

English summary
of Fafo-report 2018:47

Violations of the regulations pertaining to fixed-term employment and temporary agency work. Sub-report

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4 Fixed-term employment in the Labour Force Survey

In this chapter we investigate the characteristics of fixed-term employment in the sense of whether features of the employment relationship indicate that the employment should fall under the provision on exemptions in Section 14-9 (1) of the Working Environment Act. We have done so with the aid of questionnaires, and consequently this involves no assessment of legality.

- Thirty-eight per cent of workers on fixed-term contracts report that they are in a training position (16 per cent) or substituting for someone who is absent (22 per cent). These are reasons that would mainly qualify for exemption from permanent employment as stipulated by the Act.
- It is more complicated, however, to construct indicators showing that the work is of a temporary nature. We have included characteristics to determine whether the work is time-limited or that the workers possess skills that differ from those found in the enterprise in general, or whether the work in question is linked to a peak in production. Depending on whether strict or more lenient criteria are applied, the proportion that falls under this category varies from 22 to 35 per cent.
- The proportion of workers on fixed-term contracts who cannot be categorised under any of the reasons outlined above varies from 27 per cent (lenient classification) to 40 per cent (strict classification).
- The group that cannot be classified is reduced somewhat if we remove those who report to be hired on a temporary basis under the provision for fixed-term employment for up to twelve months on a general basis. The proportion that cannot be classified into any category (up to and including litera f) varies from 23 per cent (lenient coding) to 35 per cent (strict coding).
- If we assume that from 23 to 35 per cent of the temporary employment relationships have no clear legal basis, this will involve from 40 000 to 65 000 people in the private sector, the municipal sector and the health enterprises.

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- There are clear differences between industries in terms of the reasons given for hiring on a temporary basis, but there are no significant differences in the number of workers with such contracts who cannot be classified under any of our indicators.
- The vast majority of the workers on fixed-term contracts have less than two years' seniority with their employer. Sixteen per cent report to have been continuously employed for three years or more. The questions are insufficiently specific to permit any conclusions as to whether this constitutes continuous employment in the sense of the Working Environment Act.

5 Analysis of data from enterprise surveys

In this chapter we investigate the arguments that employers use to justify their practices related to fixed-term contracts and temporary agency work. These data cannot provide any estimates of the number of violations, in the sense of the number of workers who are in an employment relationship with questionable contractual terms. The data primarily provide a picture of the frequency with which employers engage in this type of hiring from motives that lie outside or in the grey zone of the regulations, and when it comes to agency work, whether agreements for extended use are established.

Fixed-term employment

- Fixed-term employment is one of the two most important staffing solutions (apart from permanent employment) for more than 40 per cent of all Norwegian enterprises. The proportion is highest in education, health and social services, and public administration.
- Various reasons for fixed-term employment are given. Among them, we also find reasons that are outside the scope defined by the Working Environment Act (literature through e).
- From 19 to 25 per cent of the enterprises partly justify their fixed-term employment practices with reference to circumstances that are outside the exemptions stated in the Act. Since multiple reasons for hiring can be given, we cannot conclude that this is indicative of legal violations. Figures nevertheless show that fixed-term employment fulfils functions beyond what is assumed in the Act.

Temporary agency work

- Thirty per cent of the enterprises have hired workers from temporary work agencies during the last twelve months, and for 21 per cent of them, this is one of the two most important solutions to staffing problems.
- From 10 to 13 per cent report to use temporary agency workers to fulfil needs/functions that are in the grey zone or outside the scope of the Working Environment Act. It is noteworthy that the temporary agency workers are part of the ongoing operations. Hardly anyone refers to this reason exclusively.
- One in four enterprises that use agency workers report that an agreement to this effect is entered into with trade union representatives. Agreements are far more common in private manufacturing than in the public sector and private service industries.

Temporary agency workers from Eastern Europe

- The employment of Eastern European workers, including agency workers, have been identified through a separate study among enterprises in the construction industry, parts of the manufacturing sector and the hotel and catering industry. Here we find that from 3 to 6 per cent of the enterprises are using such workers as part of their daily operations, without any waiver agreement. This is an indication that agency workers are hired in ways that contravene the regulations.

6 Reports by trade union representatives

- One in four trade union representatives of unions that are part of the Norwegian Trade Union Confederation (LO) report to have received questions from workers regarding illegal practising of fixed-term employment. The proportion is highest among trade union representatives in the municipal sector. Although we cannot conclude from this that these employment relationships are actually illegal, the figures show that the reasons for fixed-term employment and associated breaches of the regulations are topics that are discussed at the workplace level.
- Trade union representatives report that in their workplace, agency workers are hired to allow for production peaks and to cover for workers on sick leave. All these reasons are within the scope of the prevailing legal provisions (see Figure 5.3).

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- As further reasons, they refer to the difficulty in recruiting people with special-ised skills and the need to recruit new staff; this applies to the private sector in particular. This is illegal, provided that it is the employer's only justification in the case in question.
- According to trade union representatives in LO, some enterprises use agency workers instead of employing permanent workers or to meet a permanent need for higher basic staffing. This is permitted, provided that the enterprise has signed a collective agreement and the trade union endorses the arrangement.
- Twenty-six per cent of the trade union representatives report that an agreement is always or as a rule entered into with the trade unions regarding temporary agency workers in their workplace. However, among the trade union representa-tives there are some who report that agency workers are used to a large or a very large extent to replace permanent workers or to meet a permanent need for in-creased basic staffing. Only a small proportion (15–20 per cent) add that the em-ployer always or as a rule establishes a written agreement on use of agency work-ers in the workplace. These results indicate that the rule on mandatory agree-ment is not followed up to any appreciable extent.

7 Analyses based on data from enforcement agencies

- Our informants have the impression that few cases end up in the courts.
- Most of the cases are solved through dialogue, often at the workplace between the employers and employees, but dialogue is also characteristic at higher levels.
- The parties indicate that dialogue is the preferred form, but it was also pointed out that the small number of cases that are taken to court may have an unfortu-nate signalling effect, and imply that no boundaries are drawn up and tested.
- Our informants indicate that they are receiving far more requests for advice and guidance, which also may explain the small number of cases taken to the courts.
- The general picture indicated by the experience of key informants is that the number of formal cases and inquiries has remained fairly stable over time, but they also note that the greater clarity and awareness seen in recent years have had a positive effect.

- According to our informants, the great majority of the cases are linked to the rules on extended work, the three/four-year rule and the volume of basic staffing, and when it comes to temporary agency work, the written agreement that can be established with the trade union representatives.
- Based on our informants' experience, it may seem as though cases pertaining to fixed-term contracts are most prevalent in the public sector, in our case in the municipalities, while cases associated with illegal temporary agency work are most prevalent in the private sector, primarily in the construction and manufacturing industries.
- Our informants in the trade unions and employers' associations emphasised that their opinions were valid only for the unionised parts of working life; the legal advisors in the trade unions assumed that they could see only 'the tip of the iceberg' and that there could be a number of unrecorded cases in Norwegian working life as a whole. Combined with the experience of JussBuss, this gives grounds to assume that there are groups that are especially vulnerable.