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The *Tate*
Report.

March 2009

The Implied
Employment Risks
of Engaging
Temporary Workers

THE IMPLIED EMPLOYMENT RISKS OF ENGAGING TEMPORARY WORKERS

THE FOCUS OF THIS REPORT IS TO:

Assess the implied risks of engaging temporary workers from an employer perspective

Provide an understanding of the views of temporary workers

Assess the level of awareness and understanding towards the Agency Workers Directive (AWD)

FOREWORD

Temporary workers and the agencies that supply them play a crucial role within the context of employer resourcing strategies. The availability of flexible and often highly skilled workers is a key support mechanism for UK businesses. Temporary work also provides both short and longer term opportunities for job seekers.

For all the reasons highlighted above, it is crucial that we enhance understanding of the UK's agency work model and that we ensure that forthcoming regulations do not have a negative impact on the viability of this model. The findings included in this report highlight areas where there is a lack of awareness of the potential impact of new regulations, such as the EU Agency Workers Directive. What's more, there is a crucial role for agencies to play in working with their client employers to address concerns and establish ways of implementing these and other new regulations.

As the representative body for the UK recruitment industry, the REC is pleased to support member agencies that take the initiative through specific research projects and play an active role in leading the debate on key employment issues. A number of economic and legislative challenges lie ahead and it will be crucial for recruitment agencies to work with leading employers to adapt and thrive. We have come a long way over the last few years, in terms of the overall recognition from Government and other stakeholders of the crucial contribution that agency work brings to the UK economy and labour market. Proactive initiatives, such as the current report, will remain crucial, as we continue to challenge some of the misconceptions of agency work in the UK and highlight the vital service that agencies provide to employers in all sectors of the UK economy.

Kevin Green
Chief Executive
Recruitment and Employment Confederation (REC)

EXECUTIVE SUMMARY

Recent case law has brought into focus the benefits that recruitment consultancies, like Tate, can bring, by assuming full responsibility as the contracted employer of temporary workers. These benefits are likely to be further enhanced by the proposed implementation of the Agency Workers Directive (AWD) legislation.

The implied employment risks of employing temporary workers was recently voted the topic most Tate clients wanted to learn more about, thus Tate commissioned this survey of employers and temporary workers.

Through the research, it has become clear that there is a high level of confusion over where the responsibility lies for temporary workers - from both organisations and temporary workers.

In addition to this, we found a lack of awareness and understanding of the AWD, with a mixed response on whether it would have a positive or negative impact on those who did understand it.

At Tate, we are committed to providing our clients and candidates with the highest levels of service and collaborating with them on initiatives which will make them more productive and effective. In this report, we aim to explore the levels of confusion facing our clients and candidates, as well as answer some of the questions raised.

If you would like to find out more about Tate, please visit our website www.tate.co.uk or call your local Tate office on 0845 345 4141.



Julia Robertson
Managing Director

THE IMPORTANCE OF TEMPORARY WORKERS

Temporary workers play a vital role in the UK economy, accounting for 3.1% of the workforce - a higher proportion than any other EU country.[◇]

TEMPORARY WORKERS ARE MOST COMMONLY USED TO COVER:

Short-term cover for a vacant position

31% of organisations



Meet an upturn in demand

29% of firms



Cover for staff absence

21% of firms



Although the importance of temporary workers to the UK economy is clear, there are a number of concerns over the difference in employment rights between temporary and permanent workers, as well as confusion over where the employment responsibility lies between the recruitment agency and the organisation.

[◇]Source: CBI Employment Trends Survey

CONFUSION OVER THE EMPLOYMENT RESPONSIBILITY OF TEMPORARY WORKERS

There have been a number of legal cases dealing with disputes over where employment responsibility for the temporary worker lies. Such cases can have an impact on recruiters, agencies and temporary workers, causing confusion. Examples of high profile cases include:

JAMES V THE LONDON BOROUGH OF GREENWICH

Ms James worked for The London Borough of Greenwich for over five years and through two different agencies. She was paid by the relevant agency and arranged holidays and sick days through the agency. While Ms James was sick, the agency sent a replacement and when she returned to the council she was told she was no longer needed, as the agency had sent someone else. Ms James claimed unfair dismissal but the claim was rejected by the court. Therefore, in this case, the company did not have to pay damages to Ms. James.

