

The International Temping Industry and the Restructuring of Work – the example of Germany and Australia

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INTRODUCTION

Temping and agency work has a long tradition in OECD countries. The deployment of temps for seasonal work or to fill short-term vacancies has been a long established practice. Nonetheless, agency work has now extended across industries, occupations and countries and beyond seasonal and filling expected and unexpected staff absences. It has become a labour use practice than can be observed around the globe (Burgess and Connell, 2004). The temping industry itself has seen tremendous growth and expansion beyond temporary staff placement. It has developed into a global industry offering a vast array of employment services from recruitment to training and payroll (Peck and Theodore, 2004). Trade unions and labour regulators have long been skeptical when dealing with temping in a number of areas – the ambiguity of the employment relationship, specifically the question who is regarded as the employer (Davidov 2004) and determining the status of the temp worker; the tax status of the worker; the access to employment entitlements by the worker and the compliance and familiarity with workplace regulations, especially occupational health and safety regulations (Underhill, 2006).

In this article we discuss the temping industry in Germany and Australia. The comparison is to highlight differences between the two countries regarding the temp industry and the nature of the regulatory regime. In both countries the temping industry has grown although agency workers remain a small part of the overall workforce. After discussing the development of the temping industry in each country the article will then analyze the regulations of the industry in each country. Following the discussion we will examine two specific issues: the impact of the deployment of temps on the client companies and the opportunities for temps to exercise voice. Finally the role of temping in the current financial crisis is briefly discussed.

DEVELOPMENTS IN THE TEMPING INDUSTRY IN GERMANY & AUSTRALIA

Market information about the temp industry and the characteristics of agency workers can vary, as official statistics do not deliver all necessary information (Alewell 2005). The share of temporary agency work, the number of agency workers as well as the number of temporary work agencies have risen steadily in Germany over the last few years (Bundeagentur für Arbeit 2007). The market for temporary agency work in Germany is nevertheless still very fragmented. This is reflected by the fact that the largest companies in Germany combine only 25% of the market share measured by turnover (Garhammer 2002). Take for example Ranstad that has a market share of 40% in the Netherlands, but as a market leader in Germany it accounts for only 7.7% of the market (Garhammer 2002).

In Australia the official estimation of agency employment is also problematic. First, there are potential differences in employee status, some agency workers may be employed on a self-employed contract basis. Second, agency assignments may be very short-term equating to just hours, days or weeks. This is often the case for professional services and in construction. Since the national labour force survey takes stock employment estimates at one point in time on a monthly basis, it can miss the potential short-term assignments associated with agency employment. The research by the Productivity Commission (2005) of agency work suggested a figure of 2.8m. workers in 2004, but this was based on a household survey. Since agencies are performing multiple functions linked to the provision of employment services, the placement of workers can cover both labour hire (agency employment) and job placement. It is also possible that agencies conflate the placement and agency functions, with placements being initially on an agency basis in order to screen potential employees. Hall (2006) cites data from the Household, Income and Labour Dynamics in Australia (HILDA) survey, which indicates that agency employees constitute 3.7

per cent of all employees. The share of the workforce would be smaller, around 3 per cent. Hall (2006) suggests that this estimate would place Australia toward the top end of the proportion of agency workers in OECD workforces. The 2003 survey by the Australian Bureau of Statistics (ABS) of the employment services industry (ABS, Catalogue 8558.0), indicated that there were over 2.700 organisations in 2001/02, with around 250 of these being not for profit organizations. As with Germany the market for employment agencies is fragmented with a few large, mainly multinational firms, dominating the industry.

Agency workers make up only a very small proportion of the overall German workforce, accounting for just 1.4% of total employment (Jahn 2005). A large proportion of German agency workers (around 30%) is unskilled and mainly deployed in the industrial sector (34%) working at low scale production jobs (Bundesagentur für Arbeit 2007). The market has witnessed very dynamic growth rates. In absolute terms the number of temporary agency workers increased from around 177.000 in 1996 to nearly 800.000 in the first half of 2008 (Bundesagentur für Arbeit 2008). Concerning the status of agency workers, over 62% have not been employed beforehand (Bundesagentur für Arbeit 2007), indicating that agency work is one suitable way for re-entry into the labour market although it is itself often regarded as second-best choice. Studies show that around three quarters of agency workers hoping to find a permanent position after their assignment with the agency (Wieland et al 2001). Only 10% of agency workers prefer this form of employment over other alternatives (Wieland et al 2001).

