

# Shades of similarity. On equal treatment for temporary agency workers

## Summary of

## Sjatteringer av likhet. Evaluering av reglene om likebehandling av utleid arbeidskraft

## Fafo-rapport 2016:15

On January 1, 2013, new rules were applied regarding the employment of workers contracted through temp agencies. The new regulations entailed that temp workers would have the same work and wage conditions as if they were directly employed by the hiring firm. In addition to this 'equal treatment' principle, there were also established mechanisms to make it easier to monitor and enforce these rules. In this report, we examine how these new regulations have functioned thus far. In particular, we analyze whether the regulations are obeyed; whether and how the monitoring and enforcement mechanisms work; what is deemed problematic with the new regulatory regime; and whether there is the need for further action. The report is based on interviews with management and union representatives in temp agencies; inspectors at the Norwegian Labor Inspection Authority (Arbeidstilsynet), the social partners; and management and union representatives at hiring firms across a range of sectors, including construction, electrician, nutrition, health and care services, office work, and shipbuilding.

*Our main conclusion* is that the equal treatment principle seems to have indeed led to more equality in practice. In particular, the agencies that already had good systems and routines in place before the new regulations were applied have been able to adapt and improve them such that the new rules are followed. These agencies are responsible for the majority of temp services in many of the sectors studied. In smaller temp agencies, however, these systems and routines appear lacking. Many customers rarely carry out thorough inspections of the temp agencies they employ, and in combination with lack of systems in the temp agency, this entails the risk that the rules are not being obeyed. It is also questionable whether the equal treatment principle is being respected in certain sectors, namely the construction and shipbuilding industries. Specifically, differences in the way wages are calculated between temps and regular employees, as well as unequal practices relating to the reimbursement of expenses and work-related travel costs, mean that there are significant differences in wage levels between temps and permanent employees in the hiring firms.

*Awareness* of the regulatory framework appears high among both the temp agencies and many of their customers. Least informed are those customers that rarely use temporary hired workers, and in these cases the temp agencies must take the time to

explain the rules to their clients. However, the depth of knowledge of the rules varies. Most are aware that there are multiple terms and conditions that comprise equal treatment, most prominently among them that work and wage conditions are to be the same; however, there is less knowledge about terms such as pay for public holidays.

A significant majority of temp agencies have systems to ensure that they receive the necessary *information* from hiring firms in order to establish a proper basis of comparison; again, this information seems to be most complete in relation to basic wage and working hours. However, there are also some agencies that approach this process more informally, running the risk that they receive inaccurate information.

Among hiring firms, there are significantly varying degrees of oversight of the terms that temps work under. This variation is related to how often and how many checks they conduct, and whether they look only at the contracted terms as opposed to what temps are actually paid. Hiring firms are not required to monitor compliance according to the current regulatory framework, but can be held jointly and severally liable if temp agencies do not compensate workers according to the equal treatment principle. However, such liability seems to have little effect, and it is primarily only in branches where actors have, over time, have been obliged to ensure that subcontractors comply with the obligations in according to the General Application Act, that the checks are thorough.

Many at the management level at temp agencies say that they are seldom subject to compliance checks by customers. Few temp agencies are bound by collective bargaining and few have union representatives; and none of the union representatives we interviewed in the temp agencies have been involved in compliance checks initiated by hiring firms. This can be a weakness with the checks that are conducted. Where hiring firms do check compliance, it is primarily centred on the wage and working conditions that employees receive. However, many companies check only the contracted terms that temps are subject to, or trust that the temp agencies are paying in accordance with this.

The risk of rule violations varies according to the sector under examination, and it seems that temp agencies in many ways reflect the working conditions in different branches. Within the '*office and administration*' and '*accounting and billing*' sectors, the applicable regulations seem to be followed. While compliance checks are still lacking, the temp workers being contracted out generally have a good degree of knowledge of Norwegian working conditions and regulations. Because these sectors absorb relatively little temporary workers, there is relatively little downward pressure on pricing, as faced in the construction or shipbuilding industries. Cumulatively, this means that the risk for regulatory violations is relatively little in the 'office and administration' and 'accounting and billing' sectors.

