



TÖÖINSPEKTSIOON

Temporary agency work





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Table of contents

2	Introduction
4	What is temporary agency work?
5	Special cases related to temporary agency work
6	Whose instructions do temporary agency workers follow?
8	Obligations of the employer and the user undertaking
10	Temporary agency work in foreign companies
14	Occupational health and safety of temporary agency workers
16	Medical examination
17	Registration and investigation of occupational accidents and occupational diseases
18	Resolution of labour disputes
20	Contracts for temporary agency work
22	Annex. Brainteasers

Introduction

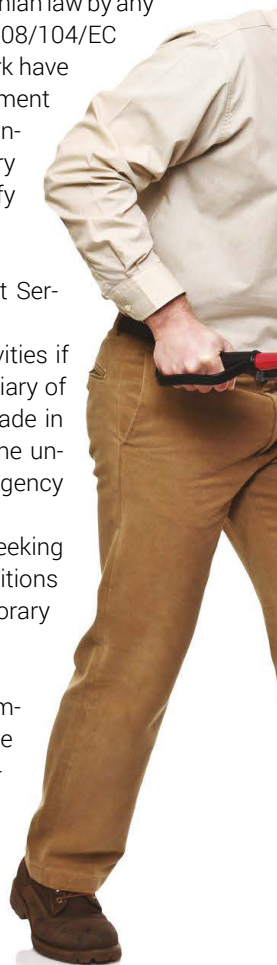
Temporary agency work is a modern form of employment that has increasingly been used in Europe as well as in other parts of the world. It enables a company or a group to diffuse economic risks and facilitate procedures related to workforce. A temporary work agency guarantees a user undertaking suitable employees during holidays or sick leaves and enables hiring additional workforce in moments of necessity. In addition, it reduces recruitment, labour and production costs and mitigates risks and obligations arising from employing people.

Although temporary agency work has not been regulated under Estonian law by any separate legal act, the general and important principles of Directive 2008/104/EC of the European Parliament and the Council on temporary agency work have been transposed into the Employment Contracts Act. The Employment Contracts Act provides a definition for temporary agency work; lists principles of entering into fixed-term employment contracts with temporary agency workers and prescribes user undertakings' obligation to notify of relevant vacant positions .

Two fundamental principles have been set out in the Labour Market Services and Benefits Act:

1. An undertaking is obligated to submit a notice of economic activities if it offers employment mediation services and/or acts as intermediary of temporary agency work. Thus, there must be a relevant entry made in the Register of Economic Activities (<https://mtr.mkm.ee>) about the undertaking offering employment mediation services or temporary agency work. If this is missing, the undertaking is operating illegally.
2. It is prohibited for an undertaking to charge a fee from people seeking work or employment for any information concerning vacant positions and employers. It is also forbidden to charge a fee from temporary agency workers for a chance to work in any user undertaking.

Participating in a tripartite employment relationship means for an employee, above all, knowing who is responsible for what in accordance with law and which undertaking to turn to should any problems occur. The employee must not forget that the temporary work agency remains the employer while working in the user undertaking. This means that the temporary work agency is obligated to provide an employee with work and pay wages. The user undertaking is only responsible for the suitable working environment.





WHAT IS TEMPORARY AGENCY WORK?

Temporary agency work involves three parties. While the classic employment relationship consists of two parties – the employee and the employer –, in case of temporary agency work, the user undertaking is a third party (see figure 1).

In case of temporary agency work, the employer (i.e. temporary work agency) enters into an employment contract with a temporary agency worker. Based on this contract, the temporary agency worker is assigned to work temporarily under the supervision and direction of a third party, i.e. the user undertaking.

The temporary work agency and the user undertaking conclude a contract under the law of obligations which regulates their cooperation.

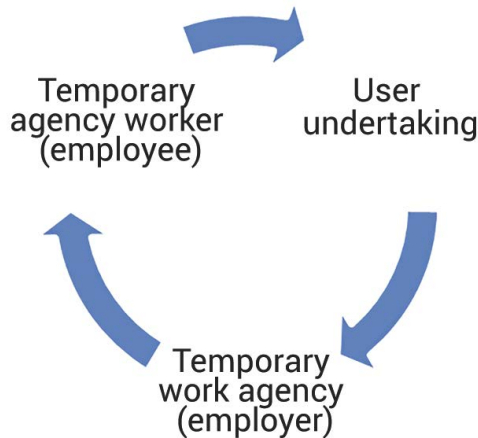


Figure 1.

Example. An employee found a job offer on the Internet, posted by temporary work agency X, searching for an experienced administrative assistant. Having 15 years of related work experience as office manager and secretary-assistant adviser, she successfully passed all the tests and got the job.

