SEANAD ÉIREANN

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

LEASUITHE TUARASCÁLA
REPORT AMENDMENTS

[No. 80*b* of 2011] [27 April, 2012]

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AN BILLE UM CHOSAINT FOSTAITHE (OBAIR GHNÍOMHAIREACHTA SHEALADACH), 2011 —AN TUARASCÁIL

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

Leasuithe
Amendments

[**Government amendments are denoted by an asterisk.*]

***1.** In page 5, to delete lines 18 and 19 and substitute the following:

"(2) *Sections 2*, *4*, *5*, *6*, *7* (other than *subsection (1)*), *8*, *9* and *13* (other than *subsections (2)* and *(3)*) shall be deemed to have come into operation on 5 December 2011.

(3) *Subsection (1)* of *section 7* shall be deemed to have come into operation on 5 December 2011 in so far only as it relates to pay.

(4) *Subsections (2)* and *(3)* of *section 13* and *section 22* shall come into operation on the day immediately following the passing of this Act.".

***2.** In page 5, between lines 20 and 21, to insert the following:

" "Act of 1971" means the Employment Agency Act 1971;".

***3.** In page 6, between lines 5 and 6, to insert the following:

"(*f*) overtime,".

***4.** In page 6, to delete lines 8 and 9.

***5.** In page 7, to delete lines 41 to 43 and in page 8, to delete lines 1 to 22.

6. In page 7, to delete lines 41 to 43 and in page 8, to delete lines 1 to 15 and substitute the following:

"3.—(1) For the purposes of this Act, an employee is a comparable employee in relation to an agency worker if—

(*a*) that employee's employer and the hirer of the agency worker is the same person,

(*b*) that employee and the agency worker work at the same place of work within the meaning of the Safety, Health and Welfare at Work Act 2005 or, where that employee and the agency worker work or are required to work at different locations, their work is directed and supervised by the hirer from the same place, and

(*c*) (i) both that employee and the agency worker do the same work under the same or similar conditions or each is interchangeable with the other in relation to the work, or

(ii) no employee of the hirer of the agency worker is a comparable employee by reference to *subparagraph (i)* and the work done by that employee is the same or similar in nature to that done by the agency worker and any differences between the work done or the conditions under which it is done by each are of minor significance when viewed as a whole or occur with such irregularity as not to be significant.".

—*Senators Mary M. White, Jim Walsh, Terry Leyden, Feargal Quinn*.

7. In page 8, between lines 22 and 23, to insert the following:

"(3) For the purposes of *subsection (1)* of *section 7*, where more than one employee is a comparable employee by reference to *subsection (1)* and different comparable employees are entitled to different basic working and employment conditions, then an agency worker shall be entitled to the basic working and employment conditions of the comparable employee who is most comparable to the agency worker, having regard to matters such as the similarity of their respective work and the date on which the comparable employee was employed as such by the employer.".

—*Senators Mary Ann O'Brien, Marie Louise O'Donnell*.

***8.** In page 9, to delete lines 3 to 12 and substitute the following:

"7.—(1) Subject to any collective agreement for the time being standing approved under *section 8*, an agency worker shall, for the duration of his or her assignment with a hirer, be entitled to the same basic working and employment conditions as the basic working and employment conditions to which he or she would be entitled if he or she were employed by the hirer under a contract of employment to do work that is the same as, or similar to, the work that he or she is required to do during that assignment.".

9. In page 9, to delete lines 3 to 12 and substitute the following:

"7.—(1) Subject to any collective agreement for the time being standing approved under *section 8*, the basic working and employment conditions to which an agency worker is entitled shall be the same as the basic working and employment conditions to which a comparable employee would 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.

(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 the same as the basic working and employment conditions of a comparable employee.".

—*Senators Mary Ann O'Brien, Marie Louise O'Donnell*.

10. In page 9, to delete lines 3 to 12 and substitute the following:

"7.—(1) Subject to any collective agreement for the time being standing approved under *section 8*, the basic working and employment conditions to which an agency worker is entitled shall be the same as the basic working and employment conditions to which a comparable employee would be entitled if a comparable employee were so employed and his or her employment started at the same date as the assignment of the agency worker.".

—*Senators Mary M. White, Jim Walsh, Terry Leyden, Feargal Quinn*.

11. In page 9, between lines 12 and 13, to insert the following:

"(2) Where, in respect of an agency worker, more than one person is a "comparable employee" within the meaning of *section 3*, the hirer company may designate one such person as the "comparable employee" for the purpose of this section and the basic working and employment conditions to which the agency worker is entitled further to *subsection (1)* shall be the same as the basic working and employment conditions to which that designated person is entitled.".

—*Senators Mary M. White, Jim Walsh, Terry Leyden, Feargal Quinn*.

