

# ПРОБЛЕМИ РЕАЛІЗАЦІЇ ПРАВ У СФЕРІ ПРАЦІ ТА СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

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## TEMPORARY EMPLOYMENT AND EMPLOYEES LABOUR RIGHTS

Temporary employment is a heterogeneous concept. It may refer to fixed-term contracts, on-call work, probationary jobs, leave replacements and sometimes temporary agency work. The full list of jobs that qualify as temporary employment varies between countries. The temporary employment rate has increased.

**Keywords:** temporary employment, private employment agencies, employee, labour rights.

**Problem setting.** The role of the classic employment relationship is undergoing major rethinking at the current time and temporary employment becomes more widespread in both developed and developing countries. However, the use of such form of employment leads to increased inequality and insecurity that undermines prospects for economic development, causing a steady decline in the living standards of employees.

**Analysis of recent researches and publications.** Topical issues of legal regulation of non-standard forms of employment in a market economy is the subject of study of Ukrainian and foreign scientists, such as: F. Andersson, A. P. Bizyukov, A. K. Bhandari, I. Brinkley, P. H. Cappelli, S. Clauwaert, G. I. Chanysheva, P. Fadeuilhe, C. Gather, E. S. Gerasimova, V. E. Gimpelson, S. Y. Golovina, M. Hall, T. Hartmann, A. Heshmati, R. I. Kapelyushnikov, J. R. Keller, I. J. Kiselev, T. Y. Korshunova, M. Kurzina, I. A. Kostyan, C. Lang, I. Motorna, A. Muller, A. F. Nurtdinova, A. S. Prylypko, A. P. Rymkevich, J. Thompson, S. A. Saurin, I. Schömann, G. Vakhitova, H. Wilson, S. Wölfling, G. Wünsche, I. I. Zavodovsky, etc.

The **purpose** of this article is to examine the main characteristics of temporary employment, to research issues of ensuring the individual and collective labour rights of temporary employees.

**Article's main body.** Temporary employment covers diverse forms of employment relationships. One of the most

common forms is fixed-term contracts that are particularly affected by the impact of the economic crisis, putting employees in a very insecure and precarious position. Rising structural unemployment and global competition in the 1980s led to demands for greater flexibility in labour markets, which resulted in reforms of employment protection legislation. This in turn gave rise to an increasing use of temporary employment contracts in the 1980s and 1990s in many European countries. In the past decade, this trend has continued in a number of countries. Transitions out of employment are becoming more common while those into permanent employment are becoming more difficult in recent years, which raises questions about the extent to which temporary contracts facilitate career progression [1].

It is important to evaluate that recent developments in temporary employment across EU member states show that: 1) much higher for employees aged 20–29 years (and for those aged 30–39 years and above 60 years, although to a lesser extent) and lower for those aged 50–59 years than for those employees aged 40–49 years; 2) slightly higher for female than male employees; 3) higher for employees with low educational attainment and lower for highly educated employees than for employees with medium educational attainment, confirming the negative relationship between educational attainment and the likelihood of holding a temporary contract; 3) much higher in agriculture and

some service sectors (extraterritorial organisations, arts and entertainment, and education) than for employees in manufacturing, while they are lowest in the financial, mining, and activities of households as employers sectors; 4) slightly higher for employees working in medium-sized companies (20–49 employees) than in larger companies employing 50 or more, while there is no difference between the latter and smaller companies employing fewer than 20 people, where the results are not statistically significant; 5) higher for part-time than for full-time workers, and higher for employees having more than one job than for those having only one; 6) much higher for employees who were out of employment in the previous year than for those who were already employed [2, p. 24].

Temporary work is booming, in particular in Germany. Almost two percent of all employees are temps rented by agencies to other companies to meet peaks in demand without hiring new staff. The politicians who came up with the idea originally believed that the system would allow the German economy to better react to business fluctuations. At the same time, temporary work would help unemployed people get into permanent jobs. That's how it works in theory, anyway [3]. But in practice, several companies recognized the tremendous saving potential that came with hiring cheap temporary workers instead of sticking to their more expensive permanent employees.

In some countries, particularly lower-income developing countries, temporary employment is characterized by casual employment relations, which in most cases means that workers are engaged on a daily, weekly or sometimes seasonal basis, but without a formal work contract. In developing countries, the trends and incidence of temporary or casual employment are affected primarily by the movement from self-employment into waged employment [4, p. 6].

Attention should be drawn to the temporary employment, whereby employees are engaged for a specific period of time, includes not only fixed-term, project or task-based contracts, as well as zero hour contracts which are also known as casual contracts. Zero hour contracts are where an individual is not guaranteed work and is paid only for the actual hours of work offered by the employer and carried out. Employees have to be available as and when an employer needs them.

The issue of zero hours contracts has become one of the hottest political topics in the *United Kingdom*. Zero hours contracts allow companies to keep staff on stand-by while offering no guaranteed work.

