

Agency and Migrant Workers



Foreword



Agency staff are a growing sector of the UK workforce and are now used in workplaces in every sector that Usdaw organises.

With few rights, worse terms and conditions than permanent staff, high mobility and no employment protection, agency workers are among the most vulnerable people in any workplace. They are also among the hardest to organise.

Unless unions recruit, organise, represent and bargain for agency workers, we will see the establishment of two-tier workforces. That would be to the detriment of permanent as well as agency staff in the long term.

Usdaw is therefore campaigning to improve the working conditions of agency workers by representation in the workplace, collective bargaining and campaigning with the Government.

Much of our success will depend on our activity in workplaces, so we need to involve as many of our activists and members as possible.

This statement sets out the issues and the problems we are seeking to address, making suggestions on how we can reach out to and assist agency staff in all workplaces.

I hope that you find it informative and - above all - useful.

A handwritten signature in black ink, which appears to read "John Hannett". The signature is fluid and cursive, written in a professional style.

John Hannett
General Secretary

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Chapter 1

Agency Workers in the UK

What are agency workers?

Agency workers are staff who are provided to a company by an employment agency to perform agreed tasks.

The company will have an agreement with the agency whereby they 'contract for services' to be provided by the agency and pay the agency a set fee for those services.

Agency staff register with one or more agencies which then assign them work at client companies. Usually, it is the agency which pays the worker for the hours they work and agrees their terms and conditions.

The vast majority of agency staff are classed under UK law as 'workers' rather than as 'employees' of either the agency or the client company. This means that they lose out on many of the most basic employment rights.

Whilst some agency workers are highly skilled and highly paid, many in low skilled work are poorly paid as agencies compete with each other on the basis of the lowest cost for providing the work required.

Market forces serve to constantly drive down agency fees and also the wages and conditions of agency staff.

Agency staff are therefore more in need of the protection of a union than most other workers. However, they are also often the most difficult to recruit.

Agency work in the UK

There are now more than 1.5 million temporary workers in the UK.

Many work directly for companies on short term contracts, but it is estimated that upwards of 600,000 are agency workers.

Agency workers are now being used in every sector that Usdaw organises. Numbers are particularly high in food manufacturing and distribution, but are also growing in other areas, particularly retail.

The numbers of agency staff in the UK as a whole are increasing rapidly, partly as a result of the recent expansion of the European Union.

This has brought with it increasing numbers of migrant workers from the 'New' European countries such as Poland, Hungary and Latvia who are often employed through subcontracts with employment agencies or gangmasters.

Despite these high numbers, there is still a lack of understanding about who agency workers are and how they are used.

Challenging the myths about agency work

“Agency workers are only used for low paid and low skilled jobs”

It is true that there have traditionally been a high number of temporary workers in clerical and manual jobs, but this is rapidly changing.

In fact, one of the fastest growing areas is in professional and managerial occupations, which have seen a six-fold rise in agency workers in the past five years.

“People choose agency work because they don't want a permanent job”

Around 40% of agency workers are temping because they could not find a permanent job.

Only 28% make a positive choice to take temporary work instead of permanent.

While some people may find it beneficial to not be tied down to long term employment, this is certainly not the case for most.

“Agency work is just a stepping stone into a career”

For some people, a temporary job gives them the opportunity to ‘get a foot in the door’ within their chosen workplace or career.

But this is not so easy for older workers and those who lack educational qualifications, or have been unemployed for long periods of time.

These are exactly the sort of people who are likely to become trapped in a vicious circle of low paid, short term jobs, with few opportunities for training and development.

“Temps are only there to cover for holidays, sickness and changes in demand”

In sectors such as retail, where there are seasonal peaks and troughs in trading, many employers say they need to use agency temps to meet with demand. However, some businesses use agency workers as convenient, cheap labour, regardless of how long they are needed for.

How agency workers lose out

1. Pay and conditions

The UK is one of only six countries in the European Union which continues to allow temporary agency workers to receive less pay than their colleagues.

As agency staff are normally classed as ‘workers’ rather than ‘employees’, under the current law they miss out on fundamental rights such as:

- Maternity, Paternity, Parental and Adoption Leave
- Redundancy Pay
- Protection from Unfair Dismissal
- Sick Pay
- The right to time off for family emergencies

Even those who are classed as employees are likely to lose out on many of these rights because they can’t build up enough length of service.

2. Training

The Government estimate that only 20% of agency staff receive work-related training in any 13 week period, as opposed to 57% of permanent workers. Lack of training and updating skills means that agency staff can find it more difficult to find a permanent job and can become stuck in low skill, low paid agency jobs.

3. Pensions

Most agency staff do not have the opportunity to join a company pension scheme. Agencies are not required to operate a stakeholder pension scheme. Those on low wages find it difficult to afford a personal pension scheme.

