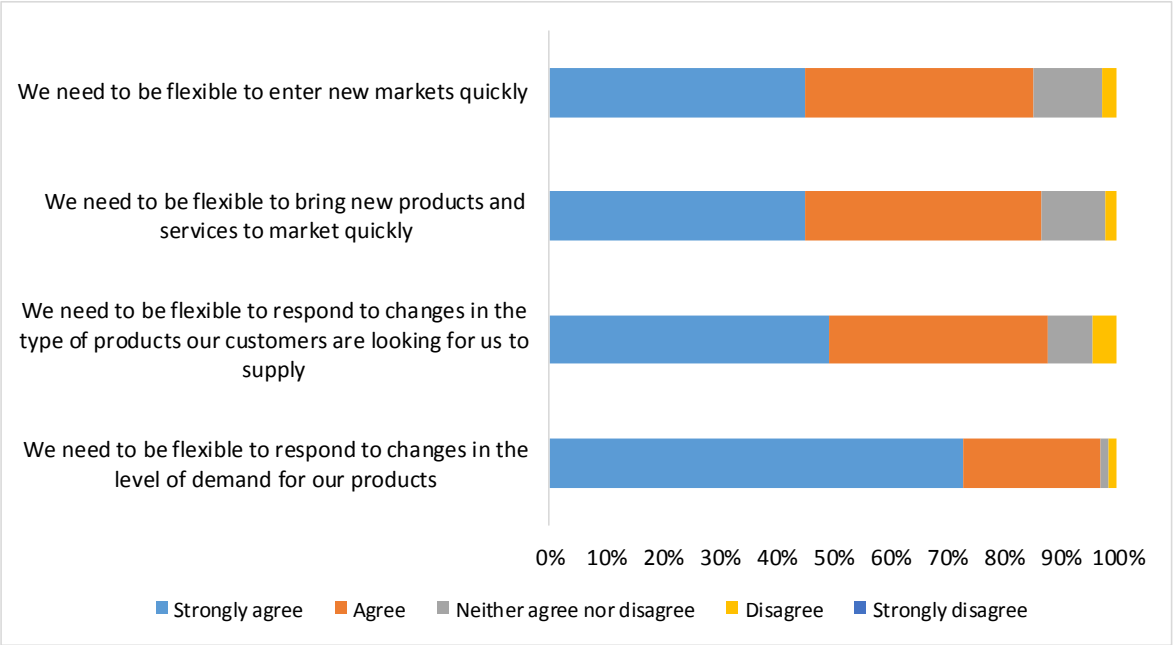
EEF response to the BEIS consultation on agency workers recommendations

Overview

1. EEF, the manufacturers' organisation, is the voice of manufacturing in the UK, representing all aspects of the manufacturing sector. Representing some 20,000 members employing almost one million workers, EEF members operate in the UK, Europe and throughout the world in a dynamic and highly competitive environment. EEF is also an independent training provider. We have two apprenticeship training centres in the Midlands which on average trains 400 engineering apprentices each year. We are committed to training the generation.

2. The background to this response is the sectorial nature of UK manufacturing. Many manufacturers operate in fluctuating markets, where demand and output can be volatile. Increasingly, manufacturers are global businesses, most export, many import unfinished product and raw materials not available in the UK, and some operate on the basis of very short order books, lasting no more than four weeks. To remain competitive in global markets they need to be responsive to the demands of their customers and the agility of their competitors, who similarly may be operating globally and based in economies with significantly lower input costs. It is for that reason that manufacturers place a strong value on flexibility; a flexible and adaptable workforce is crucial to achieving their wider growth ambitions. (See Chart 1)

Chart 1: Manufacturers need flexibility to respond to fast-moving, changing markets, % companies agreeing with statements about flexibility. Source: EEF, Modern Manufacturing Workplace Survey (2011)



3. UK manufacturing maintains its international competiveness by investing in new technology and new capital equipment, investing in new skills, investing in research and development and being innovative. Whilst not exclusively so, the skills and costs of human capital are a large part of the competitive mix for UK manufacturers. For example, over eight in ten manufacturers say they will need staff skills and over six in ten say they will need management skills to adopt advances in technology.[1] It is these advances that have the potential to make the industry both more productive and more competitive.

