

This is an English translation of the Norwegian Federation of Service Industries and Retail Trade's (hereinafter "NHO Service og Handel") memo on hiring of personnel from temporary work-agencies. The translation, including references to the wording in acts, regulations, etc., is non-official.

The possibility to hire personnel from temporary-work agencies from 2023 – updated as of 13 February 2023

The Norwegian parliament, the Storting, and the Government have adopted new regulations concerning the possibility to hire employees from temporary-work agencies. As a result, the possibility of temporary hiring from temporary-work agencies will be limited with effect from 1 April 2023. The present regulations, which are applicable until 1 April 2023, are summarised [here](#) (in Norwegian only).

In this memo, we will provide a brief overview of the restrictions and options going forward. As this is an overview, it is not possible to account for all aspects of the legislative changes. There may be additional conditions to the ones described below, including conditions for temporary hiring set out in collective agreements.

Which restrictions have been adopted regarding the possibility to hire employees from temporary-work agencies?

The Storting has decided that the legal grounds for hiring personnel from temporary-work agencies shall no longer be parallel with the legal grounds for direct temporary employment. This means that a company cannot hire workers from temporary-work agencies to the same extent as it can directly employ workers on a temporary basis. In short, it will as the main rule not be legal to hire employees from temporary-work agencies to carry out work of a so-called "temporary nature". Such work may relate to seasonal work, workload peaks and work that differs from what the company normally deals with. However, companies bound by a collective agreement may still hire from temporary work agencies to carry out such work if certain conditions are met. The same applies to companies providing health and care services. Read more about this below. Transitional rules will apply, please also see below.

Furthermore, the Storting has adopted a ban against hiring employees from temporary-work agencies for construction work in Oslo, Viken and the former Vestfold County. The prohibition is without any exceptions and will apply regardless of whether a company is bound by a collective agreement. The ban will be set out in a new Section 4 of the existing [Regulation relating to Temporary Hiring from Temporary-Work Agencies](#) (in Norwegian only) and will apply from 1 April 2023. The adopted changes in this regulation may be found [here](#) (in Norwegian only).

The ban applies to "construction work" on "construction sites". By "construction work" is meant:

- Erection of buildings
- Furnishing, decoration and installation work
- Assembly and disassembly of prefabricated elements
- Demolition, disassembly, rebuilding and repair
- Clearing and maintenance, excluding work that is routine or less extensive
- Digging, blasting and other groundwork in connection with construction site
- Other work carried out in connection with construction work

"Construction site" shall mean any workplace where temporary or changing construction work of a certain scope is carried out.

Infrastructure projects (*Norwegian: "anlegg"*) are not comprised by the ban. Construction companies may also continue to hire other employee groups for other types of work, such as engineers, administrative staff, etc.

Transitional rules will apply, please see below.

How will this affect existing agreements on temporary hiring of personnel?

The restrictions will take effect on 1 April 2023, but transitional arrangements will apply until 1 July 2023. The transitional arrangement applies to (i) specific agreements on temporary hiring of personnel which exist at the effective date, and (ii) contracting agreements concluded prior to the effective date on the premise that hired staff can be used to fulfil the contract. For the latter, the same applies where binding offers have been made prior to the effective date.

Alternative (i) entails that temporary hiring agreements concluded between a temporary-work agency and the end-user company, which are ongoing on 1 April 2023, can continue until 1 July 2023. Until 1 April 2023, temporary hiring agreements can be concluded as before – with a completion date set to both before and after 1 April. Before 1 April 2023, agreements can also be extended to continue until 1 July 2023.

It is somewhat uncertain whether this alternative also covers temporary hiring agreements concluded before 1 April 2023, but where the actual temporary hiring assignment commences after 1 April 2023.

Alternative (ii) is assumed to apply to agreements concluded between two companies regarding the delivery of various services/goods which require the use of hired personnel, such as an agreement between a developer and a contractor or an agreement between two companies on the delivery of various services. For example, a contractor who has entered into a construction contract before 1 April 2023 on the condition that it can use hired workers from temporary-work agencies, will be able to continue temporary hiring of personnel until 1 July. Another example could be a shipyard that before 1 April 2023 concluded an agreement to repair a ship based on the possibility of using hired-in labour, and therefore can continue temporary hiring of staff until 1 July 2023.

