

CAMPAIGN FOR

TRADE UNION FREEDOM Update



European Union revises Posted Workers Directive

SUMMER 2018

SOCIAL DUMPING

THE CONTROVERSIAL 'Posted Workers Directive' which has been used by employers and contractors to undermine national collective agreements and exploit workers has been amended by the European Parliament.

Jude Kirton Darling Labour MEP for North East England told the Campaign For Trade Union Freedom: "The EU Posting of Workers Directive has long been criticised for failing to guarantee equal pay for equal work at the same place. The deal reached between the European Parliament and Council means that this will

no longer be the case. Posted workers will have to be paid the same wages and allowances as their British colleagues. Importantly for construction sector campaigners, the legislation will allow the universal application of the so-called 'Blue Book' NAECI national agreement for the first time. The deduction of travel and accommodation costs from salaries, a practice all too widespread, will no longer be allowed. Most local terms and conditions will apply from day one to posted workers, and posting will be limited to 12 months."

A vote on 29th May approved the new deal by 456 votes to

147, with 49 abstentions.

Under the current arrangements employers are not obliged to pay posted workers more than the minimum wage set by the host country, they usually earn less than local workers for the same job.

According to the Commission, posted workers can earn up to less than 50% in some instances.

Loopholes in the current legislation have led as well to an increase of fraudulent practices - such as companies existing on paper only or fake sub-contracting, that involve the exploitation of posted workers.

CONTINUED OVERLEAF

Inside this issue

European Union and Australia to fast track free trade deal

Time to end the insecure work free-for-all

Government forced to revise trade union membership figures

Social Dumping

In the UK the provisions of the directive lead to walkouts and disputes notably at the 2009 Total oil refinery in Lindsey and the 'Pay The Rate' protests in Teesside just before of the EU referendum. Employers used the Directive to import workers and pay them less than nationally or locally agreed rates of pay provided.

The definition (according to the EU) of a 'posted worker' is an employee who is sent by his or her employer to perform a service in another EU member state on a temporary basis. In 2016, there were 2.3 million posted workers in the EU. Posting increased by 69% between 2010 and 2016.

Most 'posted workers' (82.3%) get sent to EU countries in Western Europe, with Germany, France and Belgium receiving about 50% of all posted workers.

The countries that send out the most posted workers are Poland, Germany and Slovenia.

In the revision of the Directive a host country's remuneration rules will apply to all posted workers; a posting can last up to 12 months, with a possible extension of 6 months and the EU says posted workers "will now be better protected against fraud and exploitation".

Employers will also have to pay for travel, food and accommodation instead of deducting these costs from workers' salaries.

The maximum posting period would be capped at 12 months, with a possible extension of six months. After that working conditions will be subject to the labour rules of the country they are working in. Co-operation between EU countries to tackle fraud will also be boosted.

In addition temporary work agencies would have to guarantee posted workers the same conditions that apply to other temporary workers hired in the country they have been sent to.

Ensuring fair pay: under the agreed text, all of the host

country's remuneration rules must apply to posted workers. In addition to legal provisions, member states may apply large, representative regional or sectoral collective agreements. So far, this has been done only in the construction sector.

Improving workers' conditions: travel, board and accommodation costs will have to be paid by the employer and not deducted from workers' salaries. Employers will also have to ensure that the accommodation conditions for posted workers are decent, and in line with national rules.

Protection against fraud: in the event of a fraudulent posting, e.g. by a 'letterbox company', member states should cooperate to ensure that posted workers are protected, at least, by the conditions of the Posting of Workers Directive.

International road transport: the new elements of the revised directive will apply to the transport sector once the sector specific legislation included in a mobility package enters into force. Until then, the 1996 version of the directive still remains applicable.

Now here is the rub - as they say: Member States will have two years to transpose the rules into their national laws, and must put them into effect by the end of this period.

Tim Roache General Secretary of the GMB commented: "Theresa May cannot be allowed to drag her feet on measures that will stop unscrupulous employers using migrant labour to undercut agreed wage rates.. In construction we've seen examples of EU workers paid up to £5 an hour less than local workers. We would like it go further it should now be welcomed and implemented as soon as possible by the UK government. If it had been brought in when unions called for it years ago, we might not be facing the prospect of Brexit now."

"Any delay in introducing this, would be a monumental betrayal of UK workers and be proof the government is not interested in protecting rights at work through the Brexit process." ■



PRECARIOUS WORK

HANNAH REED

RECENT UNION campaigns have placed a spotlight on exploitative working practices in companies such as Sports Direct, Amazon, Uber and TFI Friday – precarious working practices that would be better suited to the Victorian era than twenty-first century Britain.

Gig economy bosses are hiding behind sham self-employment to dodge their employment responsibilities. Zero hours working means workers lack any control over their working hours or how much pay they take home each week.

Being constantly at the beck and call of managers, with shifts being offered or cancelled at short notice, makes it impossible to manage life away from work. No wonder 66 per cent of zero hours workers are unhappy with their contract and want a job with guaranteed hours.

Such one-sided relationships between workers and all-powerful bosses are all too common in the UK today.

The TUC estimates that at least one in nine workers are now in insecure and precarious jobs.

Millions are denied key workplace rights. Agency workers and zero-hours staff can be sacked without notice and have no right to return to their job after having a baby. Gig



economy workers are forced into bogus self-employment are not even guaranteed the national minimum wage, paid holidays or sick pay.

Last year's much trumpeted Taylor Review into modern employment practices is certainly not the game-changer which working people desperately need.

The government's plans will fail to change the balance of power in the workplace or deliver a new deal for working people.

