

CGU General Secretaries Meeting

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Global Union Principles on Temporary Work Agencies

Policy positions differ in the trade union movement, both at national and international levels concerning the use of temporary work agencies. Views vary from total bans on such agencies, to partial bans, to strict regulation. There are also differences as to on what basis workers should be covered by collective bargaining agreements. However, there are certain views shared by all Global Unions.

The first principle is that the primary form of employment shall be permanent, open-ended and direct employment.

Concerns and challenges

The use of workers provided by temporary work agencies raises concerns and challenges for trade unions. This includes the effect that the use of temporary work agencies has on workers with regular and permanent employment as well as on the conditions under which work is performed by workers engaged through such agencies. The triangular relationship between the worker, the user enterprise and the temporary work agency that supplies the worker can undermine labour and social protection, as well as the effective realisation of the right of all workers to form or join trade unions and to bargain collectively.

Agency workers must be specifically guaranteed the right to join a union with a collective bargaining relationship with the user enterprise and be part of a bargaining unit comprising direct employees of the user enterprise and be covered by all collective bargaining agreements applying to the user-enterprise.

Using temporary work agencies as a way of replacing direct and permanent employment

There may be legitimate demand-driven or business reasons for using temporary agency workers, including surges of work and seasonal employment, although such work can also be performed through direct employment. However, not all reasons for using temporary agency work are related to staff shortages or the “fluctuation of business” and it has become common to use temporary agency workers to fill previously permanent and direct positions and to reduce costs. Increasingly, workers provided by agencies are used to fill “core” jobs but are not given any opportunity to transition to direct permanent employment. In a growing number of instances, entire workforces are provided by temporary work agencies.

Using temporary work agencies to adversely change employment conditions, avoid social responsibilities and evade laws

Employers often use temporary agencies in order to avoid their legal obligations. This can and does lead to abuses such as social dumping and all kinds of discrimination. Work then becomes precarious and workers are denied the employment rights and working conditions to which they would otherwise be entitled. Sometimes these agencies are creations by the company or employer concerned, with the user enterprise becoming the sole client.

Workers provided by agencies frequently receive significantly lower compensation than regular employees performing the same work. Such workers are also often not entitled to the same levels of social protection, such as retirement provision, the right to unemployment compensation, sickness benefits or maternity leave. Employers commonly do not invest sufficiently in the education or training of agency-supplied workers. Inadequate education and training may undermine the quality of service provided by the agency workers, while lack of training on health and safety increases the risk of occupational accidents and diseases.

The cost of downsizing is lower if temporary agency workers are engaged because ending a commercial contract is often less costly than terminating an employment relationship. In various countries and sectors, the financial crisis resulted therefore in massive job losses for temporary agency workers, who are not generally entitled to any of the compensations that are required to be paid in the case of forced redundancies. This experience heightens the danger that as economies recover, employers will increasingly favour temporary agency work as a means to avoid the costs of terminating regular employees. This would add additional instability and volatility to the economy.

Where more and more workers are made “disposable”, many business risks are shifted from employers to workers.

Using temporary work agencies to weaken trade unions, avoid collective bargaining or prevent union organising

Employers are, at times, deliberately using temporary work agencies to reduce the number of workers covered by collective bargaining at their enterprises or to prevent unorganised sections of the workforce from seeking union representation and exercise their right to bargain with the user enterprise, which effectively controls terms and conditions of employment.

One of the principal reasons why workers do not form or join trade unions is fear of discrimination or dismissal. Temporary agency employment increases this fear because it is a way to avoid dismissal legislation, which has the effect of, indirectly, protecting the right to organise. Too often, contracts are simply ended. In addition, temporary agency employment reduces the workers’ stake in an enterprise, as well as the opportunity to participate in trade unions.

The use of workers supplied by temporary work agencies to replace striking workers or to undermine industrial action at a user enterprise is a serious violation of trade union rights.

Using temporary work agencies as a means of exploitation.

Where temporary work agencies are permitted to operate, they must be properly regulated and monitored in order to prevent abuses of workers, such as human trafficking or fee charging in cross border placements. When agencies involved in recruiting workers in one country for work in another country charge fees to the workers concerned instead of to the user enterprise, those abuses lead to extreme exploitation, including bonded or slave labour. All recruitment fees, including visa, transportation and hiring fees, must therefore always be borne by the user enterpriser.

