



DÁIL ÉIREANN

AN BILLE UM CHOSAINN FOSTAITHE (OBAIR GHNÍOMHAIREACHTA SHEALADACH), 2011 PROTECTION OF EMPLOYEES (TEMPORARY AGENCY WORK) BILL 2011

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHOSAINN FOSTAITHE (OBAINR GHNÍOMHAIREACHTA SHEALADACH), 2011 —AN TUARASCÁIL

PROTECTION OF EMPLOYEES (TEMPORARY AGENCY WORK) BILL 2011 —REPORT

Leasuithe Amendments

1. In page 5, to delete lines 18 and 19.

—Willie O'Dea.

2. In page 5, line 26, after “agency” to insert the following:

“, but the following shall not be deemed to be agency workers—

- (a) employees of contractor companies, and
- (b) limited liability companies where the worker is also the beneficial owner of the company”.

—Willie O'Dea.

3. In page 5, to delete lines 27 to 30 and in page 6, to delete lines 1 to 11 and substitute the following:

“ “basic working and employment conditions” means terms and conditions of employment required to be included in a contract of employment by virtue of any enactment or collective agreement, or any arrangement that applies generally in respect of employees, or any class of employees, of a hirer, and that relate to—

- (a) pay,
- (b) working time,
- (c) rest periods,
- (d) rest breaks during the working day,
- (e) night work,
- (f) annual leave, or
- (g) public holidays;”.

—An tAire Post, Fiontar agus Nuálaíochta.

4. In page 6, between lines 7 and 8, to insert the following:

- “(h) holiday entitlements above the statutory minimum in the case of non-exchequer funded posts,
- (i) bank holiday rostering in the case of non-exchequer funded posts,
- (j) Employment Registration Orders,
- (k) adoptive and parental leave in the case of non-exchequer funded posts;”.

—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.

5. In page 6, between lines 7 and 8, to insert the following:

“(h) any other terms and conditions applied to a comparable employee;”.

—Peadar Tóibín.

6. In page 6, to delete lines 8 to 11 and substitute the following:

“and in the case of non-exchequer funded posts include sick pay, payments under any pension scheme or arrangement or payments under any scheme to which the second sentence of the second subparagraph 4 of Article 5 of the Directive applies;”.

—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.

7. In page 6, to delete lines 8 to 11.

—Peadar Tóibín.

8. In page 7, to delete lines 4 to 11 and substitute the following:

““pay” means—

(a) basic pay, and

(b) any pay in excess of basic pay in respect of—

(i) shift work,

(ii) piece work,

(iii) overtime,

(iv) unsocial hours worked, or

(v) hours worked on a Sunday,

but does not include sick pay, payments under any pension scheme or arrangement or payments under any scheme to which the second sentence of the second subparagraph of paragraph 4 of Article 5 of the Directive applies;”.

—An tAire Post, Fiontar agus Nuálaíochta.

9. In page 7, to delete lines 10 and 11 and substitute the following:

“(iv) allowances,

(v) unsocial hours worked, or

(vi) hours worked on a Sunday;”.

—Patrick Nulty.

10. In page 7, between lines 11 and 12, to insert the following:

“(vi) any allowances that are automatically paid as an industry norm in the case of non-exchequer funded posts,

(vii) occupational pensions in the case of non-exchequer funded posts,

(viii) work related allowances in the case of non-exchequer funded posts,

(ix) work related travel and expenses in the case of non-exchequer funded posts,

- (x) “top up” maternity payments in the case of non-exchequer funded posts,
 - (xi) bank holiday premia in the case of non-exchequer funded posts,
 - (xii) sick pay in the case of non-exchequer funded posts,
 - (xiii) overtime premia in the case of non-exchequer funded posts;”.
- Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.
11. In page 7, line 26, to delete “employed” and substitute “employed under a contract of employment”.
—An tAire Post, Fiontar agus Nuálaíochta.
 12. In page 7, line 31, to delete “employee of” and substitute the following:
“employee employed under a contract of employment by”.
—An tAire Post, Fiontar agus Nuálaíochta.
 13. In page 8, between lines 20 and 21, to insert the following:
“(3) If any agency worker believes that an incorrect comparator has been used that worker must inform the employer and the employer will be obliged to investigate the claim and if necessary correct the situation within a period of fourteen days. If the employer corrects the situation within fourteen days, then no claim will lie against the employer.”.
—Willie O’Dea.
 14. In page 8, to delete lines 24 to 41.
—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.
 15. In page 9, line 6, after “same” to insert the following:
“or where different, in the aggregate not less favourable than.”.
—Willie O’Dea.
 16. In page 9, line 12, to delete “be entitled.” and substitute the following:
“have been entitled if such a comparable employee were so employed at the same time as the commencement of the assignment of the agency worker, having regard to all the circumstances.”.
—Willie O’Dea.
 17. In page 9, between lines 12 and 13, to insert the following:
“(2) In respect of any agency worker, his or her employer shall be deemed to have conferred the entitlement described in *subsection (1)* where such employer demonstrates that such agency worker is in receipt of basic working and employment conditions which are at least the same as the basic working and employment conditions of a comparable employee.”.
—Willie O’Dea.
 18. In page 9, to delete lines 13 to 30.
—Willie O’Dea, Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy, Peadar Tóibín.
 19. In page 9, to delete lines 13 to 30 and substitute the following:
“(2) To the extent to which it relates to pay, *subsection (1)* does not have effect in relation to an agency worker who has a permanent contract of employment with a temporary work agency if—