They will do nothing to:

- End the hire-and-fire culture of zero-hours work
- Crack-down on bogus self-employment
- Give workers a genuine voice at work

As for the right to 'request' from the boss a regular hours contract – it gives workers about as much negotiating power as Oliver Twist

If Theresa May is serious about "protecting and enhancing" workers' rights here are just four of the things

Secure

she must do:

Improve equal pay rights for agency workers by repealing the Swedish derogation that allows employers to pay agency workers less than permanent staff doing the exact same job.

Ban zero hours contracts by giving workers better rights to guaranteed hours contracts and a right to be paid in full if work is cancelled at short notice.

Ensure all workers have the same floor of rights enjoyed by employees. This includes paid time-off for working parents, statutory redundancy pay and protection from unfair dismissal.

Ensure unions have a right to access and organise in all workplaces. If we want to tackle the scourge of insecure work we need to get more people into unions.

Nobody should have to go it alone against a bad boss. The amazing work done by Unite at Sports Direct, the Bakers Union at McDonalds and the GMB at Uber, Hermes and Amazon show the importance of extending collective bargaining.

The balance of power in today's workplace has swung far too much in favour of employers, and the way to combat this is by getting this new generation of workers to join our unions. ■

Hannah Reed is the TUC's Senior Employment Rights Officer



EU, Australia and New Zealand to 'fast track' free trade deal

GLOBALISATION

THE EUROPEAN UNION will begin drafting a free trade agreement (FTA) with Australia and New Zealand in July, the EU trade commissioner Cecilia Malmström has revealed.

"Australia will have access to the EU single market and 500 million people," she said. "We will be looking at facilitating trade in all areas - in goods and services, public procurement. We will also be talking about sustainable development, about energy, about regulatory cooperation. So getting away with most hindrances that are between us today."

Notice there is no mention about employment rights?

Australian unions in particular are under attack from the Liberal right wing Government, with the government even trying to stop a merger between the Construction and Energy Union (CFMEU) and the Maritime Union as they fear its industrial strength. The government has also tried to discredit unions with police raids on union offices (which failed to produce anything) and alleging union officials had blackmailed employers (charges which were tossed out after it was revealed that the employers only started to think about 'blackmail' a year after the event).

Australia, along with other Pacific



Basin countries has been one of the boosters of the renewed Trans-Pacific Partnership trade agreement.

Ms Malmström said the move's timing had nothing to do with Brexit. The UK's Brexit and International Trade Minister Liam Fox has long touted that a trade deal between the UK, Australia and New Zealand government was a priority, but it seems the Australian and New Zealand Governments see a deal with the EU as far more important. "We prepared these negotiations long ago and there is a moment now when we are sort of appearing to be a circle of friends who do believe in multilateralism, in good trade agreements," Cecilia Malmström said.

"The Liberal Government under Malcolm Turnbull talks a big game on trade," Australian Manufacturing Workers Union National President Andrew Dettmer said. "Yet they

always sell out to the corporations. Whether it's on ISDS rights to sue, or on workers' rights, or medical benefits, the Turnbull Government rolls over to the corporations every time."

"In TPP, there is no labour chapter worthy of the name; after all, the TPP signatories include Brunei, which the last time I looked banned trade unions and jailed activists. And the TPP will allow foreign workers from 6 of the other 10 signatory countries to work in Australia as temporary migrants, without any need to see if there are qualified and able Australian workers to fill any job."

"Australian unions are campaigning to #ChangetheRules, and a trade agreement, even with a relatively benign body like the EU, will be yet another opportunity for the Turnbull Government to trash workers' rights."

"It's sort of funny," Dettmer said. "We used to be a part of this thing called the British Empire less than a century ago, and that was supposedly a 'free' trade arrangement too - we got British convicts and Britain got our gold and wool (and dispossessed a whole people while we were at it). Wonder if that's Liam Fox's idea this time around too?" ■

Pictured above: Andrew Dettmer of AMWU Australian Manufacturing Workers Union.

Government forced to revise trade union membership figures

UNIONS

THE TORY government has been forced to revise how it calculates union membership following research by Rhys Davies of the Wales Institute of Social and Economic Research, Data and Methods Research.

In late May the Department for Business Energy and Industrial Strategy (BEIS) published its latest 'estimates for trade union membership' in the UK based upon data from the Labour Force Survey.

The figures showed that 6.2 million workers were members of

trade unions during 2017 and showing union membership had increased slightly since 2016.

The headline figure for trade union membership is 'union density' which measures the proportion of employees in employment who are union members.

But research undertaken by Rhys Davies at WISERD revealed that official statistics of trade union presence have been incorrectly estimated over the last 20 years.

He argued that government statisticians have mistakenly treated those who did not respond to the

question on trade union presence as if they had said that nobody at their place of work were union members. Normal practice would be to exclude such people from the calculations.

BEIS have revised their methodology for estimating trade union presence and the revised figures reveal that 49% of employees are employed at workplaces 'where trade unions are present'.

The effect of the change has been to increase the rate of union presence by 8 percentage points, roughly equivalent to 2 million

employees.

Rhys Davies comments: "Declining levels of trade union membership is often cited as evidence that trade unions have become less relevant within the modern UK economy. Whilst the downward trend in union membership is not open to debate, today there are many more workers employed at workplaces where trade unions are present than was previously thought. By implication this suggests that the workplace influence of trade unions in the UK has been significantly underestimated for many years." ■

A Manifesto for Labour Law

The law needs to change. This Manifesto offers 25 major policy recommendations for consideration. It proposes changing the way in which working conditions are regulated by embedding the voice of workers at national, sectoral and enterprise levels. It moves responsibility for workplace regulation from legislation to collective bargaining. It calls for a Ministry of Labour and a National Economic Forum; sectoral collective bargaining; the repeal of the Trade Union Act 2016 and the introduction of fundamental and enforceable rights for workers.

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