Zero-hours contacts seem to have been widely used in industries such as tourism and retail for some time. However, they are being used increasingly across a wider range of sectors. Many teachers, journalists and lawyers are also on zero-hours contracts. Certain groups of people are more likely to be on zero-hours contracts, such as people under 25 or over 65 years of age [5].

In brief, zero-hour contracts may be a dream for cost-cutting employers. But they can be a nightmare for workers. Many people on zero-hours contracts are unable

to plan for their future and regularly struggle with paying bills and having a decent family life. The so-called 'flexibility' these contracts offer is far too one-sided [6]. Staff without guaranteed pay have much less power to stand up for their rights and often feel afraid to turn down shifts in case they fall out of favour with their employer.

Furthermore, New Zealand has passed legislation banning zero-hour contracts, in what is thought to be one of the first laws in the developed world to end the use of deals criticised as exploitative [7].

It should be emphasized that Labour Code of Ukraine provides for the following types of employment contracts: for an indefinite period of time (permanent contract); for a definite period of time (fixed-term contract); for a period of completing a specific task (article 23). A fixed-term contract is typically concluded if this is justified by the specifics of the job, the conditions of its execution, or the interests of an employee. There is no limit as to how many times a fixed-term employment contract may be concluded between the same parties. However, if the term of the regular employment contract expires and the employee continues to work for the company without any objections of the employer, then such contract is considered renewed for an indefinite period of time. Also an employment contract concluded for a period of completing a specific task is typically concluded with temporary/seasonal employees.

Also, it is important to note that temporary employment contacts are being widely used also in Ukraine.

At times of economic fluctuations companies often face the problem of performing the current number of tasks while balancing employment costs. The decision in this case is to find appropriate temporary personnel. For instance, **Total HR** is one of the biggest personnel leasing companies in Ukraine, which on average provide about 10 thousand temporary workers per year [8].

**Total HR offers assistance in the following spheres:** personnel leasing (staff leasing, outsourcing); conducting projects for large production companies as well as companies employing big number of staff; providing personnel for season work, during vacations, as staff replacement, etc.; payroll and administrative services; staff audit; administrative services for foreign workers (such as foreign company registration in Ukraine, getting job permit, handling visa issues and much more).

An international staffing agency Europa Recruitment focusing on staff leasing. Recruitment is performed through the staffing agency branches in the Czech Republic and through subsidiary companies – staffing agencies in different countries of Central and Eastern Europe, Slovak Republic, Poland, Latvia, Ukraine. The feature of staff leasing and temporary help is in simplicity of human resource use, provision of necessary number of people in the shortest possible time, as well as transparency of calculation. Due staff leasing enterprise could save up to 25% of human resource costs. Period of supply of temporary workers – *up to 3 days*, trade workers –

1 day, craft professions – 3 days [9]. Temporary workers are placed in industrial production, logistics and storage, in food production, for service and health sectors.

Thus, temporary employment agencies are becoming stronger actors in the labour market of Ukraine.

While the average Ukrainian agency has typically started operating in the period 2005–2009, there is a whole variety of firms in this sector. On the other side, a licensed private employment agency is predominantly small and owned by a Ukrainian private entrepreneur. The sector of licensed private employment agencies consists of two distinguished subsectors. Almost half of firms recruit mariners and slightly less than – recruit for international companies (migration). This dichotomy is observed in many aspects of actual operations. Firms use their existing database to build up a pool of potential candidates and mostly recruit mariners (71 percent) [10, p. 49]. The number of private employment agencies is currently estimated to be 715 actors [11].

Temporary employment supposes a tripartite relation between the temporary employment agency, the employee and the user company (secondary employer). There is considered to be no employment relationship between the temporary agency employee and the user company. In the best case scenario, the tripartite relation implies two separate agreements, one between the agency and worker and another – between the agency and the user company. Relationships between the agency and the secondary employer are regulated by Civil law, whereas relationships between the agency and worker – by Labour Law.

It must be remembered that, the percentage of employees who held a temporary job because they could not find a permanent job.

Temporary employment contracts can affect employees in a variety of ways. Empirical evidence suggests that de facto earnings of temporary workers differ from those of full-time workers. They have much lower wages, even after such issues as the length of the employment relationship, sector, age and gender are controlled for. Indicators related to employment security and physical safety, participation in training and discretion regarding job tasks are also systematically at lower levels than among equivalent employees in permanent employment.

Temporary work has a clear effect on an individual's career. People in temporary employment usually have fewer months in employment and more months in unemployment or absenteeism in comparison with workers in permanent employment. Employers have fewer incentives to provide vocation training when the employment relationship is not long enough to compensate the training costs.

It can be seen that increased temporary employment brings risks. Poorer job quality, especially in involuntary temporary work, can negatively affect productivity.