Company X is a temporary work agency that provides temporary agency work services to various undertakings. Temporary work agency X entered into an employment contract with the employee, according to which she commenced work as temporary agency worker in user undertaking Y until their current administrative assistant returned from maternity leave.

After she returned from maternity leave, temporary work agency X offered the employee an employment contract for an unspecified term. Now, depending on the needs of the contractual partners of the temporary work agency, the employee works as stand-in for office managers, secretaries and administrative assistants in different companies.

SPECIAL CASES RELATED TO TEMPORARY AGENCY WORK

The Employment Contracts Act (hereinafter the ECA) requires employers to inform employees of all essential terms and conditions of the employment contract. The employer must notify the employee of all information specified in subsection 5 (1) of the ECA, including work duties and remuneration, and also agree in writing on working conditions in special cases set out in § 6 of the ECA. Temporary agency work is considered one of the special cases.

Pursuant to subsection 6 (5) of the ECA, the employer must inform the employee if the work duties are performed by way of temporary agency work in the user undertaking. Generally employment contracts



are entered into for an unspecified term but the law permits fixed terms in case of temporary agency work, should the term be justified by the temporary character of the work in a user undertaking (subsection 9 (1) of the ECA). However, concluding a fixed-term employment contract must be justified and stipulated in the employment contract because, pursuant to subsection 6 (2) of the ECA, it is also a condition that requires a special agreement.

Section 10 of the ECA provides restrictions on consecutive entry into and extension of fixed-term employment contracts, but it also includes an exception for temporary agency work relationships. According to the second subsection of the same section, restriction on consecutive entry into and extension of an employment contract for a specified term shall be applied to every user undertaking separately.

Example. *An employee is a welder with ten years of work experience who knows a lot of welding techniques. Temporary work agency A has entered into a contract for services for specified term with user undertaking B for a period of carrying out one specific task and into another indefinite-term contract for services with user undertaking C. Due to a temporary increase in work, a fixed-term temporary agency work contract was concluded with the employee until the termination of the contract with user undertaking B. But in fact, the temporary agency worker was working in two places at the same time: both in user undertaking B and C.*

The temporary work agency terminated the employment contract on the day of the due date of the contract with undertaking B. The employee challenged the termination of the contract by claiming that the work in user undertaking C did not end. The labour dispute resolution body considered the employment contract between temporary work agency A and the employee to be concluded as a indefinite-term contract ex tunc (i.e. from the outset).

WHOSE INSTRUCTIONS DO TEMPORARY AGENCY WORKERS FOLLOW?





In general work orders are given by a representative of the user undertaking but in certain cases it is possible to organise work so that the tasks are given and their performance is monitored by the temporary work agency, i.e. the direct employer of the employee.

In case of conflict between the orders of the user undertaking and the direct employer, the temporary agency worker must adhere to the orders given by the employer, i.e. the temporary work agency (subsection 17 (5) of the ECA), but in dangerous situations at the workplace the employees must always follow the orders of the user undertaking. Pursuant to the Occupational Health and Safety Act, the user undertaking must ensure that all temporary agency workers fulfil the occupational health and safety requirements at the workplace.

***Example.** The temporary agency worker usually receives orders from the project manager of his employer who delivers work orders to all user undertakings where the temporary work agency's workers have been assigned to work. The employee started a new job in user undertaking A, where the chief operating officer wanted to assign him duties. The temporary agency worker refused to execute these orders because they differed significantly from those given by the project manager of the temporary work agency. The chief operating officer warned the employee that if he continued to refuse to perform work duties, his employment contract would be terminated, but the temporary agency worker knew that the user undertaking could not do it.*

When the project manager of the temporary work agency arrived at the site, it became clear that the chief operating officer of the user undertaking was unaware of which work duties the temporary agency worker was hired to perform and this had caused the confusion. The chief operating officer apologised to the temporary agency worker for his mistake.

OBLIGATIONS OF THE EMPLOYER AND THE USER UNDERTAKING



Section 28 of the ECA stipulates the obligations of employers with regard to employees. Although all these obligations also extend to temporary agency workers, there are some specific obligations in the Act relating to temporary agency work.

Pursuant to clause 28 (2) 91) of the ECA, a user undertaking is obligated to notify temporary agency workers of any vacant positions corresponding to their knowledge and skills for which unspecified-term employment contracts are available. Should the user undertaking fail to share any such information, it has to be done by the employer, i.e. the temporary work agency. But this requires constant exchange of information between the temporary work agency and the user undertaking regarding vacant positions. It is recommended to include a clause regarding any such information exchange in the contract for services between the temporary work agency and the user undertaking.