4. Lack of security

Agency staff are highly vulnerable. Lacking any form of protection, the client company and/or agency can refuse them work at any time. Those who become sick or injured at the workplace are simply replaced and often not offered further work. Those who complain about conditions can be ‘punished’ by ceasing to give them work for a certain amount of time, or by refusing them any further work.

The way forward

Agency workers are among the most vulnerable of all groups of workers in this country and need to be protected.

As long as they have limited rights, the use of agency workers can undermine the terms and conditions that we have negotiated in our workplace.

To prevent this, Usdaw supports the introduction of a Temporary Agency Workers Directive. This would give agency workers the right to equal treatment over basic terms and conditions in their place of work.

But there is a lot more we can do in our own workplaces to improve conditions for agency workers.

We have conducted a survey of our reps in food manufacturing and distribution where there are relatively high numbers of agency staff.

The evidence we have gathered will help us to get to grips with the problems faced by agency workers and how we can address them through bargaining, organising, campaigning and education.

This document will address all of these issues as part of the Union’s continued efforts to understand and meet the challenges that agency working presents.

Chapter 2

Agency Workers in Usdaw Workplaces

Agency staff have been used in a wide range of Usdaw workplaces for many years – often to cover peaks in trading, such as pre-Christmas.

Delegates to the trade conferences for food manufacturing and distribution reported increases in the number of agency staff used, and the National Officers therefore organised a survey of reps in these sectors.

The survey, which has been completed by reps in 34 food manufacturing and 12 distribution sites during September and November 2005 give us a more detailed and up-to-date account of the use and conditions of agency staff in Usdaw workplaces than we have ever had.

This information will prove invaluable in our campaigning with agency workers.

Use of agency staff

Agency staff were used at 29 of the 34 food manufacturing sites and at all 12 of the distribution sites.

The numbers of agency staff compared with the total workforces were:

	Workforce	Agency Staff	Agency Staff
Food Manufacturing	15,159	2,502	16.5%
Distribution	6,721	918	13.7%

Increases: At 24 of the 29 food manufacturing sites with agency staff and 8 of the 12 distribution sites, reps reported that the numbers of agency workers had increased at some point over the last five years.

In 47% of the food manufacturing sites and 50% of the distribution sites, there had been increases in the previous 12 months.

Seasonal variations: In 70% of food manufacturing sites and 83% of distribution sites, there were seasonal variations in the numbers of agency staff used.

Particular jobs: In 55% of food manufacturing sites and 75% of distribution sites, the agency staff were concentrated in particular jobs. In distribution, the concentration was mainly in driving, but also in warehouse picking at some sites. In food manufacturing most agency staff in particular jobs were doing unskilled work, mainly packing and cleaning, on the lowest grades and at the lowest rates of pay.

Several reps reported that when agency staff had started to be used, they were carrying out particular roles, but now were doing a wide variety of jobs on the site, sometimes in contravention of agreements with Usdaw. In almost half (41%) of the food manufacturing and 25% of the distribution sites where agency staff are used, reps reported that agency staff are not concentrated in particular jobs.

Reasons

The main reason for the use of agency workers in both of the sectors surveyed was mostly fluctuations in demand, followed by absence cover.

Main Reason for use of Agency Staff	Food Manufacturing	Distribution
Fluctuations in demand	35.2%	55%
Absence cover	20.5%	27%
Skills shortage	5.8%	9%
Substitute for permanent staff	5.8%	9%
Short term projects	2.9%	-

Pay and conditions of agency staff

In only two of the food manufacturing sites and in none of the distribution sites did agency workers receive the same pay and conditions as permanent staff.

Pay: Much less than half of agency staff received the same rate of pay – 37% in food manufacturing (where most agency work is unskilled), but only 17% in distribution. In food manufacturing all agency workers on different rates of pay were paid less than permanent staff with differences ranging from 20p to £2 per hour.

In contrast, at several distribution sites, drivers from agencies were paid more than permanent staff. Some reps commented that whilst pay rates were the same, agency drivers received better overtime premiums and were able to choose their own hours. As one rep explained, “market shortage dictates rates.” The shortage of qualified drivers meant that agency staff were able to command a higher rate of pay, although without the same terms and conditions, they were probably worse off in the long term.

Conditions: The most common benefit received by agency staff was overtime, followed by paid holidays.

In contrast, very few agency staff receive bonuses, the same entitlement to sick pay or paid maternity leave or are able to join the pension scheme. Only a minority of agency staff have access to lifelong learning.

The following table shows the proportions of agency staff entitled to the same conditions as permanent staff in cases where the reps were aware of their full terms and conditions.