Hall (2006) indicates that for Australia there is a heavy representation in utilities and communications (at least 10 per cent of the workforce for these sectors), but that the largest number of workers is located in manufacturing business services and health and community services. By occupation, agency work predominates among the lower skilled occupations but can also be found throughout the skill profile. The Productivity Commission (2005) report on agency employment suggests that the density of agency employment (as a percentage of all employees) was greatest in communication services (11.1 per cent), manufacturing (6.2 per cent) and property and business services (6.1 per cent). Industrial Relations Victoria (2005) conducted a survey of labour hire arrangements in that State. They found that agency workers are a very low share of the total workforce, yet nearly 40% of relatively large workplaces (more than 200 employees) regularly use agency workers. Indeed, there is a direct relationship between the size of workplaces and the use of agency work. Overall, 12% of all workplaces use agency workers. Similarly the spread of agency work by sector was found to be very uneven. The public sector is a relatively high user of agency workers while construction and hospitality are less likely to use such workers. The Parliamentary Inquiry into the labour hire industry in Victoria found that the most frequent use of labour hire in measured by the percentage of workplaces in a given industry using labour hire was by the mining and construction industries (61.5 per cent). This was followed by the manufacturing sector where 30.6 per cent of workplaces use labour hire. The education, health and community services sector is the third highest user of labour hire, with 30 per cent of workplaces using labour hire. (Parliament of Victoria, 2005, 28).

According to the Productivity Commission (2003) labour hire workers account for a larger proportion of the workers in less-skilled blue collar occupations. Labour hire workers represented 7 per cent of total employment in the category of labourers and related workers, and 4.8 and 4.6 per cent respectively in the categories of intermediate production and service workers and tradespersons and related workers. In terms of the distribution of the total number of labour hire workers, a large number are located in white collar professional and clerical occupations.

REGULATION OF LABOUR HIRE

In the debate on the regulation of agency workers at an international level, the question who is regarded as the legal employer of the agency worker is a widely discussed issue (Davidov 2004). The designation of the temporary work agency as an employer has been suggested by the ILO's convention on private employment agencies. However, as the ILO conventions provide only a very broad framework, regional and country-specific regulation is more

important to analyze the impact on restructuring efforts by client companies and on employee voice.

For Germany, at the *product market side* of regulation, one feature of agency work is that client companies acquire temporary rights of directive control over employees who are contractually employed by the temporary work agency (Alewell et al 2005). Product market regulations comprise a range of issues like the requirement to obtain a licence – which is laid down in the so called Personnel Leasing Act - and the obligation of the temp agency to pay taxes and social security contributions. The so called personnel leasing contract (Furier & Kaus 2004) regulates the other features of the relationship between temp agency and client company, for example the leasing fee and the duration of the assignments. There is no contractual agreement in place between temporary agency workers and client firms to which they are assigned (Urban-Crell & Schulz 2003). The federal employment service monitors the compliance with the Personnel Leasing Act and any failure to comply with the set standards can result in the withdrawal of the current licence (Storrie 2002). The starting point for *labour market regulation* is also the Personnel Leasing Act which has seen various changes lately. The development of the maximum period of assignments is a good example of the changes during the past years. The maximum duration of assignments has been increased up to 24 months in 2001 and been totally abandoned in 2004 as a consequence of the Hartz-reforms (Schönfeld 2003). Another significant change has been the introduction of the Equal-Pay principle. It places temporary work agencies under the obligation to pay their employees the same wages that the employees of the client company receive beginning at the first day of the assignment (Thüsing 2002).

