

# **Temporary work agencies**

## **- legal framework in Iceland**

**Information for temporary work agencies and user undertakings**

**Icelandic Confederation of Labour (ASÍ)**

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## **Foreword**

Temporary work agencies (TWA) that provide their services in Iceland have been provided with a legal framework in relation to registration, duty to disclose certain information to the authorities, protection of workers etc., according to an Act on Temporary work agencies No. 139/2005, which came into force on the 29<sup>th</sup> of December 2005.

The Act is based on a mutual agreement by the Ministry of Social Affairs and Labour on the one hand and the Icelandic Confederation of Labour (ASÍ) and the Confederation of Icelandic Employers (SA) on the other.

This brochure is intended to inform those who operate Temporary work agencies and those on the side of user undertakings about the basics of this new legislation and other relevant labour legislation.

Reykjavik, January 2006

# 1. Temporary work agency (TWA)

## 1.1 Definition

TWA is defined under the Act as a service company which hires out its workers in return for a fee to user undertakings that direct their work in the workplace of the latter.

## 1.2 Territorial application

The Act applies to TWA's, domestic or foreign, operating on the Icelandic labour market.

## 1.3 Establishment of foreign TWA's

As mentioned later in this brochure, all TWA's, domestic and foreign, are under a legal obligation to register with the Directorate of Labour, (see chapter 2.1).

The right of foreign TWA's to provide their services in Iceland, without registering with the Enterprise register, either as primary or secondary establishment, is contingent on whether they are established elsewhere within the EEA-area or not.<sup>1</sup>

- *TWA established within the EEA*

TWA's, established within the EEA that wish to provide their services to user undertakings operating or established in Iceland, are not under a legal requirement to establish themselves in Iceland, by registering with the Enterprise register, either as primary or secondary establishment.<sup>2</sup> They can provide their services here in Iceland using their home country offices.

- *TWA established outside the EEA*

TWA's established outside the EEA are not allowed to provide their services in Iceland unless an international agreement which Iceland is party to provides for that. Currently, no such agreement exists.

Such companies must establish themselves in Iceland by registering with the Enterprise register, as primary establishments. In that case they would be deemed by Icelandic company law as established in Iceland.

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<sup>1</sup> Iceland is a member of the European Economic Area (EEA) which unites the internal market of 25 European Union Member States and three of the EFTA States (Iceland, Liechtenstein, and Norway).

<sup>2</sup> Tax issues of foreign TWA's can pose a special concern which is not dealt with here.

## **2. Conditions for operating a TWA in Iceland**

### **2.1 Registration and information**

Under the Act on TWA companies, domestic or foreign, are not authorized to operate a TWA in Iceland without prior registration with the Directorate of Labour.

TWA's are required to register at least eight days before starting its operations for the first time.

The TWA is required to provide the Directorate of Labour with information about the

- Name of the agency, ID number and address.
- Name of its managing director, ID number and address.

TWA established in another EEA-Member State or an EFTA-state is under the same obligation as regards registration with the Directorate of Labour. In addition it has to present documents which prove that the company is registered as such in another member state and is authorized according to the law of that country to operate a TWA.

The Directorate of Labour provides for direct registration of TWA's on its website.<sup>3</sup>

### **2.2 Publication of registered TWA's**

A list with the name of registered TWA's is published on the Directorate of Labour website.

### **2.3 A local representative of foreign TWA's**

TWA which provides its services in Iceland for more than 10 working days in every 12 months is required to appoint a representative in Iceland. This requirement applies to both domestic and foreign TWA's.

The TWA must inform the Directorate of Labour about the representative, his ID number and legal domicile or residence in Iceland, at least eight working days before it starts operating in Iceland. The Directorate of Labour shall be informed without delay of any change of this representative.

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<sup>3</sup> [www.twa.is](http://www.twa.is)

The representative is responsible for providing the authorities with information under

- The Act on Temporary work agencies, and
- The Working Terms Act, No. 55/1980, as amended by Act No. 145/2004. (see further chapter 4.3)

This representative must have power of attorney to accept decrees issued by the authorities or subpoena in case someone intends to sue the TWA before a court of law, with the same legal effects as if these decisions were presented and accepted directly by the TWA.

The duties of this representative last for a period of 12 months after the TWA ceases its operations in Iceland.

#### **2.4 Information regarding the scope of services**

TWA which intends to provide its services in Iceland for more than 10 working days in every 12 months period must provide the Directorate of Labour with the following information each time at least eight days before it starts providing its services:

- a. Number of workers hired out by the agency in Iceland, including their names, address in their country of origin, citizenship and professional qualifications where applicable.
- b. The estimated length of stay in Iceland, in case of foreign workers.
- c. Information regarding the validity of employment permits in case of non-EEA/EFTA workers, which have been issued by another EEA/EFTA member state.
- e. Other information deemed necessary by the Directorate of Labour in order to check whether the TWA is truly providing services as foreseen by the EEA Agreement and that it is hiring out its own workers. This includes on the one hand copies of the agreement of services between the foreign TWA and the domestic user undertaking and employment contracts of the hired out workers on the other. The Directorate of Labour is authorized to transfer information under items a-c to the Icelandic Directorate of Immigration.