Source: British and Irish Legal Information Institute, October 2007

MUSCAT V CABLE & WIRELESS

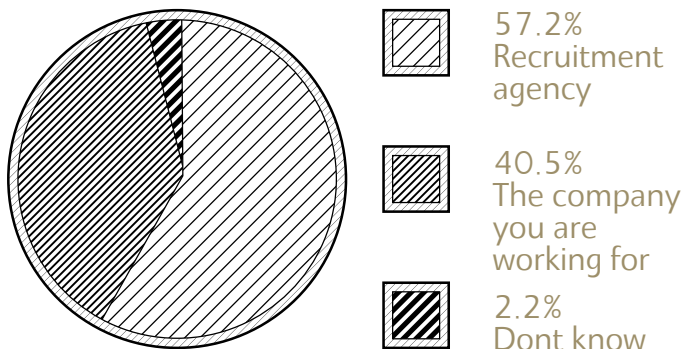
Mr Muscat was an employee of Cable & Wireless under an implied employment contract. The appeal was brought by Cable & Wireless against decisions by both an employment tribunal and the Employment Appeal Tribunal that Mr Muscat was an employee, despite being supplied by an agency. In this case, the Court of Appeal dismissed the appeal, allowing Mr Muscat to proceed with a claim for unfair dismissal, with serious costs implications for all concerned.

Source: British and Irish Legal Information Institute, March 2006

WHO DO TEMPORARY WORKERS REGARD AS THEIR EMPLOYER?

In our research, 57% of temporary workers regarded the recruitment agency to be their employer, compared to 41% who regarded the organisation that they worked for to be their employer. This finding highlights the confusion amongst temporary workers on this topic and indicates a need for clearer communication.

Q. When you gained employment through a recruitment agency, who did you regard to be your employer?



CONFUSION OVER THE EMPLOYMENT RESPONSIBILITY OF TEMPORARY WORKERS

Whether temporary workers regard the recruitment agency or organisation to be their employer, confusion remains over who is responsible for different aspects of employment. Of the temporary workers who regard their recruitment agency to be their employer, there are still a number of employment aspects that they consider the organisation to be responsible for, particularly:

- working hours
- rest periods
- performance reviews

Q. % of temporary workers who see the recruitment agency to be their employer but consider the organisation to be responsible for the following aspects:



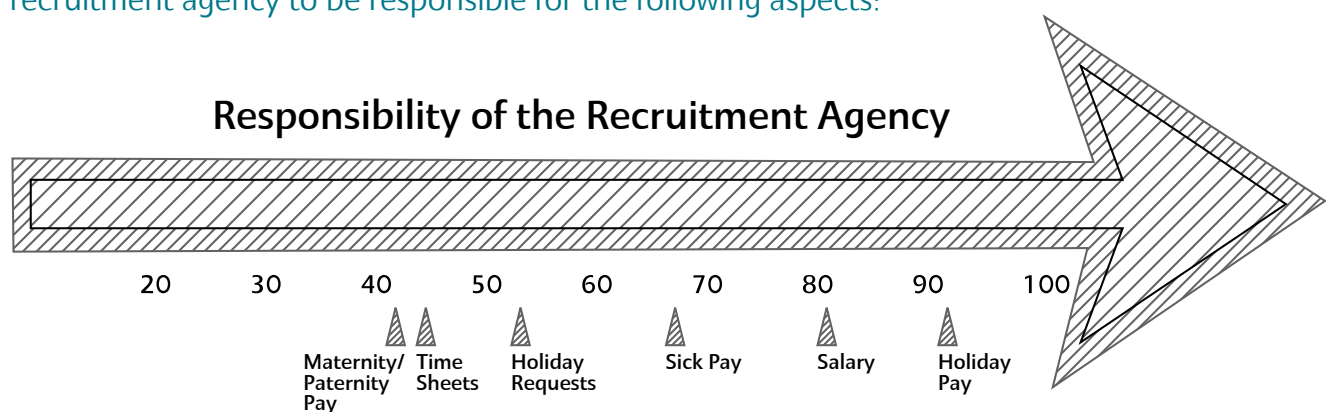
Career development and performance reviews were seen as the responsibility of the organisation by a significant proportion of temporary workers questioned. These aspects should firmly sit with the recruitment agency, as they can be indicators of 'employed status'.