This has influenced the industrial relations in Germany. Before the Hartz-reforms there have been no collective agreements in place in the temp industry. But the principle of Equal Pay has led to a number of collective agreements for the temp industry, as the parties to a collective agreement can dispose of the principle of Equal-Pay which has been accompanied by a gradual increase of wage costs for temporary agency workers (Alewell et al 2004). For agency workers this means that the working conditions have been laid down in collective agreements for the first time, marking a turning point in the representation and possibility to exercise their voice in the industrial relations system.

In Australia, there have been several legal cases and industrial disputes surrounding the use of agency employment arrangements that have assisted in eroding the conditions of employees and de-unionising workplaces (Stewart 2002). In the main the Australia regulatory environment is very light in comparison with Germany, and despite public concern, as demonstrated by the many inquiries into labour hire, the situation is one of limited regulation. With regard to *product market regulation*, in Australia, there is no national regulation of temporary work agencies. Those regulations that do exist are confined to the State jurisdiction. Temporary work agencies must be licensed at the state level and licensing usually involves an application for licensing (O'Donnell & Mitchell 2004). Beyond this, agencies were subject to the same regulations that govern other commercial enterprises such as the fair trading provisions of the Trade Practices Act (O'Donnell & Mitchell 2004). There is a growing awareness of the industry and the issues associated with its development and growth in Australia. To date, a few inquiries have been spawned, but actions regarding regulation are limited and are largely left to state governments. Queensland was the first state to attempt to set out the nature of the employment relationship between the labour hire company, hiring organisation and the worker (as set out in the Queensland Industrial Relations Act 1999). The Queensland Act establishes the temporary agency as the employer and the labour hire worker as the employee. In Australia, there are no reporting obligations, financial bonds do not have to be posted by the agencies and there are no limitations on the occupations/industries that can be covered through agency employment arrangements.

There are no statutory limitations placed on labour hire in terms of the number of hires that can occur, the length of the labour hire or the exclusions from particular sectors (Underhill 2006). With regard to industrial relations, the triangular nature of the labour hire relationships introduces ambiguity into determining who the employer in the relationship is. Creighton and Stewart (2005, 290) suggest that the employer could be the hiring organisation, or in some

instances the employing organisation. As short term hires, agency workers are usually hired as casuals. It is then not surprising then that the trade union membership of temps is very low and they tend to be excluded from many non wage benefits such as paid holidays on account of the short duration of their engagement (Hall 2006). The development of rights has revolved around decisions by industrial relations tribunals at the state and federal government level as well as court rulings that clarify employment status, identity of the employer and establish employer obligations. The regulation of labour hire has largely been confined to the award system that is defined by collective agreements that take in many workplaces within an industry. The potentially ambiguous nature of labour hire is not addressed in legislation and instead there is a piecemeal collection of case study law that applies across the different state jurisdictions (Creighton & Stewart 2005).

The development of rights and entitlements for agency workers has been sporadic and piecemeal, despite the proliferation of public inquiries into labour hire (Underhill 2006). At the state level the New South Wales "Secure Employment" decision established entitlements for temporary workers (including labour hire) who are employed continuously for longer than 6 months (Workplace Info 2006). However, the same decision rejected any controls over labour hire or the assignment of equality rights to agency workers (Workplace Info 2006).

THE DEPLOYMENT OF TEMPS IN CLIENT ORGANISATIONS

In Germany and Australia the main reasons given for the use of agency workers are quite similar. The reasons are mainly related to labour flexibility and meeting short term staff needs although the avoidance of legal regulation and cost aspects are often cited too. For example, the Federal paper on agency employment and independent contracting in Australia (DIR 2003) suggests that the 4 main reasons for labour hire were: meeting short term staff shortages, replacing staff on leave, providing specialist skills unavailable in the organisation and to serve as a screen for selecting potential employees. The evidence suggests that the spread of temping extends across all industries including the public sector which is one of the heaviest users of temping services. Here temping is not only related to skill and staff shortages, but also the budgetary and HR practices that limit over time and payroll head counts. Temping is also a means of meeting staff needs without hiring ongoing staff (DIR 2003).

