



Reform of temporary agency work and service contracts in Germany

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The German Parliament passed the “Act on the Reform of the Temporary Agency Work Act and other Acts”, which will come into force on 1 April 2017. The main objective of this reform is to re-orientate temporary agency employment to its core function (i.e. dealing with peak periods and temporary staff fluctuations) and to prevent the abuse of service contracts.

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Description

Temporary agency work as a form of non-standard employment has increased greatly in quantitative terms in recent years in Germany. In June 2016, around one million people, i.e. almost 3% of all employees, were working as temporary agency workers. This employment form is highly dynamic: only 15% of all temporary employment relationships last longer than 18 months. In 2015, the average pay of temporary agency workers was 42% lower than that of core employees, a difference that is only partly explained by differences in occupation and qualifications (Bundesagentur für Arbeit 2017). Temporary employment enables employers to make flexible use of the workforce, but it is associated with high risks for those concerned – in terms of both employment and income.

On 21 October 2016, the German Federal Parliament passed the “Act on the Reform of the Temporary Work Act and other Acts” (Gesetz zur Reform des Arbeitnehmerüberlassungsgesetz und anderer Gesetze). It was approved by the Federal Council (Bundesrat) on 25 November 2016 and will come into force on 1 April 2017.

The Grand Coalition had already declared in their coalition agreement of 2013 that the legal framework for temporary

agency work should be reformed. The main objective of this reform was to re-orientate temporary agency work to its core function (dealing with peak periods and temporary staff fluctuations) and to prevent the abuse of service contracts.

Temporary agency work and service contracts are regarded as important instruments in the German work-sharing economy. However, efforts must be made to prevent their abuse and avoid them circumventing labour law.

Accordingly, the main provisions of the Act are as follows:

- From April 2017 onwards, the hiring time of temporary agency workers in any one company is restricted to a maximum period of 18 months. However, different regulations can be negotiated and included in a collective agreement covering the sector in question. Longer workforce deployment times are also possible.
- After nine months, temporary agency workers shall receive the same pay as permanent workers employed by the user company. Longer adjustment periods of up to 15 months are possible only if the pay is gradually raised to the level of the “standard” workers (i.e. permanent full-time contracts) under the terms of a collective agreement.

- Temporary agency workers may not be used as strike breakers by their company; however, their use is not completely ruled out in companies experiencing strike action (temporary agency workers may not undertake tasks that were previously carried out by striking workers, which leads to legal uncertainties and problems of proof).
- Following the case law established by the Federal Labour Court, an employment relationship shall be deemed to exist by law (regardless of the name and formal content) if this corresponds to the actual execution of the contract.
- Work councils have to be informed of employees who have no regular/ standard employment contract with the company.

Outlook & Commentary

At the experts' hearing held by the Federal Parliament, the Confederation of German Employers' Associations stressed that there was no need for tighter regulation and controls. After the legislation was passed, it declared itself satisfied that the legal scope for flexibility had been maintained (Bundesvereinigung der Deutschen Arbeitgeberverbände 2016).

The German Trade Union Federation has welcomed the new legislation, but its Institute of

Economic and Social Research has emphasised that the reform will not achieve the goals set out in the coalition agreement because the Act is weaker than the statement in the coalition agreement and the bills initially drafted by the Federal Ministry of Labour and Social Affairs (Absenger et al. 2016). Since the maximum hiring time for temporary agency workers is defined for individual employees (and not for occupations), the reform will not prevent employers from replacing permanent employees with temporary agency workers. Moreover, the pay gap between permanent and temporary employees will not be reduced in a sustainable way. The distinction between normal and misused service contracts will remain difficult to define because the Federal Parliament has not included in the Act the list of criteria originally agreed.

In general terms, the reform seeks to strengthen the employment and income protection of temporary agency workers without reducing the flexibility that temporary agency employment and service contracts offer employers. As a result, most experts expect that the Act will not have a major impact on the employment and income situation of temporary agency workers. The extent to which the misuse of service contracts will be prevented is difficult to assess; the legislation has only just been passed and evaluation research results are not yet available.

Further reading

Absenger, Nadine et al. (2016), Leiharbeit und Werkverträge. Das aktuelle Reformvorhaben der Bundesregierung, WSI-Report Nr. 32, 10/2016 [Absenger, Nadine et al. (2016), Temporary agency work and service contracts. The current reform project of the Federal Government, WSI-Report Nr. 32, 10/2016].

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Deutscher Bundestag (2016), Beschlussempfehlung und Bericht des Ausschusses für Arbeit und Soziales zu dem Gesetzentwurf der Bundesregierung (Drucksache 18/9232), Drucksache 18/10064 vom 19.10.2016 [German Bundestag (2016), Resolution and report of the Committee on Labour and Social Affairs on the bill drafted by the Federal Government (Drucksache 18/9232), Drucksache 18/10064 vom 19.10.2016].

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