#### **2.5 Nationalities of workers**

TWA's established in Iceland, can employ and hire out workers with either Icelandic or EEA/EFTA-nationality to domestic undertakings, including nationals of

the new EU member states.<sup>4</sup> Work- and residence permits can not be granted to TWA's established in Iceland. <sup>5</sup> TWA's, established in Iceland, do therefore not have the possibility to engage workers from outside the EEA/EFTA area.

TWA established in another EEA/EFTA member state, can hire to a domestic undertaking in Iceland, a worker holding a legal work- and residence permit in its country of establishment.

### **3. Legal protection of workers**

Icelandic labour law including the Act on Temporary work agencies provide workers employed by TWA's established or operating in Iceland with a number of legal protections.

#### **3.1 Wages and other terms of employment**

Wages and other terms of employment concluded in Icelandic collective agreements are minimum terms, applying to all workers in the relevant occupation within the area covered by the agreement. Depending on various factors, such as economic development in different occupational sectors, geographic location etc., pay levels can fluctuate from the minimum terms set by the applicable collective agreement.

Collective agreements are under a specific provision of labour law made generally applicable and are therefore binding upon all employers and workers within the boundary of the applicable agreement. This means that employers and their workers are bound by law to respect the applicable collective agreement, regardless of whether they themselves are members of the workers unions or associations of employers which undertook to negotiate the agreement.

TWA's are as employers bound by Icelandic collective agreements to pay their workers certain minimum wages in the same manner as those undertakings that use the services of those TWA's.

There are two principle pieces of Icelandic labour law to consider:

- The Working Terms and Pension Rights Insurance Act No. 55/1980, as amended by Act No. 145/2004, which stipulates that the wages and other

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<sup>4</sup> the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.

<sup>5</sup> Article 7 of Act 97/2002, as amended by Act 139/2005.

working conditions agreed upon by the parties to collective agreements shall be minimum working conditions, irrespective of nationality, for all workers in the relevant occupation within the specific geographical area covered by the collective agreement.

- The Law on the Legal Status of Employees working temporarily in Iceland for Foreign Companies, No. 54/2001, as amended by Act No. 139/2005, stipulates that foreign workers shall, while working in Iceland, receive wages and other terms of employment, provided for in the applicable collective agreement and Icelandic labour law.

Further information regarding remuneration in the relevant occupational sector and other related issues is provided by the trade unions or any of the trade unions federations.

### **3.2 Written contract of employment**

TWA's must provide their workers with a written contract of employment. TWA's must also provide their workers with written information about the work they are about to undertake in each user undertaking.

### **3.3 Ban on collecting a fee from workers**

TWA's are prohibited from claiming, to negotiate or receive a fee from their workers for offering or providing them employment, whether at the start or during the course of the employment relationship.

### **3.4 Foreign TWA's - allowances specific to posting of workers**

It is illegal for foreign employers, incl. foreign TWA's, who post their workers to Iceland to calculate allowances specific to the posting as part of the minimum wage, payable under Icelandic collective agreements, which the employer has paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

### **3.5 Limits – previous employment**

TWA's are not allowed to hire out a worker to a user undertaking if the worker was in direct employment with the latter undertaking in the previous six months.

### **3.6 Change of employer**

TWA's are prohibited from banning or restricting their workers from resigning from their employment contracts in order to form a direct employment relationship with any of the user undertakings where they have been working.

## **4. User undertakings**

### **4.1 Responsibilities and best practices**

Undertakings that use the services of TWA's do not form a direct employment relationship with the workers that are hired out to them and are therefore not prima face legally responsible for their wages, unless otherwise stipulated in collective agreements.

As mentioned above in chapter 3.1, TWA's, domestic or foreign, are bound by Icelandic collective agreements.

It is a common policy of the social partners in Iceland that companies employing foreign workers in their production or services pay wages and offer working conditions in compliance with collective agreements and the laws in this country.

In order not to cause conflicts as to the correct implementation of collective agreements on the Icelandic labour market user undertakings are urged to consider the following:

- Only engage in business with a TWA's that is either registered with the Directorate of Labour or is fully committed to apply for such registration before starting its operation.
- To openly discuss the issues of wages and other terms of employment with the representatives of the TWA, by reference with the applicable collective agreement, preferably at some stage with the participation of the representatives of the social partners.
- To make it a contractual requirement in the service agreement with the TWA that the TWA must respect applicable collective agreements.
- By checking on a regular basis whether the TWA is in fact paying its workers in accordance with applicable collective agreements.

