(a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(b) make a written determination in relation to the appeal affirming, varying or setting aside the decision, and 20

(c) communicate the determination to the parties.

(2) An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the decision to which it relates was communicated to the party, a written notice to the Labour Court containing any particulars that are determined by the Labour Court under *subsection (4)* and stating the intention of the party concerned to appeal against the decision. 25

(3) A copy of a notice under *subsection (2)* shall be given by the Labour Court to the other party concerned as soon as practicable after the receipt of the notice by the Labour Court. 30

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this section; 35

(b) the times and places of hearings of those appeals;

(c) the representation of the parties to those appeals;

(d) the publication and notification of determinations of the Labour Court; 40

(e) the particulars to be contained in a notice under *subsection (2)*; and

(f) any matters consequential on, or incidental to, the foregoing matters.



(5) The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this section to the High Court for determination by the High Court and the determination of that Court shall be final and conclusive.

5 (6) A party to proceedings before the Labour Court under this section may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

10 (7) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under this Act as it applies to matters referred to the Employment Appeals Tribunal under that section with—

(a) the substitution in that provision of references to the Labour Court for references to the Tribunal,

15 (b) the deletion in paragraph (d) of that provision of “registered”, and

(c) the substitution in paragraph (e) of that provision of “a fine not exceeding €2,000” for “a fine not exceeding twenty pounds”.

20 (8) Where a decision of a rights commissioner in relation to a complaint under this Act has not been carried out by the end user concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the agency worker concerned may bring the complaint  
25 before the Labour Court and the Labour Court shall, without hearing the end user concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(9) The bringing of a complaint before the Labour Court under  
30 *subsection (8)* shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(10) The Labour Court shall publish, in the manner it thinks fit, particulars of any determination made by it under *paragraphs (a), (b), (c), (e) and (f) of subsection (4)* (not being a determination as respects a particular appeal under this section) and *subsection (9)*.  
35

**13.—(1)** If an end user fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *section 11* within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on  
40 application to it in that behalf by—

Enforcement of determinations of Labour Court.

(a) the agency worker concerned,

(b) with the consent of the agency worker, any trade union of which the agency worker is a member, or

45 (c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the end user or any evidence (other than in relation to the matters aforesaid) make an order directing the end user to carry out the determination in accordance with its terms.

(2) The reference in *subsection (1)* to a determination of the Labour Court is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as a reference to the date of that abandonment.

(3) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the end user concerned to pay to the agency worker concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981 in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the end user concerned ordinarily resides or carries on any profession, business or occupation.

Limitation on relief.

**14.**—(1) If penalisation of an agency worker, in contravention of *section 10(1)*, constitutes a dismissal of the agency worker within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the agency worker in respect of that penalisation both under this Act and under those Acts.

(2) An individual who is an agency worker under this Act and a part-time employee under the Protection of Employees (Part-Time Work) Act 2001 may obtain relief arising from the same circumstances under either, but not both, this Act or under Part 2 of that Act.

Insurance obligations of employment agencies.

**15.**—(1) For the purpose of maintaining sufficient security for the payment of all obligations arising from or in contemplation of contracts with its agency workers and for the repatriation of agency workers in the event of insolvency, an employment agency shall have insurance under one or more appropriate policies, with an insurer authorised in respect of such business in a Member State, under which the insurer agrees to indemnify those agency workers (who shall be insured persons under the policy), against—

- (a) the loss of all money paid over by them under or in contemplation of contracts of employment, and
- (b) where applicable, the cost of repatriation of agency workers, based on administrative arrangements established by the insurer to enable repatriation of such workers,

in the event of insolvency of the employment agency.

(2) The employment agency shall ensure that it is a term of every contract with an agency worker that the worker acquires the benefit

of the policy in the event of the insolvency of the employment agency.

5 (3) In this section “appropriate policy” means one which does not contain a condition which provides (in whatever terms) that no liability shall arise under the policy, or that any liability so arising shall cease—

(a) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy,

10 (b) in the event of the failure of the policy holder to make payments to the insurer in connection with that policy or with other policies, or

(c) unless the policy holder keeps specified records or provides the insurer with information therefrom.

15 (4) An employment agency who fails to—

(a) make the arrangement described in *subsection (2)*, or

(b) ensure that such arrangements are in force,

is guilty of an offence and is liable—

(i) on summary conviction to a fine not exceeding €5,000, or

20 (ii) on conviction on indictment, to a fine not exceeding €150,000 or to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under this section has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other similar officer of such body or of any person who was purporting to act in any such capacity, that officer or person, as well as such body, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

**16.—**For the purposes of section 30 of the Industrial Relations Act 1946 (which provides for the adaptation of contracts of service consequential upon the registration of an employment agreement)—

Inclusion of agency workers and contractors within terms of registered employment agreements.

35 (a) “worker”, in addition to the meaning assigned to it by section 23 of the Industrial Relations Act 1990, also includes—

(i) a person who works under a contract for services with another person, where—

40 (I) that other person is a party to or is bound by the terms of a registered employment agreement relating to the remuneration or conditions of employment of workers of a particular class, type or group, and

45 (II) the purpose of that contract for services is to provide work or a service of a kind generally provided by workers of the class, type or group

to which that registered employment agreement relates,

and

- (ii) a person who works under a contract, whether of service or for services, whereby he or she agrees with another person to do or provide personally any work or service for a third person (whether or not the third person is a party to the contract), where—
  - (I) that third person is a party to or is bound by the terms of a registered employment agreement relating to the remuneration or conditions of employment of workers of a particular class, type or group, and
  - (II) the purpose of the contract is to do or provide work or a service of a kind generally provided by workers of the class, type or group to which the registered employment agreement concerned relates,
- (b) references to a contract between a worker and employer include a contract mentioned in *paragraph (a)*, and
- (c) references to an employer include a person who is a party to such a contract with a worker.