Condition	Agency Staff Entitled	
	Food Manufacturing	Distribution
Same rate of pay	37%	18%
Overtime	74%	100%
Bonuses	13%	0%
Paid holiday	62%	73%
Sick pay	17%	20%
Paid maternity leave	29%	10%
Access to pension scheme	14%	36%
Access to lifelong learning	32%	18%

These results show that there is definite scope for bargaining, both on behalf of agency staff on lesser terms and conditions and also for permanent staff on sites where agency workers are paid higher rates.

Agency staff from overseas

A majority of the sites used agency staff from overseas. A total of 34 nationalities were listed, showing a very diverse workforce.

The majority of the staff who were not from the UK came from Europe. Polish was the most common nationality, followed by Portuguese.

Recruitment: Most companies recruited their staff solely in the UK, although some recruited in both the

UK and the workers’ home countries, and a couple solely recruited abroad.

Where Recruited	Food Manufacturing	Distribution
UK	78%	73%
Home country	4%	9%
Both	17%	18%

Languages: With such a large number of nationalities represented, obviously agency staff in Usdaw workplaces speak a wide range of languages.

The most common languages are: Polish, Portuguese, Ukrainian, Bosnian, Albanian, Russian, Urdu, Kurdish, Arabic and Turkish.

In all workplaces, at least some of the agency staff spoke English. In about a third it was spoken by most of the staff, but in about half of sites less than half of the agency workers spoke English.

Ushaw is currently producing recruitment literature in a wide range of languages to enable us to reach out to non-English speaking staff.

Health & Safety

Agency staff who work for a short time in workplaces where there are often many hazards can bring increased health and safety risks, both to themselves and to others.

44% of reps in food manufacturing and 50% of reps in distribution were concerned about the health and safety risks of agency staff. The most common risks cited were lack of ability to understand warnings and health and safety information.

Reps reported that in only 47% of food manufacturing sites and 60% of distribution sites were risk assessments conducted with agency staff.

Recruitment into Usdaw

In only a few of the sites had a majority of the agency staff been recruited into Usdaw, although in many sites at least some had joined.

Reps were asked the main reason why recruitment of agency staff was difficult. The most common reasons given were:

Reason	Food Manufacturing	Distribution
Language	20.5%	18%
Non-union culture	17.6%	36%
Lack of support	20.5%	18%
Not asked	11.7%	9%

These results show there is scope for recruitment of agency staff, if reps are given the support that they need.

Chapter 3

Rights at Work for Agency Workers

Employment status of agency workers

If a worker is classed as an employee of either the agency or the client company, they will be entitled to the normal rights of employees. However, it is more common for agency workers to be classed as self-employed.

To determine what rights an agency worker has, you first need to establish whether they are classed as either:

- Self-employed.
- Employed by the agency.
- Employed by the client company.

Self-employed/‘worker’

Employment status depends on whether someone has a ‘contract of employment’ or a ‘contract for services’ which is defined by the amount of control that the employer exercises over the employee.

If you answer ‘yes’ to most of these questions, you are probably classed as self-employed:

- Does your employer only offer and pay for work when they need it?
- Can you decide when you will work, and even turn down work when offered?
- Can you provide another worker to carry out the work in your place if you want?
- Do you have to provide your own tools?
- Are you left to pay your own tax and National Insurance?
- Do you have a written agreement with your employer that includes the phrase ‘contract for services’?

If you are classed as self-employed, you will not have the full rights of an employee, but will only be entitled to those rights detailed on pages 9 and 10.

Employees

If you answer ‘yes’ to most of these questions, you are probably an employee:

- Does your employer require you to work specific hours and pay you for these whether there is work to be done or not?
- Does your employer control what you do and lay down how and when you do it?
- Do you have to carry out the work personally? (ie you cannot ask another worker to do it on your behalf).
- Does your employer supply the tools or other equipment for the job?
- Do they pay tax and National Insurance on your behalf? (Although many workers also have tax and NI deducted from their pay so this alone does not prove that you are an employee).
- Do you have a written agreement with your employer that includes the phrase ‘contract of employment’?

Employee of the agency or the company?

If an agency worker is classed as an employee, it is more usual for them to be an employee of the agency. The following arrangements suggest that the worker is an employee of the agency (at least for the duration of the current placement):

- You have worked continuously for the agency for some time and would expect to continue there unless dismissed.
- Your terms and conditions are entirely directed by the agency.
- There is a disciplinary and/or grievance procedure in your contract with the agency.

Rights for agency workers who are not employees

If an agency worker is not classed as an employee, but as self-employed, they still have certain rights that are extended to all workers in the UK from their first day of work:

1. National minimum wage

The minimum wage rates are as follows:

- £5.05 per hour for those aged 22 or over.
- £4.25 per hour 18 – 21 year olds.
- £3 per hour for 16 and 17 year olds.