Within the '*health and care*' sector, one finds significant variation in the degree of professionalism of the hiring actors, as well as in the systems they have in place to oversee the terms that temps work under. Where violations occur, they seem to be

particularly related to working hours. Temporary workers in this sector often have knowledge of the Scandinavian languages, but the scale of hiring is higher than in the aforementioned (office-based) sectors, and we assess the risk of violations as also being higher. Temp agencies that do not meet the standards set by the most professional clients nevertheless find business in smaller municipalities, and the lack of compliance checks leaves room for actors with deficient systems and routines.

In the *shipbuilding industry*, the companies we examined have taken on board the equal treatment rules, and have good routines and systems in place to ensure that the rules are followed. At the same time, the volume of temporary labour is high, and the temp workers that are employed are often unskilled and unknowledgeable about Norwegian working conditions. This entails a higher risk of violations. Several sources also claimed that there are many disreputable agencies operating, while insisting that their companies did not use these agencies. If neither the temp agency nor the hiring firm has adequate systems and routines in place, it is likely that violations are occurring. The shipping and shipbuilding industry has a statutory minimum wage. In anticipation (or in the wake) of the equal treatment rules, several of the hiring firms changed their wage systems, with the result that temporary workers overwhelmingly receive minimum wage, or just above it. It can therefore be questioned whether this practice is in compliance with the equal treatment principle. Within this sector, there have also been discussions about the extent to which temporary workers are entitled to reimbursements and benefits related to travel, accommodation, and per diems.

The '*construction and electrician*' sector has many of the same traits as the shipping and shipbuilding industry, at least as it relates to temp agency workers. This includes both the characteristics of the temps, as well as the changes made to hiring firms' wage systems. Our investigation revealed that companies in this sector are also worse at checking compliance than those in the shipping and shipbuilding industry. Our survey is not representative, so we cannot claim systematic differences between branches; it can, for example, owe as much to the fact that the construction and electrician companies we examined had fewer employees and less experience with applicable wage agreements and labour laws. However, the construction industry is described as extremely tough in terms of competition and cost pressure, especially relating to the temporary hiring of unskilled laborers. This increases the chances of violations occurring.

The '*food industry*' is diverse in terms of the use of temporary labor and the existence of systems and compliance routines used by the hiring firms. The fish processing industry is the only part of the industry subject to general applicable collective agreements. Here, the use of temp agency workers is seasonal and sometimes high, and the temporary workers are typically unskilled East Europeans. None of the larger temp agencies we interviewed have thus far had sizable business within the fish processing industry, which could indicate that the cost pressures are considerable.

Although companies could attempt to *circumvent* the equal treatment rules by presenting the hiring of temps as 'subcontracting', or as hiring from manufacturing firms rather than temp agencies, this does not seem to be a particular problem. (Neither subcontracting nor hiring from manufacturing firms invokes the equal treatment rules.) In those industries where those options are feasible – namely, the construction and shipbuilding industries – the temporary agency workers generally receive wages at or just above the statutory minimum, meaning that there is little to gain from such efforts.

Is there a need to modify the rules or put in place further initiatives? Few of our informants had concrete suggestions for new initiatives, but all called for greater involvement of the Norwegian Labour Inspection Authority (Arbeidstilsynet). While Arbeidstilsynet has no statutory authority to compel adherence to the equal treatment rules, many sources – including leaders in both the temp agencies and hiring firms – advocated that they should conduct the necessary monitoring and oversight. As yet, however, Arbeidstilsynet has limited capacity. Insofar as hiring firms' compliance checks seem to have preventive effect, it can be considered whether the oversight requirement on the part of hiring firms should be strengthened. Finally, the Confederation of Norwegian Service Industries (NHO Service) has established an authorization regime that places certain requirements on temp agencies that are members. Because the authorization regime will not be fully implemented until 2017, it is premature to say what effect this will have.