12. In page 9, to delete lines 13 to 30.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly*.

13. In page 9, line 14, after "agency" where it secondly occurs to insert the following:

"with the exception of those assigned to the public sector".

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly*.

***14.** In page 9, between lines 35 and 36, to insert the following:

"(4) This section shall not operate to affect any arrangement provided for under an enactment, a collective agreement or otherwise whereby an agency worker is entitled to basic working and employment conditions that are better than the basic working and employment conditions to which he or she would be entitled under this section.".

***15.** In page 9, between lines 37 and 38, to insert the following:

"Anti-avoidance.

8.—(1) (*a*) Assignments forming part of the same series of assignments shall, for the purposes of the determination of the basic working and employment conditions of an agency worker, be treated as a single assignment.

(*b*) For the avoidance of doubt, the period between the expiration of an assignment in a series of assignments and the commencement of the assignment immediately following it in the series shall not be taken into account in determining the basic working and employment conditions of an agency worker.

(2) For the purposes of this section, two or more assignments (in this subsection referred to as "relevant assignments") constitute a series of assignments if—

(*a*) the hirer, in relation to a relevant assignment (other than the relevant assignment first occurring), is—

(i) the same person as the hirer in relation to the relevant assignment immediately preceding it, or

(ii) a person who is connected with the hirer referred to in *subparagraph (i)*,

(*b*) in relation to each relevant assignment, the agency worker is the same person as the agency worker in relation to the other relevant assignments,

(*c*) in relation to the relevant assignments—

(i) the agency worker works in whole or in part at the same place of work, or

(ii) the agency worker's work is directed and supervised from the same place (in circumstances where the agency worker works or is required to work at different locations),

and

(*d*) in relation to the relevant assignments, the agency worker does the same or similar work under the same or similar conditions, and any difference in the work done or the conditions under which it is done as between any relevant assignment and any other relevant assignment is of minor significance when viewed as a whole or occurs with such irregularity as not to be significant,

but shall not constitute such a series if the period between the commencement of any relevant assignment and the expiration of the immediately preceding relevant assignment exceeds 3 months.

(3) For the purposes of this section, a person is connected with another person if—

(*a*) in the case of an individual, he or she is—

(i) the spouse, child, parent, brother or sister of that individual, or

(ii) a business partner of that individual where the work to which the assignment concerned relates is carried out for the purposes of that business,

(*b*) in relation to a company or partnership, he or she is a person who exercises control (within the meaning of section 158 of the Corporation Tax Act 1976) of that company or partnership,

(*c*) in relation to a company he or she is—

(i) a company that is a holding company or subsidiary (within the meaning of section 155 of the Companies Act 1963) of the company first-mentioned in this paragraph, or

(ii) a company, the holding company (within the meaning of the said section 155) of which is also the holding company of the company first-mentioned in this paragraph.".

16. 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".

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly*.

***17.** In page 10, to delete lines 13 to 19 and substitute the following:

"(*c*) the body that negotiated the agreement on behalf of employees (or, in circumstances where the agreement was negotiated on behalf of employees by more than one body, each such body) is the holder of a negotiation licence under the Trade Union Act 1941, or is an excepted body within the meaning of that Act;

(*d*) the body or bodies that negotiated the agreement on behalf of employees is or are, in the opinion of the Labour Court, sufficiently representative of agency workers;".

***18.** In page 11, to delete lines 37 to 44 and substitute the following:

"Access to employment by hirer.

11.—A hirer shall, when informing his or her employees of any vacant position of employment with the hirer, also inform any agency worker for the time being assigned to work for the hirer of that vacant position for the purpose of enabling the agency worker to apply for that position.".

***19.** In page 12, to delete lines 13 to 16 and substitute the following:

"13.—(1) An employment agency shall not charge an individual a fee in respect of the making of any arrangement for the purpose of that individual's being employed, subsequent to the conclusion of his or her assignment with a hirer, under a contract of employment with that hirer.".

***20.** In page 12, between lines 20 and 21, to insert the following:

"(4) This section is in addition to, and not in substitution for, subsection (2) of section 7 of the Act of 1971.".

***21.** In page 12, to delete lines 21 to 24 and substitute the following:

"14.—(1) A hirer shall, as respects access to collective facilities and amenities at a place of work, treat an agency worker no less favourably than an employee of the hirer unless there exist objective grounds that justify less favourable treatment of the agency worker.".

22. In page 12, to delete lines 25 to 28 and substitute the following:

"(2) In this section "collective facilities and amenities" includes—

(*a*) canteen or other similar facilities,

(*b*) child care facilities, and

(*c*) transport services,

but does not include any matter in the nature of remuneration or any expense payable to an employee.".

—Senators Mary M. White, Jim Walsh, Terry Leyden, Feargal Quinn.

***23.** In page 12, line 43, to delete "Employment Agency Act 1971" and substitute "Act of 1971".