Fundamental principles on temporary work agencies

- The primary form of employment shall be permanent, open-ended and direct employment.
- Workers provided by temporary work agencies must be accorded equal treatment and opportunities, including equal pay for equal work, with regular and permanent employees with respect to terms and conditions of employment.
- Workers employed through temporary work agencies must have a recognised and enforceable written contract of employment, specifying their terms and conditions of employment.
- Where agencies are permitted to operate, they must be strictly regulated, including through licensing.
- Temporary work agencies must not be used to eliminate permanent and direct employment relationships, diminish the conditions under which work is performed, avoid collective bargaining relationships with trade unions or effectively make it impossible for an agency worker to join a trade union.
- Employers should consult trade unions before agency workers are used and negotiate over any effects that the use of these agency workers might have on regular employees, on working conditions or on the collective agreement.
- The use of temporary agencies should be restricted to cases of legitimate need. As a minimum, there should be defined limits on the use of agency workers, as well as restrictions on the duration of such employment.
- Workers provided by temporary work agencies must be guaranteed access to information on health and safety regulations in the workplace and be given the same equipment, induction and training as permanent workers.
- Adequate and continuous social protection for agency workers, including social security coverage, must be ensured by employers and government alike.
- Temporary work agencies must treat workers without discrimination on the basis of race, ethnic origin, colour, sex, sexual orientation, religion, political opinion, nationality, social origin, age, disability or any other form of discrimination. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote these principles, rights and obligations. These include the minimum standards outlined in ILO Convention No. 111.
- Given the general over-representation of women in agency employment and the disparity in wages between permanent and agency workers, particular attention must be given to ensure that the equal pay provisions of Convention No. 100 are applied, including equal pay for work of equal value.
- The ILO should play a much more active role in ensuring that temporary employment agencies respect basic labour standards, as well as in collecting data on abuses and best practices, while at the same time monitoring and analysing trends in employment in both the private and public employment agency sector. This research should focus on issues relating to the economic crisis and the Global Jobs Pact. The Global Unions should participate in this work.
- Workers supplied by temporary work agencies must never be used to replace striking workers or undermine industrial action.
- Temporary work agencies must not charge any fees to workers for dispatching them.
- The user-enterprise must be held liable for all financial and other obligations with respect to temporary agency workers should the agency fail to honour its responsibilities.

Principles of public policy with respect to temporary agency work

- Governments have the responsibility to protect the interests of society in stable employment relationships and to ensure the applicability of labour law, the branch of law developed to protect workers in both public and private sectors, in their unequal relationship with employers.
- Governments can limit or ban the use of temporary work agencies in order to protect these broader societal interests.
- Government must set strict regulations and licensing conditions if agencies are permitted to operate.
- Governments should consult trade unions on issues related to working and employment conditions of the agency workers, as well as on conditions of use of temporary agency work prior to making changes in the regulatory framework.
- The respective roles, obligations and rights of the workers, the temporary work agency and the enterprise using the worker must be clarified when there is an employment relationship between a temporary work agency and a worker.
- Governments must take genuine and concrete measures such as changes in legislation to ensure that workers dispatched by temporary work agencies are able to effectively exercise their right to join or form trade unions. This includes the right to join a union with a collective bargaining relationship with the user enterprise and be part of a bargaining unit comprising direct employees of the user enterprise and be covered by all collective bargaining agreements applying to the user-enterprise.
- Governments should strengthen labour inspection, including through providing adequate resources, in order to effectively apply labour law and regulations to employment via temporary work agencies.
- Governments should provide effective mechanisms to protect all workers from health and safety hazards and ensure health & safety conditions of temporary agency workers are the same as of permanent ones. Governments should introduce sanctions for user-enterprises, public and private, not complying with health & safety requirements.

Migrant workers dispatched through temporary agencies face specific problems.

- Migrant workers should receive details of their living and working conditions in a language they understand before leaving their country of origin.
- Governments must take active measures to prevent human trafficking and the exploitation of migrant workers by labour intermediaries, both public and private, including temporary work agencies.
- Governments should ensure that immigration legislation governing migrant workers recruited through agencies does not conflict with labour laws by imposing restrictions on migrant workers' rights to join trade unions or bargain collectively.
- Workers should not be required to pay deposits, visa, transportation and hiring fees. In the case of agencies dispatching workers to other countries, the agencies should be required to repatriate workers in the event that their employment ends or the user company disappears.
- Workers must not be required to surrender their passports or other travel or identity documents.
- Temporary migrant workers should have full rights to legal redress in the country where they work.