The right to the national minimum wage is especially relevant to migrant workers as they are likely to work in lower paid employment and may not be aware of the law in this area.

They might also be subject to illegal deductions from their wages, eg for meals, accommodation and for finding work.

2. Deductions from wages

- Accommodation costs: a maximum of £3.75 per day.
- Meals or refreshments: no deductions can be made.
- Finding work: no fees can be charged by agencies for finding work.
- Transport costs: a deduction can be made if transport is provided to and from work. There is no limit on this and it is a common source of abuse.

3. Working time rights

All workers are entitled to breaks, paid holidays, rest times and a limit on working hours.

Long shift patterns are common in sectors such as food manufacturing, where high numbers of migrant workers are employed.

Employers are legally obliged to ask their employees to 'opt out' of the 48 hour limit on the working week if they are requested to work longer than this on average. Employers are not allowed to force workers to sign an opt-out and workers can cancel their opt-out agreement at anytime, with seven days notice to their employer.

Workers are unable to opt out of any of the other provisions of the Working Time Directive on breaks, paid holidays and rest times.

Migrant workers who speak limited English might misunderstand this process, and could sign their right to a 48 hour week away without realising that this is a voluntary process, or even knowing what they are signing. They may also not receive the other rights to breaks, paid holidays and rest times that they are entitled to.

This can mean that they work long hours with insufficient rest, which puts them at increased risk of accidents or illness.

4. Health & Safety

All employers have a duty to provide their workers with the training and equipment that they need for a safe and healthy working environment. Employers have a duty of care, which means that they must not knowingly put the health and safety of their workers at risk.

The language barrier can mean that training has limited impact for migrant workers and they may not be able to understand health and safety notices.

They may be unable or afraid to voice concerns over health and safety risks, and it must be remembered that practices and procedures can differ from one country to another.

The consequences of inadequate understanding of health and safety procedures can be grave, and even fatal for migrant workers, their colleagues and the public.

5. The right to join a union

All workers are entitled to join a union. They do not have to tell their employer and must not suffer discrimination on the grounds of their union membership.

Migrant workers are among the most vulnerable in our society and it is very important they join and receive union support.

6. Protection from discrimination

Migrant workers are entitled, like all other workers in the UK, not to receive less favourable treatment than other workers on the grounds of sex, race, disability, pregnancy, sexual orientation and religion or belief.

From 1 October 2006, all workers will also be entitled to protection from discrimination on the grounds of age.

The Race Relations Act 1976 is especially significant for migrant workers, as it prevents discrimination on the grounds of 'colour, race, nationality or ethnic or national origins.'

Both agencies and hiring companies must comply with the anti-discrimination legislation.

7. Paid maternity leave

All workers are entitled to 26 weeks of Ordinary Maternity Leave. You can qualify for Statutory Maternity Pay (SMP) from the agency if you fulfill the conditions on length of service and the agency has been deducting National Insurance from your earnings. If you do not qualify for SMP you may be able to claim Maternity Allowance. See Usdaw's 'Maternity Rights' pack for full details.

However, if you are not an employee you do not have an automatic right to time off for ante-natal care.

Chapter 4

Migrant Workers

Migrant workers in the UK

Migrant workers are defined as people who come to the UK intending to stay for at least a year and whose primary purpose in travelling is to work.

It is estimated that there are currently up to a million overseas workers in the UK, making up 4% of the working population.

The overwhelming majority of migrant workers are working here legally. Those from other European Union countries are able to register to work in the UK. Work permits and schemes are available for people from outside the EU.

Migration is not a new or even recent development.

For the past century the UK and other industrialised countries have depended on an influx of migrant workers to build their economies. This influx is still necessary:

1. There are skills shortages in the UK in many regions for specific skills.
2. The growing number of pensioners in the UK require more people in work to contribute to the economy and the National Insurance system. Migrant workers contribute an estimated 10% more in revenue to the UK economy than they receive in benefits.

Migrant workers in Usdaw workplaces

Usdaw have agreements and members across sectors where increasing numbers of workers from abroad are employed. These include food manufacturing, catering and distribution.

In our survey about agency workers, only 20% of the reps in food manufacturing stated that they had an entirely English speaking workforce at their site.

Rights of migrant workers

Migrant workers who are working legally in the UK (as the vast majority are) have the same employment rights as other workers (see chapter 3). Therefore many

of the problems faced by migrant workers are common to those faced by agency workers in general.

However, workers who are not authorised to work in the UK or who are not paying tax or National Insurance cannot be protected by employment law. Their employers can be subject to heavy fines.

Migrant workers are often particularly vulnerable in the workplace because of difficulties with communication and insecurity over their employment status. They are also more likely to be exposed to racism and racist attacks than other agency workers.

While they are entitled to the basic rights described in chapter 3, migrant workers are often unaware of their rights and unable or unwilling to enforce them.