4. This consultation has been launched at a point of almost unparalleled uncertainty for UK manufacturing, which relies heavily upon a stable and favourable trading platform with the European Union. EEF has presented extensive evidence as to the need for this platform, or one with similar benefits, to remain after the UK leaves the EU, but there is, currently, no guarantee that this will be the case.[2] Whilst the UK has indicated that it will seek the most favourable trading conditions possible with the EU, even minor alterations will impose new costs, burden and administrative delays upon UK based manufacturers. For larger manufacturers, with sites throughout the EU, this has the potential to increase the base-cost of their UK operations in comparison to their EU-based sites, and make attracting inward investment to the UK harder. There is therefore a need for the UK to be supportive of UK businesses until a clearer picture emerges of the UK's new economic partnership with the EU, until the UK's new global trading relationships become established after the UK leaves the EU and a need to be cautious when implementing changes that have the capacity to increase the cost and burden on UK based businesses.

5. A further important dimension to this consultation is the current situation in the UK labour market and the supply of STEM (science, technology, engineering and maths) skills to UK manufacturers. The UK has an entrenched and historic shortage of STEM-based skills, which has been widely documented including in the Government's Industrial Strategy Green Paper.[3] EEF's own research shows that three-quarters of manufacturers are concerned about their ability to access the skills their businesses' needs.[4] The skills manufacturers are demanding are increasingly higher-level and align with their wider growth ambitions such as to export into new markets, to launch new products and services and invest in new digital technologies.

6. This is translating into difficulties in recruiting for, and filling key roles within the manufacturing industry. The number of hard to fill vacancies in the industry remains static at 35% with a high number of these being defined as skills-shortage vacancies. EEF's own research shows that three-quarters of manufacturers have struggled to fill engineering roles in the past three years with little confidence in their ability to fill these

[1] EEF, UK Manufacturing and the 4th Industrial Revolution Factcard, available at https://www.eef.org.uk/campaigning/campaigns-and-issues/current-campaigns/industry-four/4th-industrial-revolution-facts-and-figures

[2] EEF, UK Trade with the EU: A New Trading Order for the Manufacturing Industry (2017)

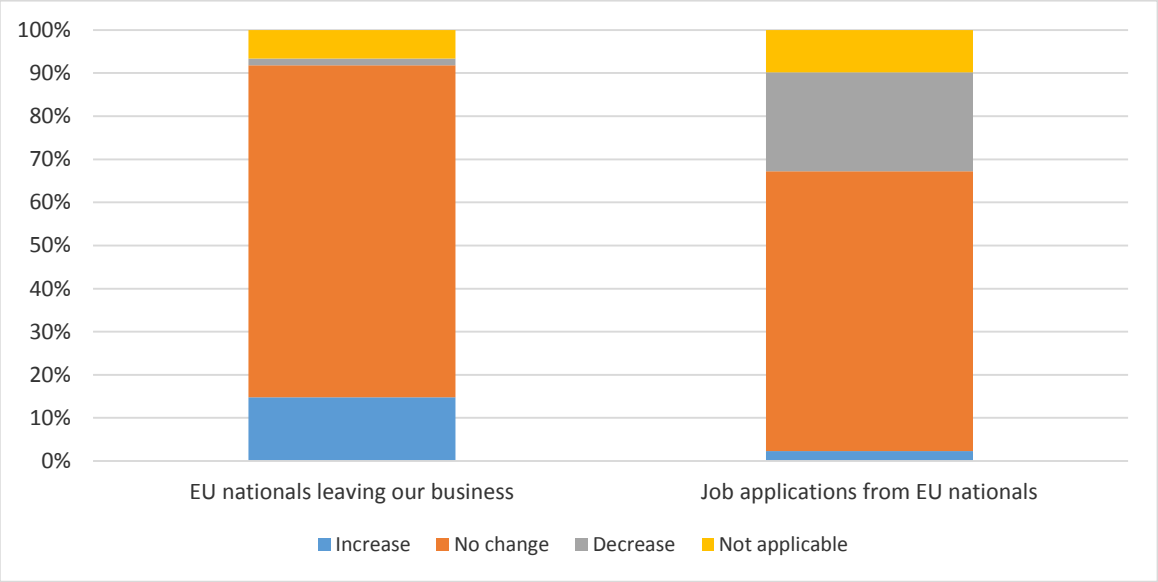
[3] BEIS, Building our Industrial Strategy: Green Paper (2017)

[4] EEF, An Up-skill Battle (2016)

roles in the coming years.[5] There is no part of the sector which reports an adequate supply of these skills, and there is no sign of improvement in the position.

7. In contrast, recent developments indicate that the position is at risk of worsening. Following the decision of the UK to leave the EU, the numbers of EU citizens entering the UK has fallen dramatically, and shows no current sign of changing. Official statistics show that EU nationals from all member states are arriving in significantly fewer numbers, and significantly more are choosing to leave the UK. In the aftermath of the EU referendum EEF research found companies were seeing some EU nationals leaving their business and others seeing a drop in applications. (See Chart 2)

Chart 2: Manufacturers experienced a drop in job applications from EU nationals and an increase in the number of EU nationals leaving their business after the EU referendum, % companies reporting changes following the EU referendum. Source: EEF Migration Survey 2017.