Contractors who have made a binding offer before 1 April 2023 can also continue the temporary hiring of staff until 1 July 2023, even if the specific contract has not yet been finally concluded before 1 April 2023.

Despite the transitional rules, the changes will presumably impact ongoing temporary hiring arrangements – both in the relation between the temporary-work agency and its customer, and in the relationship between the temporary-work agency and their employees who have confirmed assignments with a longer duration than until 1 July 2023.

We recommend that our members in the temporary-work agency industry review their customer contracts to assess how a potential right to terminate the contract is regulated. Regarding NHO Service og Handel's standard customer contract, we have made an assessment which is available [here](#) (in Norwegian only).

Please note that confirmations of assignment concluded between the temporary-work agency and

hired-out employees cannot be terminated without terminating the employment relationship as such, unless the parties agree otherwise. In this regard, we note that a process of terminating an employment relationship must be in accordance with the provisions in the Norwegian Working Environment Act. For some temporary-work agencies, it will presumably be relevant to carry out workforce reductions through dismissals with notice. A detailed workforce reduction process description is available in both [English](#) and [Norwegian](#).

In which instances can a company still hire workers from a temporary-work agency?

The rules for hiring workers from a temporary-work agency will continue to be set out in Section 14-12 and Section 14-9 of the Norwegian Working Environment Act. For some industries and occupational groups, there will be greater access to temporary hiring of employees, which will be set out in a regulation.

It will be legal to hire employees from a temporary-work agency in the following situations:

- For temporary replacement positions (work to temporarily replace another person or persons)
- For trainee work
- For participants in labour market initiatives under the auspices of or in collaboration with the Norwegian Labour and Welfare Administration (NAV)
- In sports
- For healthcare personnel to ensure proper operation of the health and care service and where the work is of a temporary nature
- For workers with special skills who will perform advisory and consulting services in a clearly defined project. Advisory and consulting services shall mean the provision of specialised knowledge and advice within a specific subject area
- Within agriculture/substitute teams
- For short-term events, it remains legal to hire personnel on the basis that the work is of a temporary nature (postponed commencement until further notice)
- Companies bound by a collective agreement with a labour union who has a right of nomination (meaning more than 10,000 members) can enter into a written agreement on time-limited temporary hiring with employee representatives who together represent a majority of the employee category to which the temporary hiring of personnel applies.

What is meant by temporary replacement positions?

It will still be legal to use temporary-work agencies to hire workers for temporary replacement positions. The traditional temporary replacement positions are typically related to the absence of a named employee (for example due to illness or leave), but it is not a requirement that the temporary replacement position is for specific persons. Temporary hiring is also permitted for temporary replacement positions for unspecified persons or a group of persons, typically in connection with the holidays where one absence replaces the other. However, it is not sufficient to label something a temporary replacement position for it to be a temporary replacement position under Norwegian law. The temporary replacement position must be related to a specific situation of absence.

Our view is that it is also possible to hire employees from temporary-work agencies while waiting for a new permanent employee to commence his/her position, or possibly in a vacant position pending employment of the right candidate. However, a line must be drawn – a vacant position cannot be kept vacant forever to continue temporary hiring of personnel over a long period of

time. It must be a reality that the company is trying to employ someone for the vacant position.

When is it legal to temporary hire healthcare personnel?

The legal requirements for when it is legal to temporary hire healthcare personnel will be set out in a new Section 3 of the [Regulations relating to Temporary Hiring from Temporary-Work Agencies](#) (in Norwegian only) and will enter into force on 1 April 2023. The adopted changes in this regulation may be read [here](#) (in Norwegian only). The essence of this exception is that the health and care service shall be able to hire healthcare personnel for work of a temporary nature if this is necessary to ensure proper operation of the service.

"Healthcare personnel" is defined in Section 3 of the [Healthcare Personnel Act](#) (in Norwegian), which refers to Section 48 and 49, as well as "personnel in the health and care service or in pharmacies" who perform acts with preventative, diagnostic, treatment, health-preserving, rehabilitating or nursing and care purposes.