The challenge for the Union is to give these people a voice, in order to create a stronger Union and better workplaces for all our members.

Challenges – organisation and bargaining

The best way that we can protect migrant workers is to recruit them into Union membership.

Research has shown that migrant workers are significantly less likely to be trade union members than UK citizens. Workers from Eastern Europe have the lowest level of membership, at less than 12% (TUC, July 2003).

We have to work extra hard to recruit migrant workers because of the particular challenges presented by language and cultural differences. This Chapter gives guidance for shop stewards with ideas on how to overcome these differences.

A well-organised workplace is only the start of the process for winning better conditions for workers.

We have to make migrant workers aware of the rights that they do have, and work towards improving these in line with their colleagues.

As well as the normal improvements in pay and terms and conditions that we seek in all our workplaces, issues affecting migrant workers must be firmly on the agenda in our negotiations with companies where they are employed. Examples of these include:

- The provision of translation services, especially for health & safety information and for inductions.
- Ensuring that signs and notices use symbols and/or relevant languages where possible.
- Promoting language learning in the workplace.
- Celebrating cultural diversity and making a clear statement against racism.

Recruiting workers from abroad – advice for reps

In workplaces with high numbers of non British workers, we have to tailor our recruitment strategy to sign up as many people as possible.

Communication is the key to successful organising, and there are several strategies for overcoming the language and cultural barriers that can arise:

- Displaying multi-lingual information on the Union notice board.
- Attending inductions for new starters, bringing an interpreter if necessary.
- Using Lifelong Learning to facilitate language training in the workplace.
- Circulating copies of the TUC document 'Working in the UK: Your Rights' (available in seven languages).
- Encouraging those members of migrant communities who do join to become active in the Union.

We also need to be aware of the particular needs of migrant workers from various cultures and backgrounds. In conjunction with the TUC, Usdaw have worked with a Polish trade union official to help us organise Polish workers in the North West. Links with the Polish Trade Union 'Solidarnosk' have been established at some sites.

By talking to migrant workers in their workplace, shop stewards can get a better understanding of what they want from the Union – they might need to be pointed in the right direction for advice on issues outside the workplace such as housing, tax and local services.

Once a few migrant workers see that the Union is their Union and is there to support and empower them, they are likely to spread the word to their colleagues and the organising process can really take off!

Best practice

At the Christian Salvesen Service and Returns Centre in Lutterworth more than 70% of the staff come from outside the UK. The company worked with Usdaw's Union Learning Rep, Simon Mahoney, to offer English courses to the migrant workers and then basic skills and NVQs to all staff at the site. The company has seen staff retention rates increase from 20% to 82%, and Usdaw has seen an increase in membership.

At Heinz in Okehampton the safety reps, shop stewards and learning reps work together to provide educational support and guidance. They use migrant workers who do have good English to translate to the rest of the team. They have also negotiated prayer facilities for those who need them. As a consequence, nearly all of the agency staff have joined Usdaw.

Chapter 5

Organising Agency Workers

Unity is strength – why we need to recruit agency workers

By their very nature, it is a challenge to recruit agency workers into union membership. Our surveys of both food manufacturing and distribution showed much lower rates of membership of agency workers than of permanent staff.

Agency workers often change from one workplace to another, and may see little point in joining the Union due to their lack of job stability.

They are often employed on inferior terms and conditions and feel unable to voice their grievances due to their precarious employment status. Therefore, they stand to benefit from union membership more than most.

An inclusive and representative membership is vital for Usdaw to continue to grow and get the best for our members in every section of every workplace.

Our bargaining power is strengthened if our membership is representative of the whole workforce.

Rising to the recruitment challenge

The results of our survey of agency workers at our food manufacturing sites indicate that the main reason for around 12% not joining the Union is because they were never asked to.

It is often difficult to get hold of potential members when they work irregular shift patterns, particularly those who work through the night or evenings.

The turnover in agency staff can be high, making it difficult to keep track of new people starting work. It is often difficult for reps to establish the numbers of temporary and agency workers in their workplace or the types of contracts they are on.

Representing agency workers

When anyone faces a problem at work, it can be a stressful and difficult time for them. What starts off as a minor issue can easily escalate into a huge problem, and this is a particular risk for agency workers who often feel isolated and unsure about their rights.

The role of shop stewards in the workplace is vital for helping agency workers to feel included and protected by the Union. This important role helps build the Union's profile and aids recruitment.

Agency workers are especially liable to find it difficult to be taken seriously by management due to their status. They very much need the involvement of a rep in any grievance and disciplinary procedures. It is important to ensure that agency workers are aware of their right to trade union representation, regardless of whether they are classed as an employee or not.