8. EU nationals occupy a wide range of occupational groups in our sector, and are not confined to lower-paid, lower-skilled roles. The spread of EU workers throughout the sector, from the highest to lowest skilled jobs has been caused by the UK labour market being unable to meet the demands of manufacturers. The capacity of the UK labour market to flex to the needs of UK manufacturers is a long-term problem, and will not quickly be solved, even if the UK seeks to address the root causes of its skills-shortages. A significant complicating factor is the number of changes which have been made to the UK's vocational training system in a short space of time – including but not limited to the apprenticeship levy – and the unhelpful early results of these changes. The available data from EEF and other sources leads us to conclude that the UK labour market for manufacturers will remain unable to meet their skills demands in the near future, and they will continue to face shortages of people for some time to come.[6]

9. Against this backdrop, the inherent flexibility of the UK labour market, measured in international terms, remain essential. In absence of an adequate supply of the skills

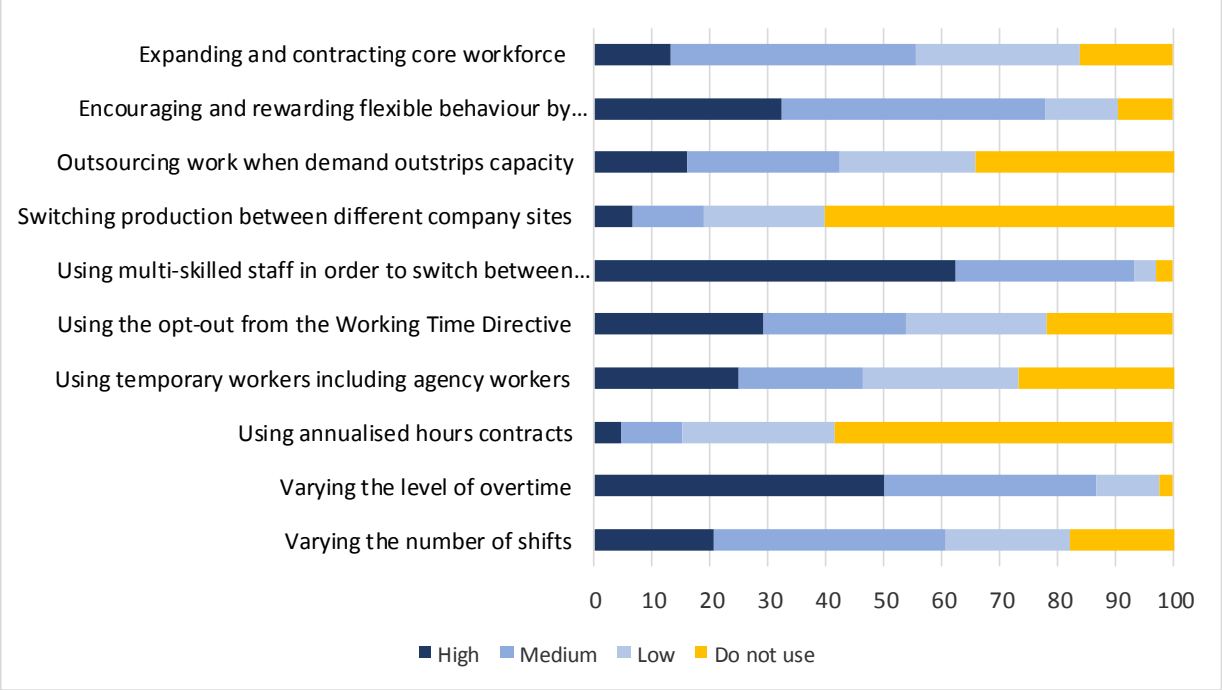
[5] Ibid
[6] Engineering UK, The state of Engineering: Annual Report (2017)

needed by the sector, manufacturers make ends meet by relying on the UK's flexible regulatory regime, allowing employers and workers to agree individually terms which meet the requirements of both sides. Our industry is characterised by higher than average number of businesses which recognise trade unions for bargaining purposes. Indeed, EEF research found that 46% of manufacturers recognised trade unions, increasing to 77% for the largest firms.[7] Manufacturers have in general a positive and constructive relationship with representative trade unions.