In Germany, studies show that increasing flexibility and reducing labour costs are also important reasons for using temps (Promberger & Theuer 2004). Hall's (2004) identified reasons for using temps: coping with fluctuations in labour demand; accessing specialist skills; reducing labour costs; contracting out industrial relations problems; and promoting organisational change can be applied for Australia and Germany. This is a mixture of both temporary and strategic reasons behind labour hire, with strategic reasons become more important.

What are the implications of temps for HR procedures and practices in client companies and temp agencies? This will be determined by the nature of job and the reason for temping. Where a temp fills a short term skills gap then the main HR issue is ensuring that the selection process has ensured that the required skill need is met by the temps. Where the use of temps is for seasonal or short term purposes only there will be issues around appropriate training, induction and fit. One issue here is the respective responsibility of agencies and hiring organisations. The hiring organisation will expect the agency to have screened temps and to have ensured that they are "job ready"; however, there will always be organisational knowledge and procedures that temps do not possess; this is particularly relevant in the case of OH&S.

In other cases, especially with regard to long-term assignments, there are a number of potential HR considerations. First, there are issues of "fit". Temps may require induction and training despite agencies performing a screening function. The evidence suggests that temps receive minimal training from the hiring organisation (Hall, 2004). Other studies also conclude that skill training expenditures in the temp industry are rather modest (Autor 2003) and that 35% of all surveyed employees but only 12% of temporary workers received some kind of personnel training within a 12 months period in the EU (Letourneux 1998).

Second, there are issues linked to an absence of organisational practice and knowledge; crucial here are procedures relating to occupational health and safety (Underhill 2006). In some cases agency workers find themselves in job assignments where they face risks to their health and lack the tools to avoid accidents. Indeed, research shows for example that agency workers are more likely to be involved in work-related accidents (Rebitzer 1998) and are assigned to more dangerous jobs (Amuedo-Durantes 2002).

Third, there are issues of organisational cohesion, especially where collective and co operative working relationships are required. This is also a question of perceived equality. For example, Geary (1992) provides additional evidence in his study that a dual workforce leads to HRM challenges as a consequence of considerable disquiet amongst temporary- and permanent employees resulting from the perceived inequality between the two groups.

The decoupling of workers from the employing organisation is one manifestation of the rise of networked organisations. Temping is one employment form associated with this process and agency work has been implemented as a strategic staffing option in many organizations, but the networked organisation also includes contractors, the self employment, casuals and fixed term workers (Rainnie et al, 2008). While the flexible firm model provided for a rationale for using employment arrangements that generated labour flexibility, these were still located within the one organisation, the use of "external" workers to the organisation was one means for enhancing labour flexibility. With networking and sub contracting the identification of the employer and the employer/employee relationship becomes blurred by intermediaries and ambiguities in the employment relationship (Grimshaw et al, 2005). Such practices as outsourcing, franchising, sub contracting and partnership arrangements have the potential to bring with them ambiguous employment arrangements. Developments in networked organisations are expanding through more sophisticated supply chain management and the growth is such practices as public-private partnerships. The deployment of agency workers is one element of the wider restructuring of ownership arrangements and the associated deployment of labour. This increasingly means that workers can be employed simultaneously by a number of organisations, have short term employment arrangements and be removed from their employer. Decoupling the traditional employer-employee relationships is occurring in a number of ways that provide opportunities for greater use of agency employment or other new forms of intermediated work like for example interim management.

Dual workforces have a special effect on Human Resource Management practices. Generally, there are several strategic options available for managing a dual workforce. The first option with regard to agency workers is to treat them completely different than the core workforce (Lautsch 2002). Second, agency workers can be treated as an integral part of the workforce at the client company (Koene & Riemsdijk 2005). Between these two poles different combinations depending on the situation are possible (Koene & Riemsdijk 2005; Lautsch 2002). In most of the companies and countries, temps are outside of traditional internal labour market HR processes and policies.