Given that employer **offers flexible system, for instance, of staff leasing that help to achieve such goals as:** obtaining of specialists for a specific problem solving, urgent projects that require involvement of ad-

ditional staff, quick building of employee staff of branches, agencies, reduced costs on maintenance of human resources and accounting departments, possibility to «lease» employees if number of staff employees and budget are limited. As a result, temporary employees frequently have inadequate employment-based social security coverage, either because they are explicitly excluded from receiving coverage by law or because their short tenure, short contribution periods or low earnings may limit access to such entitlements. They experience difficulty in joining trade unions or in being covered by collective bargaining agreements.

In that regard, Verkhovna Rada Committee on Social Policy, Employment and Pension Provision recommends Ukrainian Parliament adopt as a basis draft law «On amendments to Article 31 of Law of Ukraine «On employment of population». The draft law No. 3566 aims to bring the Ukrainian legislation in line with the laws and standards of the European Union in social and labour sector [12].

It also aims to implement the Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with an employment relationship governed by a fixed-duration contract or a temporary employment relationship.

The draft law offers to supplement Article 31 of the Law of Ukraine «On employment of population» with new term, under which works put on the list of the particularly dangerous works approved by the State industrial safety committee of Ukraine on January 26, 2005, do not refer to the category of public works.

The Committee considers that the implementation of the offered terms will improve safety and protection of labor of citizens involved in public works in compliance with the Law of Ukraine «On employment of the population».

#### **Conclusions and prospects for the development.**

Ukraine should ratify ILO Convention № 181 on private employment agencies, one of the objectives of which is that private employment agencies should have an opportunity to act, and the employees who use their services, should be protected. Ukrainian legislation should include a provision stating that the employees have the same individual and collective labour rights as other categories of employees, including personal non-property labour rights.

Accordingly, Ukraine should make necessary changes in legislation. For instance, in France, a new scheme for permanent contracts for temporary agency workers (CDI intérimaire) took effect on 6 March 2014. Concluded between temporary workers and temporary employment agencies, the CDI intérimaire contract covers two defined periods: periods when the temporary worker is engaged on an assignment – when they receive remuneration at the rate equivalent to that normally paid by the user company; periods of non-assignment, during which they receive a guaranteed minimum monthly salary that must not be lower than the French national minimum wage. During both these

periods, the temporary employment agency can ask the worker to attend training courses [13].

The Annual Report of the Ukrainian Parliament Commissioner for Human Rights on the state of human rights and freedoms in 2015 indicated that the demand for employees decreased in almost all types of economic activity and by main classification of occupations. With the purpose of resolving the situation in the labour market, it is necessary to introduce an efficient strategy for creating jobs, directed at increasing employment and the effective protection of individuals from unemployment, to improve legal mechanisms to encourage employers to create new productive high-tech workplaces [14, p. 449].

These are also indicative of the positive role of social dialogue in regulating and monitoring private employment agencies implementing forms of social dialogue. The Law of Ukraine «On Social Dialogue in Ukraine» determines the legal principles of organizing and the procedure for holding social dialogue in Ukraine with the purpose of developing

and implementing the state social and economic policy, regulating labour, social and economic relations, and ensuring improvement of the living standard and the quality of life, as well as social stability in the society. Article 8 of the Law envisages that social dialogue is conducted between the parties of social dialogue in the following forms: exchange of information; consultation; reconciliatory procedures; collective negotiations on conclusion of collective agreements.

This is especially true that temporary employees must receive the same treatment as full-time permanent staff. Specifically, it is important to ensure that temporary employees enjoy equality and non-discrimination in terms of wages, social benefits, training, and access to collective bargaining.

It is important to pay attention to the need for detailed regulation in the Labour Code of Ukraine conditions of activity of business entities. Labour relations between an employee and several employers simultaneously require the establishment of reliable guarantees of the rights of employees to prevent abuse by employers.

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## ТИМЧАСОВА ЗАЙНЯТИСТЬ ТА ТРУДОВІ ПРАВА ПРАЦІВНИКІВ

У статті підкреслюється, що тимчасова зайнятість веде до зростання нерівності та соціальної незахищеності, підриває перспективи економічного розвитку країни, викликає неухильне зниження рівня життя працівників. Аналізується проблема законодавчого врегулювання правовідносин між роботодавцями і працівниками, що працюють при нетипових формах зайнятості, та приватних агентств зайнятості.

**Ключові слова:** тимчасова зайнятість, приватні агентства зайнятості, працівник, трудові права.

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## ВРЕМЕННАЯ ЗАНЯТОСТЬ И ТРУДОВЫЕ ПРАВА РАБОТНИКОВ

В статье подчеркивается, что временная занятость ведет к росту неравенства и социальной незащищенности, подрывает перспективы экономического развития страны, вызывает неуклонное снижение уровня жизни работников. Анализируется проблема законодательного урегулирования правоотношений между работодателями и работниками, которые работают при нетипичных формах занятости, и частных агентств занятости.

**Ключевые слова:** временная занятость, частные агентства занятости, работник, трудовые права.