10. Whilst the experience of EEF members may be reflective of the sector, and the shortage of skills, there is little evidence we have gathered from manufacturers to suggest that this flexibility to exercise in one direction only. Manufacturers, lacking applicants with the required technical skills, are unlikely to risk losing their staff, and more often find the problem is the opposite, where their workers have a strong bargaining position and they risk losing them to their competitors.

11. Within this labour market, maintaining flexibility for manufacturers is essential. This flexibility is achieved in a number of ways. Manufacturers offer flexible working to their staff, variations in shift patterns, part-time work, or contractual changes to suit the needs of specific individuals.

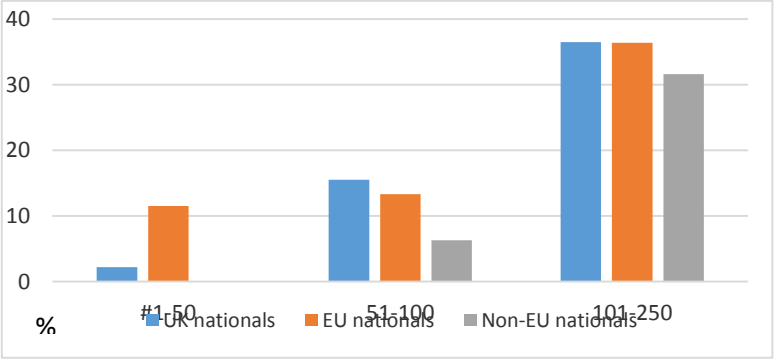
Chart 3: There are a variety of channels through which manufacturers achieve flexibility in the workplace, % companies reporting how important ways of achieving are to their business. Source: EEF Modern Manufacturing Workplace Survey (2011)



[7] EEF, Modern Manufacturing Workplace Survey (2011).

12. Within this mix, agency workers occupy an important space, with a number of manufacturers recruiting agency workers on a regular basis (See Chart 4). Invariably when we have sought evidence from our members, the reason why they use agency workers is for the flexibility offered. Engaging agency workers brings with it a premium, paid for by the user, and which therefore makes the hiring of agency workers more expensive than directly employed staff. Agency workers may be used because demand is uncertain, and may only last a short time, or be seasonal or cyclical. For some members, their UK or site operations may be the subject of certain limitations, for example budgetary or headcounts. For businesses unable to directly employ staff, agency workers enable them to meet their business needs within the parameters set for them. Often, manufacturers use agency workers as a source of future, directly employed workers, preferring to see a worker for some time before deciding to offer them an employment contract. For other businesses, retaining a core of directly-employed staff to service the level of demand that they can predict retains their competitive position, allowing agency workers to increase their capacity in busier times, and avoiding the need for workforce restructuring, and the uncertainty this brings for workers and employers, when demand reduces.

Chart 4: Manufacturers continue to rely on agency workers within their business, % companies reporting on what basis they employ UK, EU and non-EU nationals by company size. Source: EEF Migration Survey (2018)



Improving the transparency of information provided to work seekers

Taylor Recommendation: *Government should amend the legislation to improve the transparency of information which must be provided to work seekers both in terms of rate of pay and those responsible for paying them.*

The government accepts this recommendation. The purpose of the consultation is to understand how we implement greater transparency of information,

1) To what extent would you agree that a 'key facts' page would support work seekers in making decisions about work?

13. EEF would support the proposal and furthermore believes that hirers should be provided with similar information, whist protecting the privacy of the worker. We have found in consultation with our members that there is a wide variety of understanding of the terms upon which agency workers are engaged. Hirers will not necessarily know the structure which sits behind the agency worker, that is whether they are directly employed by the agency with who they deal, or employed via an umbrella company, or self-employed with their primary interface being via the agency or some other intermediary.

14. Whilst some manufacturers have told us that they make inquiries of their agencies, it can be difficult to see the exact relationships, whether there is an employment contract in existence at all, or whether the agency worker is in fact receiving the benefits which the hirer assumes they are. Extending the "key-facts" principle so that hirers are also aware of the organisations involved and their roles would more easily allow hirers to understand the position of the agency worker.

2) a. What information would be important to include in a 'key facts' page?

15. For workers, they need to understand what they should expect from the relationships which they enter in. There may well be some differences, depending on the level of experience of the workers, but it must be made clear to them if they are to be employed, and if so by whom. If they are not to be employed then they need to know what their status is and what effect this will have upon them. They must also be made aware of what deductions will be made from their pay, and in short, the details of how their net pay will be calculated before they make an informed decision. Any fees should be transparent and agreed to in advance.