Firstly, this includes healthcare personnel with a licence or authorisation such as nurses, auxiliary nurses, health workers, social educators, care workers, doctors, etc. It also includes personnel without a licence/authorisation – including unskilled workers – if they provide healthcare. The term "health and care service" is not defined in the Healthcare Personnel Act, but includes activities in the specialist health services, the municipal health and care service, the dental health service and private vendors of health and care services, as defined in the services acts.

For the hiring of healthcare personnel to be legal under this exception, the work must be of a temporary nature. This permits temporary hiring of employees in the event of unforeseen workload peaks and seasonal fluctuations. Furthermore, the temporary hiring must be necessary to ensure proper operation of the service. If the need for staff can be solved in other ways than by temporary hiring and without it affecting proper operation of the service, it will not be possible to hire personnel from a temporary-work agency. Other ways to cover the need for staff can be direct permanent or temporary employment, redeployment of personnel, part-time employment, etc. As a starting point, recruiting challenges shall not be solved through temporary hiring of personnel. The employee representatives can request access to the assessments made in this respect. Furthermore, the Norwegian Labour Inspection Authority has supervisory authority.

Before a decision is made on temporary hiring, the employer shall discuss the need for temporary hiring with the employee representatives. If the company does not have a collective agreement and a formal employee representative system, the temporary hiring must in any case be discussed with a representative of the employees.

In which cases may companies temporary hire workers with special skills?

The so-called specialist exception applies to hiring workers with special skills that is offered and delivered within the advisory and consultancy market. By "special skills" is meant specialised knowledge and advise within a specific discipline. In addition, it is a requirement that the temporary hiring is related to a clearly defined project. The exception is based on the traditional advisory and consultancy industry, but where the delivery of services is integrated with the customer's activities to such an extent that it will be defined as temporary hiring of personnel. Note that several advisory assignments are delivered as contract work, which is not comprised by the legal regulations on temporary hiring of personnel.

While the delimitation of what is considered advisory and consultancy services is somewhat unclear, certain factors for the assessment were described in the consultation letter for the draft regulation. The exception concerns specialised knowledge, deliveries of problem solvers and knowledge bearers, employees who hold expertise that is sold to customers, expertise that is highly sought after but can be challenging and unprofitable to develop internally in a company, etc. Furthermore, it will preferably be expertise that the company cannot be expected to possess itself. No formal competence is required to be considered a specialist, and the possibility of temporary hiring is not limited to certain types of professions or industries.

The requirement that the temporary hiring must be related to a clearly defined project means that the work must have a fairly clear delimitation and a natural conclusion. However, there is no specific limit for the allowed duration of hiring of personnel under this exception. If the company has a permanent need for the special expertise, however, the company shall employ the personnel directly and permanently. The requirement also includes an assumption that the work carried out by the hired worker differs from what is ordinarily carried out in the business, but this is not an absolute requirement.

The employee representatives at the hiring-in company can request information about the basis for the temporary hiring under this exception as well, and the Norwegian Labour Inspection Authority has supervisory authority.

Temporary hiring in the agricultural industry

It has been notified that there will be made exceptions for this industry. The exception will be further detailed in collaboration with the employers' organisations and labour unions. However, we currently do not know much more at this point.

The possibility for companies bound by a collective agreement to temporarily hire personnel from temporary-work agencies:

No changes will be made to the provision that allows companies bound by a collective agreement to conclude an agreement with employee representatives on time-limited hiring of personnel. This opens the possibility for companies bound by a collective agreement to continue temporary hiring as before and provides a fairly wide possibility for temporary hiring from temporary-work agencies. There are, however, certain requirements for which party the collective agreement must be concluded with, as well as which employee representatives may conclude such an agreement.

Firstly, the greater possibility to hire personnel is reserved for companies bound by a collective agreement entered into with labour unions who has a right of nomination. This means labour unions with more than 10,000 members. The large labour unions, such as the United Federation of Trade Unions, the Norwegian Union of Municipal and General Employees, the Norwegian Nurses' Association, Industri Energi, the Norwegian Food and Allied Workers Union, Parat, etc. are all labour unions with a right of nomination. Whether or not the labour union has a right of nomination is usually something that is stated on the websites of the respective labour union.