Suggestions to improve recruitment

1. **'Mapping' the workplace:** This is a useful way to establish who agency workers are and which departments they are based in. Reps need to gather as much information as possible about members and non-members, in order to identify areas of low Union membership and investigate the reasons why. The Union runs training courses for reps that can help them to hone this technique and apply it to their workplace. For further information please contact your Area Organiser or Divisional Training Officer.

2. **Improved resources:** One of the major factors our survey respondents identified as an obstacle to recruitment is lack of support. The Union has a role to play here by providing specific training and guidance for our reps to ensure that they are equipped to deal with agency workers, and that they fully understand the legal and industrial issues surrounding them.

As part of the Agency Workers Campaign we will be looking at the publicity and recruitment materials that Usdaw provides to tailor them specifically to agency workers (including, where appropriate, producing them in languages other than English).

3. **Improving facilities:** There is a further issue of the facilities and support provided by the companies and agencies. Inductions and training may be less thorough than for permanent staff (or may be non-existent). This can jeopardise one of the most vital opportunities we have to recruit.

Reps and Officials need to negotiate with management to try to ensure that inductions are carried out for all new workers at a site, and that reps are informed of the times, dates and venues.

Where a presence at induction isn't possible, it can be helpful for shop stewards to have information packs to distribute to new workers quickly and easily.

4. **Raising the profile:** New workers need to be immediately aware of the Union's presence and the work that we do. Union notice boards should be kept up to date with relevant information, arranging 'surgeries' where members and non-members can come along and talk to their rep, putting up posters and leaving copies of *Arena* in prominent places. Usdaw will be producing materials specifically for agency workers that can be placed on notice boards to show agency staff that Usdaw is relevant to them.

5. **Representing agency staff:** Agency staff need to know that Usdaw is able to support them and offer advice. If they are deemed to be employed by the company with an Usdaw agreement, we will be able to represent agency staff. Any support that reps are able to offer to agency staff will show others that we are on their side and make them more inclined to join. Reps can help agency staff with many issues such as ensuring:

- They do not have illegal deductions made from their wages.
- They receive adequate health and safety training and equipment.
- Any housing provided for them is acceptable.

Lifelong learning as a tool for recruitment

Since the start of our Lifelong Learning Campaign six years ago, over 12,000 members in Usdaw workplaces have returned to some form of learning.

Lifelong Learning represents a unique opportunity to reach out to all types of people who might not otherwise be aware of the benefits the Union has to offer.

In workplaces where we have negotiated learning facilities and funding, it has a very positive effect on recruitment. This is because the Union's profile is raised and people are given the opportunity to attend courses, use the Learning Centres and apply for funding.

For agency workers, who often feel isolated from their colleagues and the Union, attending courses with their colleagues can help them to integrate. It can also help agency workers to gain the skills that they so often miss out on, which in turn can give them the opportunity to gain permanent employment.

There is a particular gain to be had in promoting courses in English as a second language in workplaces with a significant migrant worker population, as improved English can help workers to understand their rights, work safely and get involved in the Union.

Best practice

1. **Health & Safety:** Many reps have concerns about agency staff and health and safety. At Hollands Pies in Baxenden, Union reps frequently have to ensure that workers are adequately trained in health and safety. At the Cardiff dairy of Dairy Farmers of Britain, Usdaw reps have made sure that agency staff are provided with safety boots and clothing. At Cavaghan & Grey in Carlisle, Union reps ensured that important health and safety signs were translated into relevant languages.
2. **Housing Issues:** At St Merryn Meat in St Austell, Union reps work with company management and the HR Department to ensure that accommodation and facilities provided for agency staff are of an acceptable standard. At the Exel Logistics site in Runcorn, the agency provides housing for their staff. The Union reps have recruited some agency staff who work full-time and have become involved in their housing issues.
3. **Representation:** At a produce factory supplying Morrisons, 300 agency workers were taken on to cover new shifts. Many were Tamils and were quite happy to join the Union. Because the agency staff were organised, the company did a u-turn on a different shift system they had been going to introduce.

Chapter 6

Bargaining for Agency Workers

The need to bargain for agency workers

Whilst there is some legal protection in place for agency workers, the fact remains that they are often employed on inferior terms and conditions to their colleagues. Our survey consistently showed that agency workers, even in unionised workplaces, consistently lose out on wages, maternity/paternity provisions, pensions and sick pay.

The next chapter of this document will discuss the improvements to the law that the Union is campaigning for, to create equality between agency workers and other types of employees. However, the law provides only minimum protection for workers' terms and conditions.

Collective bargaining allows workers to exert real control over their working lives. For this reason, the Union is working towards signing recognition agreements with employment agencies, so that we can negotiate on behalf of those people who have a contract of employment with the agencies.

