

UK Government Allows Agency Staff to Cover for Striking Workers

Article By:

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Despite what seems to be almost universal opposition to its proposals, the government has changed the law to allow employment businesses to supply temporary workers to cover for striking workers.

Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 prohibits employment businesses from supplying temporary workers to cover (i) the duties normally performed by an employee who is taking part in a strike or other industrial action; or (ii) the work of an employee who is covering the duties of an employee taking part in a strike or other industrial action. The unimaginatively-titled Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 came into force on 21 July and, [as heralded in our previous alert](#), revoke that Regulation with immediate effect.

The government says this change will allow those businesses most impacted by industrial action to fill vital roles with temporary skilled workers. Almost everyone else concerned, including members of the House of Lords, have suggested the changes are simply “gesture politics” or a “political gimmick” designed to make maximum capital out of the impending Summer, Autumn and probably also Winter of Industrial Discontent. Most stakeholders seem to think these changes will have very little practical impact, not least because of the very real shortages at the moment of temporary skilled workers to fill such roles. The paper right to hire temporary workers to stand in for your train drivers, baggage handlers, doctors, teachers, etc. is basically a dead letter unless there are skilled people available who can do so immediately. Other criticisms levelled at the proposals include allegations that they (i) breach international law by violating the right to freedom of association (not sure); (ii) will harm industrial relations (beyond any possible argument); (iii) leave employment agencies and their workers in an impossible position because of the pressure from hirers to break strikes (maybe); and (iv) expose agency workers to violence and intimidation from strikers (completely inevitable).

The Recruitment & Employment Confederation issued a joint statement on these proposals with the TUC last month, panning them as “unworkable”, likely to “prolong conflict between employers and their staff”, doing nothing to solve the issues underlying the industrial action, prolonging disputes and inflaming tensions, with agency staff unlikely to be willing to cross picket lines if they don’t have to. You can dismiss the TUC’s input to this as self-interest to a large extent but once you have one of the key voices of the temporary worker industry saying in terms that your strikebreaking proposals

will fall flat on their tiny faces in more or less every possible way, would you not at least pause? Hey ho. Further surfing the wave of what it sees as public sentiment whipped up by recent and threatened train strikes, the government has also raised the statutory cap on the damages that can be awarded against a trade union for organising unlawful industrial action, which depends on the size of the trade union's membership. As the limits have not been reviewed since 1982, the government says it is simply increasing them to the levels they would have been at had they been regularly updated since then. Yes, but you could have done that and chose not to do so for forty years, so why now? Not at all a political measure, clearly. The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 will increase the maximum damages that can be awarded against the smallest trade unions from £10,000 to £40,000 and for the largest from £250,000 to £1 million. Again, trade unions have suggested this may well put the government in breach of its international legal obligations so it remains to be seen if we might see challenges to both of these changes. In any case, this measure relates only to the organisation of unlawful strike action, so lawful action, just as disruptive, will be unhindered and undeterred by this increase.

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