CONFUSION OVER THE EMPLOYMENT RESPONSIBILITY OF TEMPORARY WORKERS

Of the temporary workers who regard the organisation to be their employer, there are still a number of employment aspects that they consider the recruitment agency to be responsible for, particularly:

- holiday pay
- salary
- sick pay

Q. % of temporary workers who see the organisation to be their employer but consider the recruitment agency to be responsible for the following aspects:



Less than half of temporary workers considered maternity/paternity pay to be the responsibility of the recruitment agency - an area for which the agency has statutory responsibility.

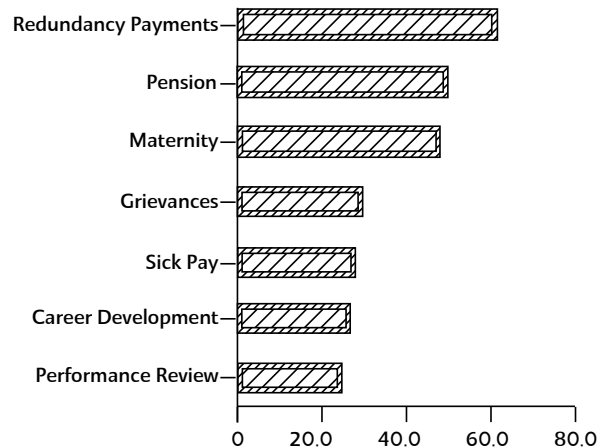
CONFUSION OVER THE EMPLOYMENT RESPONSIBILITY OF TEMPORARY WORKERS

There are also a number of areas where temporary workers do not know where the employment responsibility lies. Over half of temporary workers were unsure whether the employer or recruitment agency is responsible for the following areas:

- redundancy payments
- pension
- maternity leave

However, the confusion does not just lie with the temporary worker. Many organisations are unsure of where the responsibility lies for a number of issues, including the same issues of redundancy pay, pensions and maternity leave. This is particularly interesting, as maternity pay is a statutory right and is always handled by recruitment agencies, highlighting the need for recruitment agencies to provide greater guidance for organisations.

Q. Whilst last employed/currently employed as a temporary worker, who was responsible for the following?



% of temporary workers who responded 'don't know'.

Q. Currently when working with temporary staff recruited through a recruitment agency, who was responsible for the following?



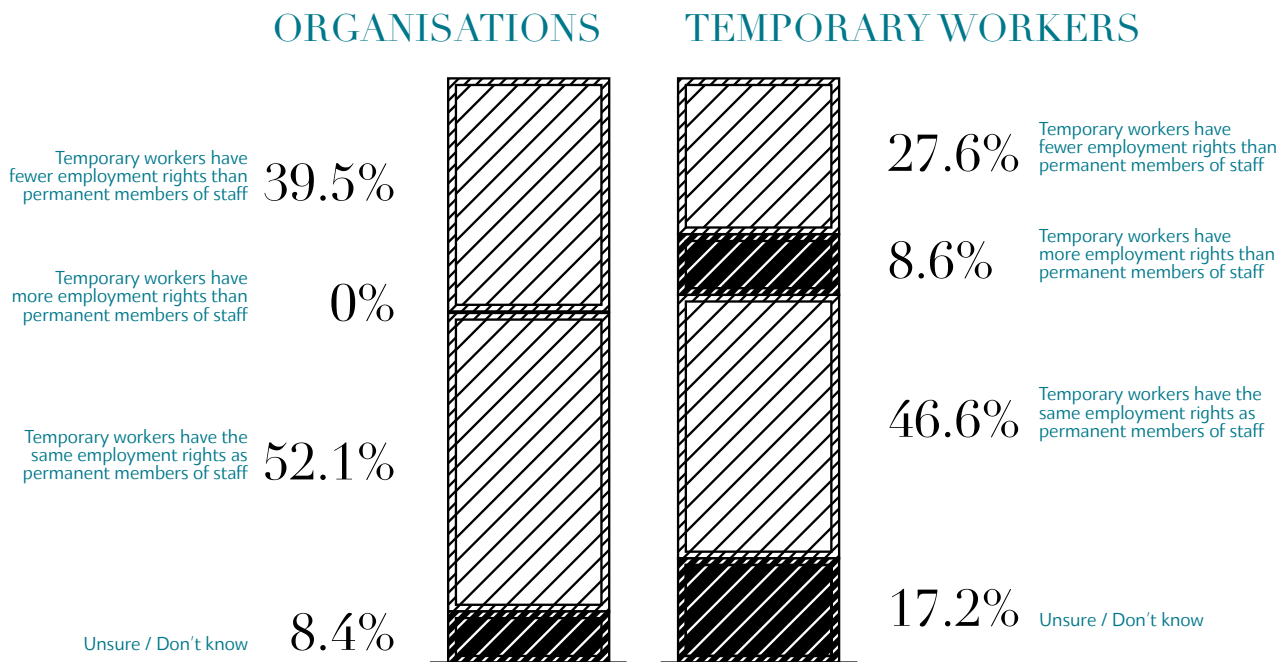
% of organisations who responded 'don't know'.