TEMPORARY AGENCY WORK IN FOREIGN COMPANIES





**Don't be blind
to your working
conditions!**

**Know your rights
and obligations
as a posted worker!**

In 2014, a study on the application of working conditions to temporary agency work in Estonia, commissioned by the Estonian Ministry of Social Affairs and with the help of the European Social Fund, was carried out by the Centre for Applied Social Sciences (CASS) of the University of Tartu. A summary of this study can be found on the website of the Ministry of Social Affairs at https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Toovaldkond/renditoo_raport.pdf.

The study revealed that most often Estonian undertakings lease labour to Finland. Such cross-border inter-European labour leasing means that temporary agency workers can also be regarded, pursuant to Directive 96/71 EC (posting of workers in the framework of the provision of services), as posted workers.

Special regulations apply to posted workers in the European Union. These regulations grant them, inter alia, the right to receive the minimum rates of pay of the destination country. For example, working in Finland, an employee is entitled to a minimum wage in accordance with his or her qualifications and established by a collective agreement in a specific field of activity, which means the Estonian minimum wage is not sufficient in such case.

More information on business trips and posted workers can be found in the Labour Inspectorate's brochure "Business Trips and Posting of Workers": http://issuu.com/tooinspektsioon/docs/toolahetus_ja_tootajate_lahetamine_.

Example. *An Estonian employee entered into an employment contract with an Estonian temporary work agency. The parties have agreed that in 2015 the employee shall be paid EUR 2.34 an hour in wages; in addition, the employer shall pay a daily allowance of EUR 24 during business trip. In the employment contract Estonia was marked as the workplace.*

Then the temporary work agency concluded a temporary agency work services contract with a Norwegian fish processing company that had a collective agreement, according to which the fish processor's minimum wage was NOK 50 (EUR 5.46) an hour.

The Estonian employer told the temporary agency worker that the collective agreement did not apply to him and therefore did not affect his remuneration. The employee worked for three months but then realised that the remuneration paid by the Estonian employer was not enough to cover the living costs in Norway. He demanded in writing to be paid in accordance to the salary scale in the user undertaking, but the employer refused. In Estonia, the employee filed a statement of claim for unpaid wages with a court. The court ordered the employer to pay the employee remuneration based on the collective agreement that also applied to the latter while working in Norway and that he was entitled to.



If an Estonian employer assigns a temporary agency worker to work in a foreign user undertaking, the employee must understand which obligations with regard to taxation he or she will have in respective countries. It would be reasonable for the employer to find out any relevant information about the foreign tax system and notify the employee who shall be posted abroad.



Example. Estonian employers who mediate temporary agency workers from Estonia to Finland are not, pursuant to Finnish law, obligated to withhold income tax in Finland on wages paid to people working in Finland. Temporary agency workers have to pay taxes on the wages earned in Finland themselves. They must contact the Finnish Tax Administration within half a month from commencing work in Finland, and after submitting a relevant application any such temporary agency workers will be issued relevant personal identification codes (unless they already have one).

Pursuant to the Finnish tax system, the Finnish Tax Administration issues everyone tax cards (verokortti) where income tax rate to be withheld on wages is quoted. Remuneration payable for temporary agency work in Finland is subject to advance income tax and the Finnish Tax Administration will also issue a proof of the payment thereof. An employee, a resident of Estonia, will submit this proof of payment to his or her Estonian employer who can, in order to avoid double taxation, apply the option provided in clause 40 (31) 2) of the Estonian Income Tax Act not to withhold income tax on payments that have already been subject to taxation in a foreign country.

After the end of each taxation period, the Finnish tax authority will send the Estonian temporary agency worker a pre-filled income tax return by post to his or her Estonian address. The Estonian temporary agency worker will make corrections and amendments, if necessary, confirm the declaration with his or her signature and send it back to the Finnish tax authority. Based on the income tax return, the Finnish Tax Administration calculates the final income tax liability in Finland.

For more information:

Visit the Estonian Tax and Customs Board website at www.emta.ee

Read the Finnish Tax Administration guide at
http://www.vero.fi/en-US/Tax_Administration

OCCUPATIONAL HEALTH AND SAFETY OF TEMPORARY AGENCY WORKERS



Pursuant to subsection 12 (1) of the Occupational Health and Safety Act (hereinafter the OHSA), an employer shall ensure the conformity with occupational health and safety requirements in every work-related situation. If duties are performed by way of temporary agency work, the user undertaking shall guarantee the conformity with occupational health and safety requirements in the user undertaking.