IMPLICATIONS FOR EMPLOYEE VOICE

In Germany, the Company Constitution Act grants agency workers the right to participate in workplace representation. They are entitled to vote for the works council of the client company if they have been assigned for more than three months to the client but they are not entitled to get elected as a works council member of the client company (Maschmann 2002). However, they have also a voting right and can stand for election as works council at their temporary work agency (Bredehorn 2003). Concerning collective bargaining, there are collective agreements in place that cover many temp agencies (Mitlacher & Burgess 2007), although the rate of union membership is very low among agency workers. This implies that agency workers do not really try to utter their voice thru this level of representation. Additionally, as the wages and working conditions laid down in the collective agreements are for many temps below their legal entitlements according to the Equal-Pay principle, for many agency workers the collective agreements and the unions have not reached the most possible for agency workers.

In Australia formal consultative mechanisms such as Works Councils are rare across the economy. Since temps are overwhelmingly casual, they have a low trade union density (Campbell et al 2004) and in many cases may be working alongside workers who are union members. It is difficult for unions to organise temps and it is difficult to recruit given that many temps have short assignments and are not with the same organisation for long periods of time. Unions themselves have seen temps as a threat to permanent jobs and in the past have sort to place limits on the use of temps.

TEMPS AND THE RECESSION

Agency work usually serves as an early indicator for economic development. In downturns the temp industry is the first to dismiss people while in economic upswings the industry is among the first to increase their headcount. This development can also be seen in the current financial crisis. The temp industry has been one of the hardest hit industries in Germany. Currently, according to estimations of the BZA the number of agency workers has decreased around one third from its record high of around 800.000 temps in the first half of 2008 to 550.000 in the first quarter of 2009 (Creutzberg 2009). Especially the clients from the automotive sector have reduced the number of agency workers as a respond to sluggish customer demand (Schuhmacher 2009). What is different in this crisis however is that the German temporary work agencies try to keep as much of their workers on their payroll to be ready if the upswing starts. In the past, many temporary work agencies had problems of hiring the needed employees with the right qualifications that can then be hired out "job ready" to clients. Therefore many temporary work agencies currently use short-working hours for their agency workers (Fasse 2009). As a reaction to the crisis the government has expanded the instrument of short-working hours to the temp industry. This means that agency workers can work short hours and are entitled to government grants to compensate for their income loss. This instrument is used by multi-national temp agencies like Randstad that has ordered a part of his workforce to work short hours (Fasse 2009). However, experts are expecting that the temp industry will see a boom like never before when the economy recovers as more companies as a result of the crisis will in a first step increase their use of agency workers before hiring permanent staff (Fasse 2009). Another result of the current financial crisis will be the consolidation of the very fragmented German market for agency work (Fasse 2009).

In Australia the temp industry has also been affected by the downturn. Those firms that specialise in recruitment, especially for high paying occupations have been hard hit (Rochfort, 2009). Also, in some sectors organisations are cutting contract and agency staff numbers before they reduce the number of their own employees (Tasker 2008; Perth Now 2009). There are opportunities and challenges emerging in terms of the Pacific Islander agricultural program and the restructuring of Federal employment service delivery.

CONCLUSIONS

The paper has provided insight into the influence of the temp industry on the restructuring of work and work processes. It has also highlighted challenges that Human resource managers face when dealing with dual workforces. Although the legal regulation is quite different in Germany and Australia the consequences of agency work on the structure of work processes is quite similar. The current financial crisis will lead to an even greater consolidation and standardization of agency work. This will improve for example the image of agency work in Germany as the multi-national temp agencies are bound to collective agreements and can offer better working conditions than many of the small companies on the temp market. Nonetheless there is still much potential with regard to the improvement of the job quality and working conditions in the temp industry. For example, temporary agency workers in both countries still do not participate as much in personnel development and training measures as regular employees. With regard to pay and benefits they still earn significantly less than core employees, despite the Equal-Pay principle for example in place in Germany. The success of the temp industry will depend on how it will manage to attract and retain workers with the required qualification to hire them out "job ready". This challenge will increase when the

current financial crisis will be over. The solution is improving the job quality of agency workers regardless of the minimum legal requirements.

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