COMPARATIVE LABOR LAW DOSSIER
TEMPORARY EMPLOYMENT CONTRACTS IN BELGIUM

Pieter Pecinovsky, PhD researcher
Piet Van den Bergh, Researcher
Institute of Labour Law, University of Leuven (KU Leuven)

Introduction

Temporary work and especially agency work is quite a popular tool for Belgian employers and companies. In 2011 there were 547.259 temporary agency workers, which were placed by 1.356 temporary work agencies. So more than 12% of the active population was a temporary agency worker, which seems to be quite a lot. However less than 100.000 persons worked more than 65 days of the year (which entitle them a right on an end of the year bonus) as a temporary agency worker.

Although it is not allowed to discriminate temporary workers and the law tries to protect them at a decent level, their situation is often not ideal, since most contracts have very short terms of only one week, which are renewed or prolonged after every week, giving the temporary worker very little job stability.

1. Is it possible to subscribe temporary employment contracts in Belgium? What is the principle that governs temporary work?

It is possible to subscribe temporary employment contracts in Belgium. However the use of this type of employment is restricted by legislation in order to give the temporary worker an adequate protection and to protect the jobs of permanent workers. On one hand, the lawmakers want to grant the positive flexibility of temporary work to employers, but on the other hand they are afraid to be blamed to allow comfortable permanent jobs being massively replaced by insecure temporary ones.

2. Which temporary employment contracts exist in Belgium? In which cases can these temporary employment contracts be used and what is their legal regulation?

Temporary work is regulated by the Act of 24 July 1987. In this act, it is provided that temporary work can be carried out either in a direct relationship between employee and employer, or in the context of a triangular relationship involving a temporary work agency, a temporary worker, and a user. In practice, it is only this later form, agency work, that temporary work is used.

Temporary work can only be performed for well-defined specific reasons or motives, which are laid down by the Act of 24 July 1987, and which have to be present at the level of the user enterprise. These are:

- Replacement of a permanent employee;
- Responding to a temporary increase of the workload;
- Performing of exceptional work;
- Recruitment of the temporary worker.

As a rule, fixed term contracts are used. Replacement contracts for the period during which the replaced person is absent, and contracts for a well-defined work are the other contractual forms under which temporary work can be carried out (cf. article 2 Law of 24 July 1987 on Temporary Work).

The Belgian legislation makes a clear distinction between regular fixed-duration contracts on the one hand, and temporary work, mainly via temporary work agencies, on the other hand. An employer is only allowed to conclude up to 4 fixed-duration contracts with an employee, for a total duration of maximum 2 years, whereby each contract must cover a period of minimum 3 months. With prior consent of the labour inspection, successive fixed-duration contracts of minimum 6 months each can be concluded for up to three years. When a fixed-duration contract is concluded in breach of these rules, the contract is considered to be open ended.

Temporary contracts including temporary agency work contracts on the other hand, can only be concluded to carry out temporary work. Temporary work is defined as the activity of:

- Replacing a permanent employee;
- Responding to a temporary increase of the workload;
- Performing an exceptional work;
- Having a temporary agency worker working for a period of maximum 6 months, after which the worker may be hired directly by the user. Hence, temporary agency work is used as a means of recruitment.

Beyond these activities, temporary work is not permitted (cf. articles 1 and 1bis Law of 24 July 1987 on Temporary Work).

Within the limits of these activities, the use of successive fixed-term contracts is in principle allowed without limitation, with one exception: the use of successive daily contract is only allowed if the user can prove the need for the use of successive daily contracts (cf. article art. 8bis Law of 24 July 1987).

The regulation of the duration and conditions is more detailed regulated by Collective Agreement n° 108 of 16 July 2013, mostly when it seems necessary to protect the jobs of permanent workers.

In case the temporary worker is recruited to replace a permanent worker whose contract is ended, the maximum duration of the temporary employment contract depends on the way the permanent worker's employment contract has ended. If it the contract was ended with a term of notice, the maximum duration is three months (starting from the end of the contract). If the contract has ended because the permanent worker has been dismissed with urgent cause, the maximum duration is six months. If the contract has ended on another way, the maximum duration is three months, but it can be prolonged with three months.

The user who wants to recruit a temporary worker, has to ask on forehand permission of the union delegates or worker representatives. If the contract is terminated on another way than dismissal with a term of notice or with urgent cause the permission is not needed. However in this case the permission is still needed to prolong the duration.