ISSUES OVER THE RIGHTS OF TEMPORARY VERSUS PERMANENT WORKERS

As well as confusion over employment responsibilities, there is also uncertainty over employment rights of temporary workers compared to permanent employees. Our research revealed a mixed response to whether temporary workers have greater or fewer employment rights than permanent workers.

The majority of both groups that we questioned believed that temporary workers have the same employment rights as permanent members of staff. Nevertheless, over a third of organisations and a quarter of temporary workers felt temporary workers have fewer employment rights.

Q. Which if any of the following statements do you agree with?



Nearly a third of respondents believe temporary workers have fewer employment rights, with nearly 40% of organisations believing this to be the case.

There have been numerous studies and papers written to highlight the disparities between temporary and permanent workers. In February

2007, the Trades Union Congress (TUC) published a report on the employment conditions of temporary agency workers. The report sets out the legal position of agency workers, and makes suggestions for future legislation, aimed at improving their labour market position. The proposals include the demand for equal employment rights for all workers and employees.

WHAT IS THE AGENCY WORKERS DIRECTIVE?

The Agency Workers Directive (AWD) is a measure to protect the rights of temporary workers, which will lead to equal treatment of temporary workers and permanent employees after a qualifying period of 12 weeks.

The AWD has been passed by Parliament but the earliest that the new legislation can be implemented is April 2010. The main aim of the AWD is to provide temporary workers with the same pay and working conditions as permanent staff.

AGENCY WORKERS DIRECTIVE KEY FACTS

Although a number of areas are still under discussion, the proposed AWD is likely to mean:

Temporary and contract workers will be granted the same working conditions and rate of pay as somebody recruited to do the same job on a permanent basis after 12 weeks in the position

After 12 weeks, temporary and contract workers will be entitled to the same basic hourly pay, holiday, holiday pay and entitlement to rest breaks as someone recruited to do the job on a permanent basis

Temporary workers will not be entitled to occupational sick pay, occupational maternity/paternity pay or entitlements to company pensions

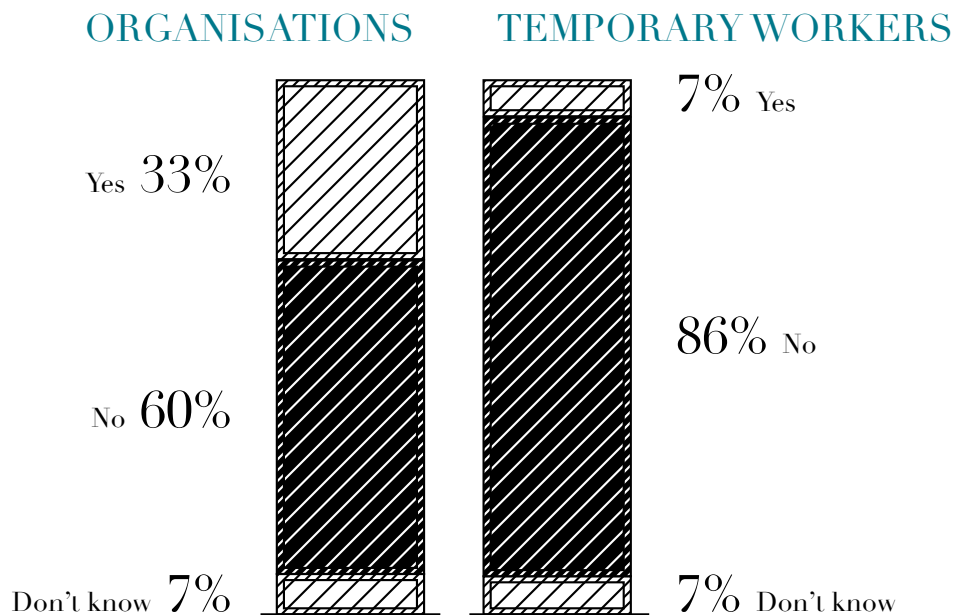
Source: REC

A LACK OF AWARENESS AND UNDERSTANDING OF THE AWD

From the research conducted, it is clear that there is low awareness and understanding of the AWD, particularly across temporary workers. A staggering 85% of temporary workers were not aware of the AWD and, of those workers who were aware, nearly half did not know the effect it would have on them.