Linking bargaining with organising

Bargaining for agency workers' rights is vital for organising and for preventing the 'two tier' workforce, which can drive a wedge between the terms and conditions we negotiate for our members and the option of cheap labour that agency workers represent for some employers.

Whilst some employers are extremely opposed to Union attempts to negotiate on behalf of agency workers, they are more likely to listen to us if we can show that agency staff are joining Usdaw.

Some companies have begun to introduce 'ethical employment' policies, so that anyone who is working at their sites is guaranteed certain minimum standards of working conditions, regardless of their employment status.

Harmonising pay and conditions between agency workers and incumbent staff has many benefits for the employer, such as reducing labour turnover and the associated costs, and improving morale by breaking

down the 'them and us' mentality. Creating a more involved workforce subsequently improves productivity.

Beyond the basics of pay, pensions, holidays, etc, employers can improve conditions for the agency staff in their workplace by less direct means – eg, by allowing them to benefit from subsidised canteen meals and aligning their working patterns with their permanent colleagues.

The gangmaster licensing provisions

From mid 2006, agencies which provide labour for the agriculture, food processing and shellfish industries will require a licence. A Gangmaster's Licensing Authority has been established to oversee the licensing function, on which Usdaw has a seat as a TUC nominated representative.

Labour providers will have to comply with the Licensing Authority's rules and will be subject to audits from enforcement officers. The standards that the labour providers will have to comply with are currently open to public consultation. Once the licensing provisions come into effect, it will be an offence for businesses to source their labour from an unlicensed labour provider.

There is already a code of practice in operation by the Association of Labour Providers, which ensures minimum standards such as:

- Employees to have written terms and conditions properly documented with evidence of right to employment.
- All deductions from wages to be with written consent.
- Risk assessments of customers' premises and written health and safety responsibility agreement with customers.
- Payment of the legal minimum wage.
- Itemised payslips for each pay period.
- Employee protection through employer's liability insurance.

- Records kept of National Insurance numbers.
- Use of a payroll system.
- Registration for VAT if the VAT threshold is exceeded.
- Written service agreements for each customer.
- Sub-contractors must comply with the code.
- Self-employed workers must not be used.

Best practice

1. **United Biscuits:** When KP/McVities first started to use agency staff, Usdaw made an agreement that the agency workers would receive the same rate of pay (at starter rate) and premiums as permanent workers. Agency workers therefore benefit from the Union negotiated increases every year.
2. **Littlewoods Home Shopping:** Littlewoods assisted Usdaw in making the agency recognise the Union. We secured the same recruitment facilities for agency staff as we have for permanent staff and negotiated the same terms and conditions. As a result, the same proportion of agency staff as permanent staff joined the Union.
3. **Duerrs Jam, Manchester:** Usdaw negotiated a quota for agency staff. If there are over 12 recruited, then permanent jobs are created so that the number of agency staff does not increase any higher.

Chapter 7

Campaigning for Agency Workers

Usdaw is campaigning with our Labour Government to improve the rights of agency workers and to improve enforcement of the legal duties on employment agencies.

Problems with rights for agency workers

Most agency workers miss out on some of the most fundamental employment rights that are only available for employees, such as:

- The right to make a claim for unfair dismissal.
- Paternity, parental and adoption leave.
- The right to request flexible working.
- The right to emergency time off for dependants.
- The right to a written statement of terms and conditions of employment.

The Department of Trade and Industry has itself admitted that the employment status of around 30% of the UK workforce is ambiguous.

There are special rights that apply to agency workers in particular, such as the right not to be charged a fee or have wages withheld by an agency.

However, these rights are not well enforced. The Employment Agency Standards Inspectorate (which investigates complaints and carries out checks on agencies) has brought few prosecutions, and there is no universal licensing scheme for all agencies to adhere to.

The rights that are extended to agency workers are ambiguous and illogical. For example, while all workers are entitled to accompaniment in disciplinary procedures, without employee status there is no right to a legal remedy for unfair dismissal following the implementation of these procedures.

Temporary agency workers' directive

Usdaw is campaigning for the Temporary Agency Workers' Directive to be implemented at the earliest opportunity.

The directive would give all workers the right to equal treatment with permanent employees on pay, working time, holidays and protection against discrimination.

Whilst employers have argued that the directive would lead to greater unemployment, this is not necessarily the case. Better treatment for agency workers would attract more people to temporary work and therefore increase the flexibility and skills base of the UK workforce.

The proposal for the directive was adopted in March 2002 and since then has been blocked by a minority in the Council of Ministers.

The main reason for the delay is disagreements over the possible qualifying period, which the UK and other governments have argued should be six months.

Due to the often casual and seasonal nature of agency work, a six month qualifying period would exclude a large proportion of workers.

The TUC estimates that over half of the UK's agency worker population would not benefit from the increased legal protection if such a qualifying period was in place. Another risk is that employers could avoid the requirements of the legislation by continually employing workers for one day less than the qualifying period.