When the temporary worker is recruited via a temporary work agency (agency work) the maximum duration of temporary work as replacement of a permanent worker whose contract was ended, is in all cases six months, which can be prolonged with six months. Also in this case anticipatory permission of union delegates or worker representatives is needed (also for the prolongation). Only when the contract of the permanent worker who is replaced by an agency worker did not end via dismissal with a term of notice or with urgent cause, the permission is not necessary (but it is when the user wants to prolong the agency work).

In case the temporary worker is recruited because of a temporary increase of workload, the user also has to ask on forehand permission to the union delegates or worker preventatives. If they agree, this permission is valid for the maximum duration of one month. The permission is without limit renewable, each time for one month.

In case of agency work, anticipatory permission is necessary, but in this case it can be valid for more than one month. After twelve months, the agency contract is extendable with a maximum of six months, after permission of a special commission of good services.

In case the temporary worker is recruited for a specific (exceptional) work (these exceptional works are listed in collective agreement n° 108), the maximum duration is

six months, prolongation is possible till 12 months. Anticipatory permission of the union delegates or worker representatives is needed, except for certain services. For agency work, basically the same rules are applicable.

In case the temporary worker is recruited as a trial worker for permanent recruitment, the minimum duration is one week and the maximum duration is six months. For every single post, the user can't make use of different temporary workers for a period that exceeds nine months.

There is no maximum on the number of temporary workers a company can employ. Some companies even have more temporary workers than fixed workers and even companies with only temporary workers exist. However this last category of companies can only use the motive of a temporary increase of workload or for a specific or exceptional work.

3. Does the legal regulation in Belgium recognize temporary workers a preferential right to occupy a permanent job in the company?

There is no preferential right for a temporary worker to occupy a permanent job in Belgian legislation, even if the motive for the use of temporary work is recruitment. The company is however obliged to inform temporary agency workers of existing job vacancies in the company (art. 20bis Law on Temporary Work). This obligation was part of the implementation of the EU Directive on Temporary Work of 2008. At the time (2012), the trade unions also tried to obtain a preferential right, but this effort failed. Furthermore, the existing preferential right for part time workers does not seem to produce remarkable results, so one can doubt the efficiency of such preferential right for temporary workers.

4. Does the legal system in Belgium allow differences in the working conditions of permanent and temporary workers? Does the reality in the labor market fulfill this regulation?

The principle of non-discrimination and equal treatment is a central principle of the Law on Temporary Work. This principle has existed already long before EU Directive 2008/104 was adopted. Article 10 of the Law on Temporary Work states that the salary of the temporary agency worker is not to be less than what his salary would have been if he would have been hired directly by the user as a permanent worker, and this under the same circumstances. Article 11 of the same law also grants the temporary worker the right to make use of the same services of the company, during the period of his

employment, as are granted to permanent workers, like the company restaurant, the company kindergarten, transportation facilities etc.

In principle there are thus no differences in working conditions allowed. However cause of the short term nature of temporary work, it is hard for temporary workers to get advantages like end of the year bonuses, which are normal for permanent workers. In practice the adequacy of some measures could be questioned. Temporary workers, for instance, have a right to parental leave as other workers, though no special rules exist to guarantee a new contract will be given after a temporary worker applied for parental leave.

5. What is the role of Temporary Employment Agencies in regard to temporary work?

Temporary Employment Agencies play a significant role in Belgium as in practice, almost all temporary work is agency work. In Belgium, they are seen as the actual employers of the temporary workers. The companies that make use of the agency workers are called the “users” and are thus not the juridical employers. So the temporary worker has only an employment contract with the agency office and he is only bound to the user via the contract that the agency office concluded with the use, which could be seen as some sort of hire contract. This means that the Agency offices have to fulfill the employer obligations like paying the social security contributions and the wages. However, as in practice the temporary workers have to follow the instructions of the users, the instruction power is delegated to the user. As follows, the agency offices are the juridical employers, but the users are the employers in practice. This inter alia includes the obligation for the user to make sure all rules about safety and health are followed.

Belgium counted in the third quarter of 2013 some 7.252.000 persons with an employable age (18-64), of them 431.000 are jobless and 2.302.000 are inactive, so there remain 4.518.000 active persons. In 2011 (with basically the same amount of active persons), there were 547.259 temporary agency workers, which were placed by 1.356 temporary work agencies. So more than 12% of the active population was a temporary agency worker (for at least one day), which seems to be quite a lot. But, as seen above, only less than 100.000 persons worked more than 65 days as a temporary worker in 2011 (data of Federgon and Statbel).

6. Which is the legal regulation regarding the expiry of temporary employment contracts? Specifically, does the legal regulation recognize compensations to workers for the expiry of the temporary employment contract?