There was a greater level of awareness across the organisations asked, with a third of employers of temporary workers being aware of the AWD. However, of those who were aware, half of those did not understand the possible effect the AWD could have on their business.

Q. Are you aware of the Agency Workers Directive (AWD)?



LACK OF UNDERSTANDING AMONGST THOSE WHO ARE AWARE OF THE AWD

ORGANISATIONS

"Do you think employers understand the possible effect the Agency Workers Directive could have on their business?"

55% of organisations said no to understanding the effects

37% said yes they did understand the effects of the AWD

TEMPORARY WORKERS

"Do you understand the possible effect the Agency Workers Directive could have on you?"

43% of temporary workers don't know the effects

37% of temporary workers feel it would have a positive effect

THE IMPACT OF THE AGENCY WORKERS DIRECTIVE

Although the AWD is designed to enhance the rights of temporary and contract workers, there is a lot of concern in the industry that implementation of the AWD could deter businesses from using temporary staff.

In addition, many have questioned the need for the AWD at all. Research carried out in 2006 showed that 77% of temporary workers were satisfied with their temporary placement.

"There is a risk that the proposal could decrease the attractiveness of agency workers to user companies, which might reduce the number of jobs available."

Department of Trade & Industry (DTI)

THE IMPACT OF THE AGENCY WORKERS DIRECTIVE

Our research revealed that some of the temporary workers and organisations questioned also had concerns over how the AWD could have a negative impact on them.



"It will reduce companies' use of temporary staff."

"It would be nice to get sick pay etc but, at the moment, I get paid holiday, although I do not feel I get as much holiday as permanent workers. Also, I wonder if this legislation will ultimately mean hourly pay will decrease?"



"The AWD would result in us employing agency people for a shorter period but replacing them with others."

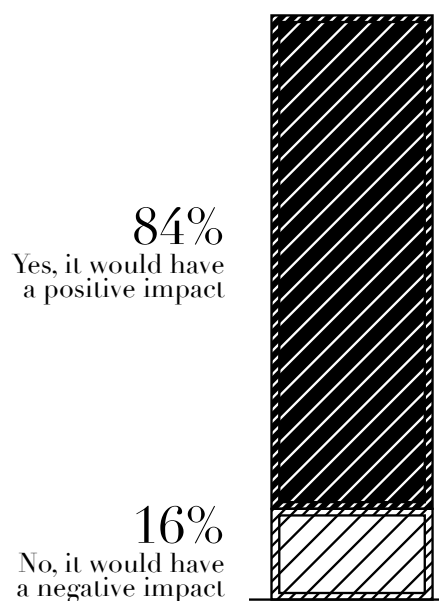


TEMPORARY WORKERS AND ORGANISATIONS SEE THE BENEFIT OF AN AGENCY WHICH TAKES FULL EMPLOYMENT RESPONSIBILITY

Temporary workers can clearly see the benefits of working through an agency that takes full employment responsibility, with over three quarters of temporary workers believing it would have a positive impact. They recognise the benefit in the clarity, simplicity and the reassurance this would offer.

84% of temporary workers would be more likely to use a recruitment agency who took full responsibility for their employment needs.

Q. Would you be more likely to use a recruitment agency who took full responsibility for your employment needs and was your contracted employer?



TEMPORARY WORKERS AND ORGANISATIONS SEE THE BENEFIT OF AN AGENCY WHICH TAKES FULL EMPLOYMENT RESPONSIBILITY

WHY WOULD IT HAVE A POSITIVE IMPACT?

"I feel it would be a lot simpler and there would be less confusion amongst temporary workers and clients."

"Because I am unsure who to go to regarding different issues. It would be reassuring to have the same point of contact whatever my situation."

"It would be simpler and clearer this way."

"I think it would be good to have only one party to be responsible for me and my work. To know who to contact when I have queries about pay, holidays, sick pay and to know more about my rights."

"Your recruitment agency should have an accurate idea as to what you are capable of and where you would like to go from this point in your career, therefore having an agency that is fully involved as your employer would make more sense."