User undertakings must treat temporary agency workers on a par with other employees in relation to organising the working environment. Risk factors of the working environment can only be recognised and assessed by the undertaking that creates and organises this environment, i.e. the user undertaking. Therefore, a user undertaking shall conduct a risk assessment of the working environment and both plan and organise the related activities.

Since it is much easier for a user undertaking to instruct the temporary agency workers who shall be working on its premises and inform them of the dangers, it is advisable to agree that the user undertaking shall conduct training and give instructions with regards to work environment. However, the temporary work agency must retain the right to monitor whether this obligation has been fulfilled or not because, in the end, a temporary work agency shall be liable for the employee's health and life.



Pursuant to subsection 12 (2) of the OHSA, a user undertaking shall not allow a temporary agency worker to work until verifying that the employee has the necessary professional knowledge and skills, and also guaranteeing that he or she has the necessary knowledge about occupational health and safety.

A user undertaking is responsible for the instruction and training of temporary agency

workers. As occupational health and safety training must take into account the qualification and experience of the employee, the temporary work agency and the user undertaking must exchange information about the employee before his or her training starts. In addition to other obligations, the user undertaking is responsible for providing the temporary agency worker with working clothes and personal protective equipment.

When the labour inspector visiting the company finds violations of occupational health and safety requirements involving a temporary agency worker, a precept shall be issued to the user undertaking.



Medical examination

Pursuant to clause 13 (1) 7) of the OHSA, an employer is required to organise the provision of medical examinations for employees whose health may be affected, in the course of the work process, by a working environment hazard or the nature of the work, and bear the costs related thereto.

If duties are performed by way of temporary agency work, medical examinations for employees shall be organised by the user undertaking in accordance with the second sentence of subsection 12 (1) of the OHSA. The Act does not disallow agreements between the temporary work agency and the user undertaking assigning the arrangement of medical examinations to the user undertaking and the payment for them to the temporary work agency. This would ensure temporary agency workers with similar medical examinations as the employees of the user undertaking, whereas the examinations would meet the expectations of the user undertaking and all workers would be treated equally. At the same time such solution would not entail unreasonable costs for the user undertaking.

Registration and investigation of occupational accidents and occupational diseases

Pursuant to subsection 24 (1) of the OHSA, the circumstances of an occupational accident and occupational disease and reasons therefor shall be established in the course of an investigation which is carried out by the employer. Subsection 12 (1) of the OHSA, however, gives the performance of this obligation over to the user undertaking, so, if a temporary agency worker has sustained an accident at work, the user undertaking for whom the temporary agency worker was working at the time of the accident is obligated to register and clarify all facts of the accident.

Pursuant to law, an employer shall submit a report on the investigation results to the victim or a person representing his or her interests and to the local office of the Labour Inspectorate. It shall indicate the measures to be implemented by the employer to prevent a similar occupational accident or occupational disease. Since it is the user undertaking that draws up the report of the accident sustained by the temporary agency worker but the information concerning the employee's temporary incapacity for work is managed by the temporary work agency, the direct employer, i.e. temporary work agency, must also receive a copy of the occupational accident report.

***Example.** An experienced builder was employed as a temporary agency worker. He had entered into an employment contract with temporary work agency O, but O was a subsidiary belonging to a group of construction companies that provided temporary agency work services to company P of the same group.*

The employee sustained a serious occupational accident and got an injury after which his capacity for work decreased significantly. User undertaking P organised an investigation of the occupational accident and found that it had happened due to insufficient supervision. According to the temporary agency work services contract, temporary work agency O should have provided the employee with better instructions. The employee submitted a claim for compensation for health damages to employer O but O refused to pay, referring to the responsibility of the user undertaking arising from law.

As a result of the agreement between the temporary work agency and the user undertaking, user undertaking P compensated the employee for medical expenses and paid compensation for the non-contractual harm suffered by him.



RESOLUTION OF LABOUR DISPUTES



If an employee has any problems arising from the employment relationship, he or she must first of all contact his or her employer to resolve them. However, when working in a user undertaking, there may emerge problems that only the user undertaking can resolve. So both the temporary work agency (a direct employer) and the user undertaking who is liable for the working environment should be involved in resolving labour disputes.

A temporary work agency, i.e. the employer with whom the employee entered into an employment contract, is solely responsible for delayed or unpaid remuneration owed to an employee, even if the actual payment is made by the user undertaking. Therefore, a recovery of unpaid wages or the final settlement is the liability of the employer alone and not of the user undertaking.



Cancellation of an employment contract can only occur if a declaration of cancellation is submitted by an employee to a temporary work agency or vice versa, sent from temporary work agency to an employee with whom the employment contract has been concluded.