Temporary work in Belgium is normally an employment contract with a fixed term (unless in case of a recruitment for a specific work). The contracts thus expire at the end of that term (or when the specific work is done). The expiry is not to be seen as a unilateral dismissal by the company, but as a mutually agreed ending, and thus there is no compensation. However, if the strict formal rules of the Act on Temporary Work or Collective agreement n° 108 are not followed, by example the contract is not in written form, the fixed term contract often will be reclassified as a permanent employment contract. In this case an "expiry" of the contract will be seen as a unilateral dismissal, and a normal right on compensation shall be granted to the temporary worker (who became a permanent worker cause of the requalification).

Naturally there is also a right on compensation for the temporary worker when the company ends the contract before the expiry of the fixed term.

7. Which consequences arise from the breach of the legal regulation of temporary employment contracts?

Temporary employment contracts and especially agency employment contracts are quite strictly regulated. First a legal motive is needed (see question 2). Second the (agency) employment contract needs to be in written form and mention some mandatory information like, the name of the worker, the place of the work, the motive and many more. Third there are other formal obligations, like in some cases respecting the maximum duration or asking anticipatory permission to union delegates or worker representatives. When permission is not granted, the temporary work will simply not be allowed. In case of breach of most other regulatory norms, the temporary employment contract will be reclassified as a permanent employment contract, with the consequence that the company cannot end the contract at the end of the fixed term, unless if it gives the worker a term of notice or equal compensation. To conclude, in theory, the sanction in most cases is that the temporary worker becomes a better protected permanent worker. In practice however, companies refuse to give contracts to temporary workers who complain that their contract is not conform the formal rules. In theory the temporary workers can subsequently ask the labour court for a compensation for the breach of contract, but these court actions are very rare. Furthermore the courts reason that a temporary worker who didn't keep on working, but who ask a compensation for the breach of contract, are themselves the reason for the non-execution of the permanent employment contract.

8. Does the legal regulation of temporary employment contracts include provisions designed to prevent fraud on temporary work?

In view of protecting the temporary worker as an employee under employment law, there is a legal presumption that a temporary worker is an employee of the temporary work agency. This is a presumption *juris et de jure*, which means that it cannot be refuted (article 8 Act of 24 July 1987).

Article 7, 3° of the Act of 24 July 1987 provides that "the temporary employee is an employee who enters into a contract of employment with a temporary work agency to perform, for remuneration, work as permitted by this Law to the benefit of one or more users".

Also the sanction to reclassify the temporary worker as a permanent worker in case the employer does not follow the regulations (see question 7) could be seen as a very important incentive.

Third, hiring temporary agency workers is prohibited in case of strike (article 19 collective agreement n° 108), so the company cannot ignore their striking permanent workers by hiring temporary replacements, as this would make collective action of workers powerless and redundant.

Lastly, following article 35 of the Act, all breaches of norms of the Act of 24 July 1987 are made subject of possible criminal persecution, and the social inspection is given certain competences to investigate these breaches.

9. What is the role of collective bargaining in Belgium in regard to temporary employment contracts?

As collective agreements are the result of collective bargaining it is thus possible to restrict or even to prohibit temporary work in a sector. The use of temporary has been traditionally been prohibited in some particular sectors of the industry, like in the construction sector and the removal companies. As far as the construction sector is concerned, collective agreement n° 36 quaterdecies of 19 December 2001 made temporary work available in this sector. The social partners of the joint committee for the transport sector however, expressed in the light of article 4 of Directive 2008/104 the view that the prohibition of temporary work in the removal companies is justified on the grounds of health and safety at work and the functioning of the labour market.

While the core of the prerequisites for the use of temporary work and the basic working conditions are set by the Law of 24 July 1987, more detailed rules are currently laid down by the National Labour Council in collective agreement n° 108 of 16 July 2013, including the procedures that have to be followed by the user company (e.g. agreement of the workers representation) and the duration of temporary work.

Collective labour agreements concluded in the joint committee n° 322 for temporary agency work are, just as any other joint committee established at the level of the sector, competent to establish wages and working conditions for temporary workers. Such collective agreements establish e.g. the right for a 13th month for temporary agency workers having worked at least 65 days during the period of a year (cf. Collective Labour Agreement of 5 December 2013 establishing a 13th month for temporary agency workers; http://www.emploi.belgique.be > Concertation sociale > CCT).

10. Other relevant aspects regarding temporary employment contracts [optional]

Temporary (agency) workers are always free to alter their relationship and to conclude an employment contract with the user. According to the Law of 1987, clauses in the employment contract prohibiting the hiring of a temporary agency worker by the user, are considered to be null and void. This is an obvious indication of the wish of the Belgian lawmaker to promote permanent work as a better and more secure endpoint of temporary work.