"Because it would feel a lot easier and safer to have one person responsible so there can be no "buck passing" and so you don't have to go through the same thing."

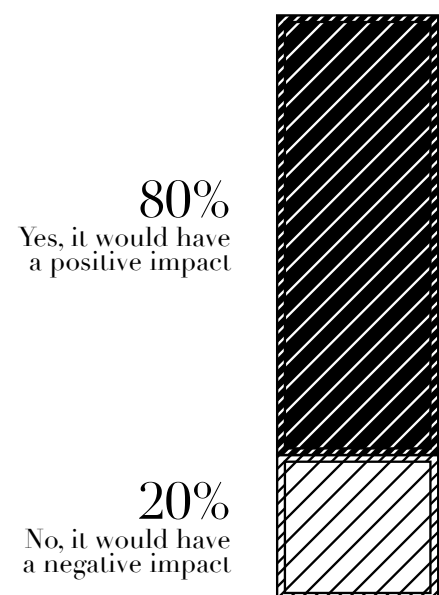
TEMPORARY WORKERS AND ORGANISATIONS SEE THE BENEFIT OF AN AGENCY WHICH TAKES FULL EMPLOYMENT RESPONSIBILITY

Organisations that recruit temporary workers can also see the benefits of using an agency that takes full employment responsibility, with the majority of those surveyed saying it would have a positive impact.

Many organisations recognise the benefits that this would offer, including easing their workload, giving reassurance and encouraging the company to employ more temporary staff overall.

80% of organisations agreed that it would have a positive impact if an agency took the full employment responsibility for temporary workers.

Q. Would it benefit you if an agency took the full employment responsibility as the contracted employer for your temporary workers?



TEMPORARY WORKERS AND ORGANISATIONS SEE THE BENEFIT OF AN AGENCY WHICH TAKES FULL EMPLOYMENT RESPONSIBILITY

WHY WOULD IT HAVE A POSITIVE IMPACT?

"This would reduce the impact of my workload."

"There has been a lack of clarity as to who the employer is and this would resolve that issue."

"It would be reassuring that I had an expert in that field and not an additional thing that I need to keep on top of."

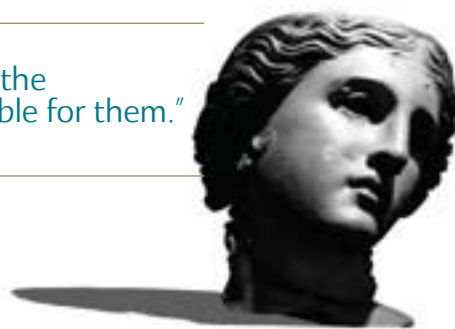
"Because it would simplify matters to have one company and/or individual that was responsible for the temporary workers. The agency would then be seen to justify their fees."

"The overall responsibility would then be with one company and hopefully more in tune with what the temporary staff member needs in the way of work and benefits."

"It would take the worry away from the employer."

"I think it would make the company more likely to employ temporary staff."

"It would give a clear indication to the temporary worker who is responsible for them."



WORKING IN PARTNERSHIP AND ACHIEVING THE RIGHT BALANCE WHILST STILL BEING PROTECTED

Overall, we have seen that the majority of temporary workers and organisations see the benefits of a recruitment agency that takes full employment responsibility.

Nevertheless, our research has revealed that it is still very important for recruitment agencies to continue to work in partnership with the organisations they are working with. This should be done with both parties fully aware of where responsibilities lie, to avoid confusion.

"Long term temporary workers should also become the responsibility of the employer, not just the agency. For an agency to take full control of this process would be detrimental to the relationship developing between the temporary worker and the company they are working for."

"I like to get involved with the temporary people who work with me - in case there is a chance of permanent vacancy - I do give praise and work very closely to the team."

WORKING IN PARTNERSHIP AND ACHIEVING THE RIGHT BALANCE WHILST STILL BEING PROTECTED

The following areas were highlighted by both the organisations and temporary workers as key areas that should be the responsibility of both parties.

To avoid the risk of implied employment, it is important that roles and responsibilities for each of these areas are clearly defined and agreed between the agency and organisation using temporary staff.

It is important that organisations work in partnership with a recruitment agency they trust and one which can help them reduce any implied employment risks of engaging temporary workers.

WORKING HOURS



CAREER DEVELOPMENT



PERFORMANCE REVIEWS/ APPRAISALS



HOLIDAY REQUESTS



WAYS OF WORKING IN PARTNERSHIP

Many organisations are already working this way. They fully understand what their responsibilities are together with those of their recruitment agency.