With regards to the agreement that provides the basis for temporary hiring, it can be entered into with the employee representatives in the hiring-in company. The agreement must be in writing. There is no requirement that the collective agreement itself must have provisions regarding the right to hire personnel, nor is it a requirement that the central labour union must approve temporary hiring agreements. The employee representatives must, however, represent the majority of the employee category to which the temporary hiring applies. The Norwegian Labour

Inspection Authority has previously stated that this requirement means that at least 50% of the employees must be organised in / members of a labour union with a right of nomination.

[The text in italic below is new information as per 13 February 2023]

However, on 13 February 2023 the Norwegian Minister of Labour and Social Inclusion answered this question differently, stating the following:

"The requirement that the employee representative must represent the majority of the employee category to which the temporary hiring of personnel applies, does not mean that at least 50% of the same employee category must be organised in a labour union. The term "employee representative" in the Norwegian Working Environment Act is not limited to be understood narrowly as only representatives for employees who are organised in traditional labour unions; it can also be elected representatives for employees without organisational affiliation."

NHO Service og Handel understands this to mean that companies bound by a collective agreement can conclude an agreement with the employee representatives without having a majority of the relevant employee category be members of a labour union. It is taken for one's basis that the employee representative who concludes the agreement must be elected by the employees. Therefore, the employer cannot appoint an employee representative but should make sure to document that the employee representative also represents non-unionised employees.

For example, both unionised and non-unionised employees may elect an employee representative to conclude an agreement on temporary hiring of construction workers to a construction company bound by the Collective Agreement for the Building Industry, given that the majority of the construction workers in the company are represented by said employee representative.

Said employee representative cannot enter into an agreement on temporary hiring of e.g. office staff. This would have to be done by an employee representative who represents office staff.

An example/template of an agreement with the employee representatives can be found [here](#) (in Norwegian only).

One may ask whether the Minister's clarification entails that there is no requirement for the employee representative to be organised in the same labour union as the one that is party to the relevant collective agreement. Further, given that the other legal requirements are met, one may also ask whether it is possible to conclude an agreement with an employee representative who is not affiliated with the relevant collective agreement. We are attempting to get further clarification in this regard.

Please note that the possibility for temporary hiring to companies bound by a collective agreement will not apply to construction work in the prohibition's geographical area of application (Oslo, Viken and the former Vestfold County).

New approval scheme

A new approval scheme for temporary-work agencies has been adopted, based on other approval schemes in other industries. It is currently not clear when the approval scheme will come into

effect, but the main elements of the scheme have been outlined by the Ministry of Labour and Social Inclusion. There is no reason to believe that the scheme will be established by 1 April 2023. It will be illegal to hire employees from a temporary-work agency that is not approved under the scheme. It will also be illegal for a non-approved temporary-work agency to hire out workers.

The approval scheme will require registration in several public registers, an employee safety service, insurance schemes, routines for equal treatment and employment agreements.

NHO Service og Handel has already established a type of approval scheme for our members in the staffing industry called [Audited Employer \(AE\)](#) (in Norwegian only). Most of the new requirements in the adopted scheme are already included in this scheme, which is compulsory for temporary-work agencies that are members of the association. If there is a need to make changes to the scheme to ensure that parallel demands are made, we will revert with more information.

Recruitment for permanent or temporary employment

In the staffing and recruitment industry, there are still many who recruit for direct employment with the customers. This will not be affected by the legislative changes described above. Companies that will no longer be able to hire workers to cover their temporary need for labour can still employ workers temporarily themselves. Recruitment for such time-limited assignments will presumably become a larger market for our members. The customers' need for labour is unlikely to change as a result of the restrictions on temporary hiring of personnel, and our members have a unique competence and experience in finding the right person to carry out the work tasks.

Questions?

Please contact the lawyers at NHO Service og Handel at e-mail address advokat@nhosh.no or phone number (+47) 47 68 73 84.