Lowering the qualifying period to six weeks would include a far greater number of agency workers, especially young workers who are likely to move from one job to another quite frequently.

Improving controls on agencies

In a motion at the Trades Union Congress in 2004, as well as calling for the directive to be implemented at the first opportunity, the Union called on the Government to rigorously enforce the existing legislation on employment agencies to ensure that workers receive:

- Their full rights, including the minimum wage.
- No illegal deductions from wages.
- No charges for finding employment.
- Accommodation meeting minimum standards.
- Proper training and health and safety awareness for each placement.

The Union will also be working with the Gangmaster Licensing Authority to ensure that, when the Gangmaster Licensing Regulations come into force, decent standards are maintained for workers in agriculture and food manufacturing.

How can you help?

1. **Complete Usdaw's survey:** The success of our campaigning relies on the quality of the evidence that we can give the Government. We therefore need to gather as much evidence as we can about the conditions and problems of agency workers. If you have agency staff at your workplace, please complete Usdaw's survey 'Workplace Organisation and the Use of Agency Labour'.
2. **Tell us your successes:** The Government is much more inclined to enact legislation affecting companies if we can prove that good companies are already putting the proposals into practice. If you negotiate successfully for agency staff in your workplace, or have any other successes – please tell us.

Conclusion

Agency workers are increasingly being used in workplaces organised by Usdaw, and are often trapped in a vicious circle of low paid temporary employment with few opportunities for progression.

The use of agency workers as cheap and convenient labour can undermine our work to improve the working conditions of permanent staff, as well as exploiting the workers themselves.

There is little surprise that our survey revealed a lack of parity in pay and conditions for agency workers.

This is a serious issue that can only be resolved by sustained efforts in organising, bargaining and campaigning.

Agency workers are notoriously difficult to recruit, due to their lack of stability and irregular hours.

However, Usdaw reps and officials have already achieved much success in many workplaces.

It is crucial that we spread this best practice across as many workplaces as possible where agency workers are used and to use all the resources at our disposal to ensure that agency staff are organised.

Of course, organising goes hand in hand with bargaining. Potential members need to see that the Union is making a real difference to their working lives. At the same time, our ability to bargain with companies is dependent on healthy levels of membership.

There is a great deal of work yet to be done, but the issue of agency workers must continue to be addressed if Usdaw is to remain representative of the UK workforce as a whole and to grow as a Union.

Appendix

Helpful Resources

- **Agency Workers Have Rights Too!**
Leaflet available from
www.worksmart.org.uk
- **TUC 'Working on the Edge' Campaign**
www.tuc.org.uk/ontheedge
- **Usdaw Recruitment Leaflet for Migrant Workers**
(Available in various languages)

To order copies, e-mail:
womenandequalities@usdaw.org.uk
or contact the Media and Communications
Department on 0161 224 2804.
- **Labour and Migration Rights** published by the
Institute of Employment Rights
www.ier.org.uk
- **Working in the UK: Rights for Migrant Workers**
Published in Czech, English, Estonian, Latvian,
Lithuanian, Polish, Russian, Slovak, French and
Spanish.
- **Your Health, Your Safety: A Guide For Workers**
Published in Albanian, Arabic, Bengali, Chinese,
Czech, Greek, English, Gujarati, Pashto,
Portuguese, Polish, Punjabi, Romanian, Russian,
Slovak, Spanish, Tamil, Turkish, Ukrainian and
Welsh.

Both documents are available from www.tuc.org.uk
or by writing to:

TUC Migrant Workers Project,
Congress House,
Great Russell Street,
London WC1B 3LS
- **Working in the UK – Information for Workers**
Versions available in English, Portuguese,
Polish and Lithuanian at
www.dti.org.uk

Contacts

- **Usdaw National Helpline**
0845 606 0640
www.usdaw.org.uk
- **ACAS Helpline**
0845 747 4747
www.acas.org.uk
- **Citizens' Advice Bureau**
Find your local office at www.nacab.org.uk
or in the telephone directory
- **Commission for Racial Equality**
020 7939 0000
www.cre.gov.uk
- **Department of Trade and Industry Enquiry Unit**
020 7215 5000
- **Employment Agency Standards Office**
0845 955 5105
- **Employment Tribunal Enquiry Line**
0845 795 9775
- **Equal Opportunities Commission**
0845 601 5901
www.eoc.gov.uk
- **Health and Safety Executive**
0845 600 0678
www.hse.gov.uk
- **Immigration Advisory Service**
020 7967 1200
- **National Minimum Wage Helpline**
0845 600 0678
- **Recruitment and Employment Confederation**
020 7462 3260
- **TUC 'Know Your Rights' Helpline**
0870 600 4882



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