



# Newsletter

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## IN THIS ISSUE

EU deal on working time and agency workers

## EU deal on working time and temporary agency workers

In the early hours of Tuesday morning (10 June 2008), EU Social Affairs Ministers reached agreement on the revision of the European Working Time Directive and a new Directive on the Working Conditions for Temporary Workers. Both texts have been several years in the making and passed to Ministers for decision following the failure of the European social partners to agree to negotiate (in the case of working time) or to reach agreement through negotiations (in the case of agency workers).

Both dossiers now pass to the European Parliament where they are likely to come under strong scrutiny from those MEPs who were keen to see stronger protection for workers. A speedy passage through Parliament is expected, particularly as the EP is due to rise next year ahead of parliamentary elections.

### Working time

CEEP has strongly lobbied for a swift resolution of the revision of the European Working Time Directive because of the significant problems caused particularly to health but also care and other services based on flexible 24 hour operation by the ECJ's SIMAP and Jaeger judgements which led to all on-call time being counted as working time and compensatory rest having to be taken immediately.

The main points of the compromise text regarding the revision of the Working Time Directive are as follows:

- The **inactive part of on-call time** will no longer be counted as working time, unless otherwise provided by collective agreement or national legislation and shall not count towards the calculation of rest periods.

- **Compensatory rest** granted to a worker who works longer hours may be taken "within a reasonable period" determined by national legislation, convention or social partner agreement and not immediately.

- The right to an **individual opt out**, allowing workers to exceed the maximum 48 hours per week remains, but restrictions to prevent abuse have been tightened. For example: the opt out will have to be renewed on an annual basis; workers who refuse to sign cannot be penalized; opt-out agreements signed within the first four weeks of the employment relationship are null and void; workers are entitled to withdraw their signature either with immediate effect if within six months or with a two months advance notice. Even opted out workers are not allowed to work more than 60 hours per week (averaged over a three months period) unless otherwise provided in a collective agreement or agreement by the social partners. If on-call working time is considered as working time in full, the maximum weekly limit can rise to 65 hours, calculated on a average of 3 months.

- **Short term contracts** under 10 weeks are exempt from these provisions which means that workers on such contracts can agreed to work up to 78 hours per week.

- An employer must, in consultation with the social partners, **inform workers in due time of any changes in the organisation of working time. Member States are requested, in accordance with national practices, to encourage employers to examine requests for changes in working hours and patterns, subject to business needs and both employers' and workers' need for flexibility.**

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The Directive, and the implementation and use of the opt-out clause in particular, will be **reviewed four years after the implementation** of the Directive but no specific mention is made of the eventual phasing out of the opt out.

#### *Working conditions of temporary workers*

CEEP has repeatedly expressed its concern about the impact of a Directive on agency workers on public services, where the use of agency workers is relatively prevalent.

It had called for a qualification period for equal treatment of six months.

CEEP UK had welcomed the UK deal on agency workers reached last month but emphasised that its application would still involve a cost to public employers and may require a review of use of agency workers.

The main points of agreement regarding the Directive on the Working Conditions of Temporary Workers are:

- **Equal treatment is to be granted as of day one** for agency workers with comparable workers in the user undertaking in terms of pay, maternity leave and leave.
- **It will be possible to derogate from these provisions through collective agreements and through agreements between social partners at national level. It is understood by the British government that the deal reached last month between the TUC and CBI on a 12 week qualification period will be accepted in this category.** In this context Member States will also be allowed to specify whether occupational social security schemes, including sick pay, pensions or financial participation schemes would be included in the basic working and employment conditions. **It is currently understood that under the UK deal occupational pensions would not be covered.**

- Temporary agency workers will need to be **informed about permanent employment opportunities** in the user enterprise.
- Agency workers are to have **equal access to collective facilities** (canteen, child care facilities, transport service)
- Member States have to improve temporary agency workers access to training and child care facilities in periods **BETWEEN** their assignments so to increase their employability
- Member States have to ensure penalties for non-compliance by temporary agencies and enterprises.
- Any remaining obstacles to the operation of temporary work agencies are to be reviewed.

CEEP UK will now closely follow the passage of these Directives through the European Parliament. On the whole, the package is to be welcomed, particularly as it offers the opportunity to resolve the difficulties caused by the SIMAP and Jaeger rulings in relation to on-call time.

Any solution other than the 12 week qualification period regarding equal rights for agency workers would cause grave concerns regarding the cost of the implementation of such measures. Even with the 12 weeks, a review of the use of agency work will be required by many public service employers in order to address potentially rising costs.

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