A user undertaking which makes little or no effort to ensure that the TWA abides by basic requirements of Icelandic labour law and ignores complaints by the trade

unions to that affect, opens itself to public criticism and can be held responsible by the trade unions for any breach committed by the TWA.

#### **4.2 Safety and occupational health**

Act No. 46/1980 on Working Environment, Health and Safety of workers requires employers to make their workers aware of any hazards in their working environment which they may be exposed to and which can be detrimental to their health and safety.

Employers are required to provide their workers with adequate training in order for them to execute their assignments in such a way that won't pose any danger to them.

An added responsibility of care applies for companies which engage workers through TWA's. Employers are according to regulation no 433/1997<sup>6</sup> required to take special care that those who are engaged to work at its workplace under an agreement with a TWA in fact enjoy the same safety and occupational health as those who are in a direct employment relationship with that employer. This can only be realised by additional effort to inform this group of workers of the various hazards in their working environment.

#### **4.3 Information regarding wages of foreign workers**

Trade union representatives have according to an agreement made by the social partners in Iceland concerning foreigners on the Icelandic Labour Market,<sup>7</sup> the right to review employment documents regarding the wages and other working conditions of foreigners working on the Icelandic labour market. This also applies to occupational qualifications, where applicable. The provision of this agreement applies to all employers operating or established in Iceland, according to a special legal provision enacted in 2005.<sup>8</sup>

Trade union representatives can make use of this right if there is suspicion of a violation of the applicable collective agreement or of the laws on the working conditions of foreign workers.

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<sup>6</sup> Regulation no 433/1997 concerning measures in order to improve the safety and occupational health of workers employed through TWA's or workers employed in a direct but temporary employment relationship. This Regulation is based on Council Directive 91/383/EEC of 25 June 1991.

<sup>7</sup> An Agreement signed by The Icelandic Confederation of Labour (ASÍ) and the Confederation of Icelandic Employers (SA) on March 7 2004, concerning Foreigners on the Icelandic Labour Market.

<sup>8</sup> Act no 145/2004.

The agreement establishes a special procedure which can either be informal or formal depending on the facts of each case and the reaction of the employer. The procedure is based upon the principle of confidentiality and the trade union representatives are not authorized to remove any information from the place of work. They have however permission to consult with the trade union in question. In such case the representatives of the trade union must observe the utmost confidentiality regarding the information disclosed to them.

In case of a dispute which has not been resolved within the company, it can be referred to a special Joint Consultation Committee of The Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA).

#### **4.4 Occupational qualifications**

The right to work is in some areas of the Icelandic labour market restricted by statutory requirements to persons holding professional degrees or who are specially authorized to work in a particular field or area.

Furthermore in some fields of work, workers are required to have special job-related certifications, such as an advanced driving licence or a driving licence for industrial machinery.

The EEA Agreement provides for the entitlement of EEA/EFTA-workers to have their professional degrees, occupational qualifications and work experience acquired in other EEA/EFTA states accredited in Iceland according to the applicable laws and regulations.<sup>9</sup>

## **5. Public supervision and sanctions**

### **5.1 Directorate of Labour**

The Directorate of Labour is responsible for the supervision of the Act on Temporary work agencies No. 139/2005.

The main responsibilities of the Directorate of Labour are described in chapter 2, i.e. registration of TWA's and their representative and collecting information regarding the scope of their operation on the labour market.

The Directorate is furthermore responsible for investigating reasoned complaints where it is alleged that a TWA has violated the provisions of the Act. If the

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<sup>9</sup> Further information is provided by the Ministry of Education. <http://eng.menntamalaraduneyti.is/>

Directorate of Labour concludes on the basis of its investigation that the complaint is well founded it can insist that the TWA changes its operation within a reasonable period of time and place it within the scope of the Act. If not the operation can be suspended (5.3.)

TWA's, domestic and foreign, are required to provide the Directorate of Labour with any information that the Directorate deems necessary in order to ensure the correct application of the Act, including contracts of employments and information concerning wages and other terms of employment.

## **5.2 Confidentiality**

The officials of the Directorate of Labour are under a strict rule of confidentiality concerning the information they obtain under this Act. They are not allowed to transfer such information to third parties, if that information is deemed to be of confidential nature.

## **5.3 Temporary suspension of operations**

If the Directorate of Labour has given a TWA a reasonable timeframe to correct and to amend the way it operates its business in order for it to be within the scope of the Act, but it has not acted in accordance to those recommendations, the Directorate can call on the police to temporarily suspend or close down the operation of that TWA. That order will not be lifted unless the required changes have been made.