"Temporary workers are fully briefed and are made aware that the recruitment agency is their employer and that the agency is responsible for aspects such as sick pay before they come to work for us."

Caroline Hedges - Elmbridge Council



"We have a lot of contact with our recruitment agency and they speak to a number of people, including people who would line manage temporary staff. In terms of performance reviews, line managers are asked to provide feedback from the recruitment agency, but it is not our responsibility to undertake a performance review."

Elaine Grigg - Ordnance Survey

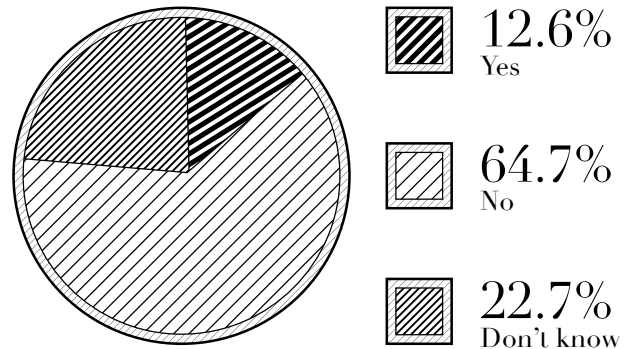
APPENDIX

WHAT RESTRICTS YOUR USE OF TEMPORARY STAFF?

The majority of organisations cannot consider recruiting more temporary workers. Those that would are more concerned about money and time than employment responsibility.

An agency which can retain its workers by fully employing them is likely to have a positive impact on productivity.

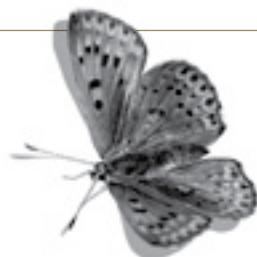
Q. Would you consider employing a higher proportion of temporary workers?



Q. If yes, what has restricted you from employing more temporary workers?

Top 2 reasons

THE LENGTH OF TIME IT TAKES FOR A TEMP TO BECOME PRODUCTIVE

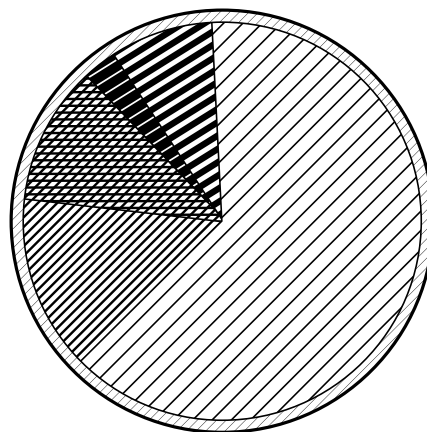


THE LEVELS OF COSTS INVOLVED



THE MAJORITY OF RESPONDENTS HAD A WORKFORCE THAT WAS MADE UP OF 0-2% OF TEMPORARY WORKERS

Q. What proportion of your workforce is made up of temporary workers? (8.4% didn't employ temporary workers)



58%		0-2%
11.8%		3-5%
10.9%		6-10%
2.5%		11-20%
8.4%		Over 20%

BACKGROUND TO THE RESEARCH

Research was carried out on behalf of Tate by independent market research specialist Nunwood, voted MRS Market Research Agency of the Year in 2008.

Nunwood used both primary and secondary research to develop a full picture of awareness and opinions on the Agency Workers Directive (AWD).

PRIMARY RESEARCH

467 online surveys were conducted across both temporary workers and organisations which employ temporary workers. These findings were supplemented by in-depth telephone interviews with employers of temporary workers, to further understand opinions on the topic.

SECONDARY RESEARCH

Context and background to the topic was provided by extensive secondary research. Sources used in the development of this report include:

- CBI Employment Trends Survey
- REC
- HMSO
- British and Irish Legal Information Institute

ABOUT TATE

Tate is a recruitment agency which specialises in office recruitment. Established in 1985, Tate has evolved through innovation, service excellence, passion and a strong belief in its core values. These values have allowed Tate to grow into a network of nineteen recruitment offices across the UK and London, offering the best office staff, with a high quality service, everywhere, all the time.

Tate offers a complete portfolio of recruitment solutions spanning temporary, contract and permanent staff, through to full outsourcing of the office recruitment function.

For more information, please visit:
www.tate.co.uk