If the parties to the conflict fail to solve their problems, they have the right of recourse to a labour dispute resolution body – a labour dispute committee or the court. When appealing to a labour dispute committee, an application in writing in two copies or signed digitally is submitted to the labour dispute committee of the employee's place of work. If the employee's workplace covers the area of several counties determined by the employment contract, the application is submitted to the labour dispute committee of the employer's seat or residence.

CONTRACTS FOR TEMPORARY AGENCY WORK



A temporary work agency and an employee must enter into an employment contract that is in compliance with the obligations prescribed by the Employment Contracts Act.


A temporary work agency and a user undertaking enter into a contract for the provision of services under the law of obligations. There is no specific format prescribed by law for it and its contents are to be determined by the parties. However, there are still certain terms and conditions that cannot be ignored when establishing a relationship for leasing labour and guaranteeing the rights and obligations of all parties.

It is recommended to agree upon the following terms and conditions between the temporary work agency and the user undertaking:


- Qualification of temporary agency workers and their work duties
- Obligations of the employer with regard to employees and user undertakings, for example:
 - obligation to pay remuneration;
 - obligation to calculate taxes and charges and the payment thereof;
 - obligation to grant holiday;
 - obligation to ensure training;
 - obligation to buy work clothes and personal protective equipment, and incur the cost thereof.
- Obligations of user undertakings, for example:
 - obligation to determine whether or not the workforce of an employee can be made available to third parties;
 - obligation to give all necessary instructions concerning the occupational health and safety requirements before allowing an employee to commence work;
 - obligation to guarantee safe and healthy working conditions to employees and provide them with all personal protective equipment prescribed by legislation or necessary for work without charge.



Annex. Brainteasers



Employment relationship

				rental contract	10. occupational health			
	2. activity licence						dangerous work environment	
		loitering at work		no written contract				
	7. notification							two salaries
		uninformed						
						1. employee	9. inclusion	11. work safety
3. temporary-work agency			unequal treatment				8. information exchange	
		4. user undertaking			13. obligations			
				lack of information		volunteer work		An employment relationship with a temporary-work agency 
	6. explanation						12. rights	
				5. employment contract	trial day			

Help the worker to go from bilateral employment to tripartite employment relationship. For that you need to pass the correct (green) points and avoid the misleading (red) ones. Connect the right points with one continuous line so that the line would go through the centres of squares, pass each square only once, and avoid all red ones.

T E M T N E M E E R G A
 P E K C E H C H T L A E H
 Y G Y L M E A S U R E S O
 T D T O P O L T A X E S L
 I E E Y O L P M E R A R I
 L L F A R S K I L L S Y D
 A W A L A Y R A L A S W A
 U O S T R O O R K A G E Y
 Q N N Y Y C W R I T T E N
 E K T R I P A R T I T E Y
 N O I T A C I F I T O N


Find words associated with temporary agency work. They can cross each other or run in any direction. After you have found all terms you will be able to make up one more word from the remaining letters: **who is the employee's employer in the tripartite employment relationship?**

**AGREEMENT, EMPLOYEE, EQUALITY, HEALTH CHECK, HOLIDAY,
 KNOWLEDGE, LOYALTY, MEASURES, NOTIFICATION, SAFETY, SALARY,
 SKILLS, TAXES, TEMPORARY, TRIPARTITE, WORKPLACE, WRITTEN**

Correct answers


Employment Maze:

Employment relationship



					rental contract	10. occupational health			
		2. activity licence							dangerous work environment
		loitering at work		no written contract					
	7. notification								two salaries
		uninformed							
						1. employee		9. inclusion	11. work safety
3. temporary work agency			unequal treatment				8. information exchange		
	4. user undertaking			13. obligations					
			lack of information		volunteer work				
	6. explanation							12. rights	
			5. employment contract	trial day					

An employment relationship with a temporary-work agency

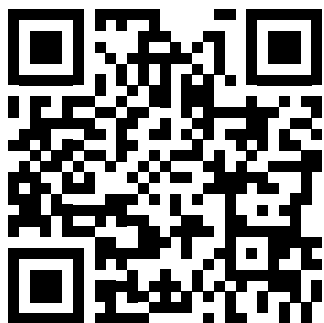


Alphabet maze:

temporary work agency



Working life raises questions? The Labour Inspectorate knows the answers



LOOK

at the website of the Labour Inspectorate
of Estonia at **www.ti.ee**

CALL

the lawyer's hotline at **+372 640 6000**

WRITE

to the lawyers at **jurist@ti.ee**

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