## **5.4 Appeal**

A Decision by the Directorate of Labour can be appealed to the Ministry of Social Affairs and Labour within 3 months as from its date. The appeal procedure is according to the Administrative Act. Such an appeal does not repeal the temporary suspension which remains in force until otherwise decided.

## **5.5 Sanctions**

Violations of the Act or regulations issued under this Act are punishable with fines, unless more serious sanctions apply under other Acts.

Cases which may arise in connection with violations of this Act and regulations issued on the basis of the Act are subject to the rules of procedure in public cases.

## Labour legislation – selection

- Act on Trade Unions and Industrial Disputes, No. 80/1938.
- Working Terms and Pension Rights Insurance Act, No. 55/1980.
- Act on 40 hours Working Week, No. 88/1971.
- Act on Working Environment, Health and Safety in the Workplace, No. 46/1980.
- Act on Mandatory Insurance of Pension Rights and on Activities of Pension Funds, No. 129/1997.
  
- The Industrial Act, No. 42/1978.
- Regulation No. 940/1999, respecting Authorized Branches of Industry.
- Regulation No. 495/2001, Respecting Recognition of Work and Vocational Training in Industry in another EEA State.
- Act respecting the Authorization of Several Professional Titles of Specialists in Technical and Design Faculties, No. 8/1996.
  
- Act respecting the right of workers for Employment and Residence within the European Economic Area, No. 47/1993.
- Foreign Nationals' Right to Work Act, No. 97/2002.
- Act on the Legal Status of Workers Posted Temporarily in Iceland in the Service of Foreign Undertakings, No. 54/2001.
- Act on Foreigners, No. 96/2002.
- Regulation on Foreigners No. 53/2003 & 546/2003.

A good starting point for foreign employers to find information about Icelandic legislation is <http://www.government.is/>

## Addresses

### LABOUR ORGANIZATION

#### **Icelandic Confederation of Labour (ASI)**

website: [www.asi.is](http://www.asi.is)  
e-mail. [asi@asi.is](mailto:asi@asi.is)  
tel. (+354) 535 5600

### GOVERNMENT

#### **Directorate of Labour (Vinnumálastofnun)**

web: [www.vinnumalastofnun.is](http://www.vinnumalastofnun.is)  
[www.twa.is](http://www.twa.is) for registration of TWA's  
e-mail. [vinnumalastofnun@vmst.is](mailto:vinnumalastofnun@vmst.is)  
tel. (+354) 515 4800

#### **The Icelandic Directorate of Immigration (Útlendingastofnun)**

web: [www.utl.is](http://www.utl.is)  
e-mail. [utl@utl.is](mailto:utl@utl.is)  
tel. (+354) 510 5400

#### **The Internal Revenue Directorate (RSK)**

web: [www.rsk.is](http://www.rsk.is)  
e-mail. [rsk@rsk.is](mailto:rsk@rsk.is)  
tel. (+354) 563 1100

#### **Enterprise register**

web: [www.rsk.is](http://www.rsk.is)  
e. mail. [fyrirtaeki@rsk.is](mailto:fyrirtaeki@rsk.is)  
tel. (+ 354) 563 1250

#### **The Ministry of Education, Science and Culture**

web: [eng.menntamalaraduneyti.is](http://eng.menntamalaraduneyti.is)  
<http://www.menntagatt.is/>  
e-mail. [postur@mrn.stjr.is](mailto:postur@mrn.stjr.is)  
tel. (+354) 545 9500

### EMPLOYER ORGANIZATION

#### **Confederation of Icelandic Employers (SA)**

website: [www.sa.is](http://www.sa.is)  
e-mail. [sa@sa.is](mailto:sa@sa.is)  
tel. (+354) 591 0000

#### **Ministries of Industry and Commerce**

web: [eng.idnadarraduneyti.is](http://eng.idnadarraduneyti.is)  
e.mail. [postur@ivr.stjr.is](mailto:postur@ivr.stjr.is)  
Tel.: (+354) 545 8500

#### **The State Social Security Institute (Tryggingastofnun ríkisins)**

website: [www.tr.is](http://www.tr.is)  
e-mail. [tr@tr.is](mailto:tr@tr.is)  
tel. (+354) 560 4400

#### **National Registry (Þjóðskrá)**

website: [www.statice.is](http://www.statice.is)  
e-mail. [thjodskra@thjodskra.is](mailto:thjodskra@thjodskra.is)  
tel. (+354) 569 2900

#### **Administration of Occupational Safety and Health in Iceland (Vinnueftirlitið)**

website: [www.vinnueftirlit.is](http://www.vinnueftirlit.is)  
e-mail. [vinnueftirlit@ver.is](mailto:vinnueftirlit@ver.is)  
tel. (+354) 550 4600