- (a) the contract of employment was entered into before the beginning of the first assignment under that contract and includes terms and conditions in writing relating to—
 - (i) the minimum scale or rate of remuneration or the method of calculating remuneration,
 - (ii) the location or locations where the agency worker may be expected to work,
 - (iii) the expected hours of work during any assignment,
 - (iv) the maximum number of hours of work that the agency worker may be required to work each week during any assignment,
 - (v) the minimum number of hours of work per week that may be offered to the agency worker during any assignment provided that it is a minimum of at least 15 hours, and
 - (vi) the nature of the work that the agency worker may be offered including any relevant requirements relating to qualifications or experience;
- (b) the contract of employment contains a statement that the effect of entering into it is that the employee does not, during the currency of the contract, have any entitlement to the rights conferred by *subsection (1)* insofar as they relate to pay;
- (c) during any period under the contract after the end of the first assignment under that contract in which the agency worker is not working temporarily for and under the supervision and direction of a hirer but is available to do so—
 - (i) the temporary work agency takes reasonable steps to seek suitable work for the agency worker,
 - (ii) if suitable work is available, the temporary work agency offers the agency worker to be proposed to a hirer who is offering such work, and
 - (iii) the temporary work agency pays the agency worker a minimum amount of remuneration in respect of that period (“the minimum amount”);and
- (d) the temporary work agency does not terminate the contract of employment until it has complied with its obligations in *paragraph (c)* for an aggregate of not less than eight calendar weeks during the contract.

(3) For work to be suitable for the purposes *paragraph (c)* of *subsection (2)* the nature of the work, and the terms and conditions applicable to the agency worker whilst performing the work, must not differ from the nature of the work and the terms and conditions included in the contract of employment under *subsection (2)*.

(4) Subject to *subsection (6)*, the minimum amount to be paid to the agency worker during a pay reference period falling within a period to which *paragraph (c)* of *subsection (2)* applies shall not be less than 50 per cent of the pay paid to the agency worker in the relevant pay reference period.

(5) For the purposes of *subsection (4)*, the relevant pay reference period shall be the pay reference period in which the agency worker received the highest level of pay which fell—

(a) within the 12 weeks immediately preceding the end of the previous assignment, where the assignment lasted for longer than 12 weeks, or

(b) during the assignment, where the assignment lasted for 12 or fewer weeks.

(6) The minimum amount shall be not less than the amount that the agency worker would have been entitled to for the hours worked in the relevant pay reference period if the provisions of Part 3 of the Act of 2000 applied.

(7) For the purposes of this section “pay reference period” is a month or, in the case of a worker who is paid wages by reference to a period shorter than a month, that period.”.

—Patrick Nulty.

20. In page 9, line 14, after “agency” where it secondly occurs to insert “with the exception of those in the public sector”.

—Peadar Tóibín.

21. In page 9, line 43, after “differ” to insert the following:

“in the case of exchequer funded posts and that are superior in the case of non exchequer funded posts”.

—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.

22. In page 12, line 11, to delete “contract of service” and substitute “contract of employment”.

—An tAire Post, Fiontar agus Nuálaíochta.

23. In page 12, to delete lines 16 to 28.

—An tAire Post, Fiontar agus Nuálaíochta, Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.

24. In page 12, to delete lines 16 to 30.

—Patrick Nulty.

25. In page 12, lines 35 and 36, to delete all words from and including “unless” in line 35 down to and including “worker” in line 36.

—Peadar Tóibín.

26. In page 20, after line 24, to insert the following:

“26.—The employment agency and the employment to which the agency worker is assigned shall be jointly and severally liable for all breaches of this Act with the exceptions of the matters of facilities and amenities for which the employer who is end user shall be solely responsible.”.

—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.

27. In page 20, after line 24, to insert the following:

“26.—In the event of an agency worker being denied access to amenities or facilities to which he or she is entitled a minimum compensation of €1,000, increasing in line with the Consumer Price Index, shall apply in addition to an order compelling the employer to give such access.”.

—Clare Daly, Joe Higgins, Richard Boyd Barrett, Joan Collins, Seamus Healy.