16. There could be some merit in pursuing a similar approach to those who are offered and accept credit, where examples need to be provided to enable users to understand the mechanics of the arrangement. Similarly, workers may benefit from a cooling-off period, if they find that the arrangement does not meet the description given in the key facts document. Consideration could be given to providing alternative key-facts documents that would allow the workers to make an easy and direct comparison between their position under different models.

17. For employers/hirers, they need to be made aware of the status of their agency workers – whether they are employed by the agency, or another organisation, whether they are categorised as self-employed, and whether there are intermediaries involved. Whilst exact numbers may be commercially sensitive, employers should also be made aware of the existence of deductions being made.

b. What conditions would be in place to ensure the 'key facts' page is provided and understood by the work seeker before any contractual engagement?

18. The work seeker should be offered an opportunity to take time to understand the document – what matters is that the worker makes an informed choice before they agree to an assignment. Ideally this should mean that they are presented with the key facts document before they need to make a decision and not at the same time. There could be a time restriction placed on the key facts document, so it is either provided a stipulated period before the start of an assignment, or the worker can choose to change status within a certain period. The document cannot be given to them in this way. The document should also be provided before the start of every assignment, or extension of an assignment, as its details may change over time. To ensure that they have received it a copy should be signed and retained as proof. Consideration will also need to be given to the sanctions faced in the event that the requirement is not complied with, which could be that the worker then has a choice of status, and if there is a financial difference between their chosen status and the status they were "assigned" then this should be made good.

3) Should an employment business be required to ensure that the work seeker understand fully the information being given to them?

19. Yes, otherwise there is little point in the requirement. The burden should be on the agency/intermediary to show that the worker has understood the key facts document. Some consideration may need to be given to complex situations involving agencies and umbrella companies, to avoid the liability for the key facts document becoming unclear. The likely easiest solution would be for all undertakings to share the obligation to provide the key facts document and be jointly/severally liable for any failure.

4) Do you feel an hour is an accurate estimate of the time it would take to produce information document for a work seeker?

20. We are not able to comment in an informed way on this, but we would expect that after familiarisation with the new requirements, the time taken to produce the information should fall significantly and that this will then become part of the standard documentation which is produced.

Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain

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Taylor Recommendation*: The new Director of Labour Market Enforcement should consider whether the remit of the Employment Agencies Standards (EAS) Inspectorate ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain.*

This consultation seeks views of how the regulation of umbrella companies and other intermediaries by EAS would improve working conditions for work seekers.

5) Have you used or do you currently using an umbrella/ intermediary? If so, for what reason?

21. We have consulted with our members regarding this issue and have found that most have very little information on the precise nature of the relationships which sit behind their agency workers. Part of the problem is that for members who do require an employment relationship to exist, they cannot be sure that the employment relationship is with the agency or another intermediary organisation. We do not therefore have any firm evidence of how many agency workers are working via umbrella companies. We suggest that this could be made far clearer by the provision of some key-facts type information to hirers regarding the agency workers, whether or not they ask for it, and that this is supplemented by a description of the arrangement, for example the agency workers are all paid for by an umbrella company, they are not employed, and the umbrella company makes the following categories of deductions from the fees passed onto the agency workers. If this is taken forward, then we suggest that BEIS holds working groups with employers who use agency workers to determine the type of information which they would wish to receive, in order that they make an informed choice as their provider.

22. When consulting manufacturers ahead of this submission, employers were unaware of the circumstances when umbrella companies or other intermediaries were involved; they therefore do not knowingly choose this model.

6) Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?

23. Not first hand from members; this does not mean to say that problems do not exist, only that our members have not been made aware of them. However, in wider discussions, HR contacts within our member companies are aware of problems that have occurred. We have been informed that these include unknown/unexpected deductions, confusion (or a lack of awareness) of status, a lack of awareness over tax and national insurance liability and general confusion over who is responsible for what, where there is a hirer, agency and separate payroll company/intermediary involved.

7) Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer:

i) Be limited to the regulation of the key facts page and provision of information relevant to those facts as part of a work offer by the hirer or employer

24. This should be part of the remit of the EASi but not limited to this.

ii) Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework such as non-payment of wages, deductions from wages which the work seeker has not agreed to, and failure to provide written terms and conditions before the assignment starts?

25. From the perspective of the worker, it is likely that they will see the EASi, where they encounter it, as the single regulatory organisation for agency workers. Whilst careful

consideration will need to be given to any expansion of the current footprint of the EASi there is in principle good reason for it to be a comprehensive regulator for agencies, umbrella companies and other intermediaries and have powers which enable it to deal with any issues it encounters. Similarly, employers are likely to find dealing with agencies and, where they are aware of them, intermediaries, easier if there is a single body regulating all their activities.

8) a. What do you think the impact of ensuring that umbrella companies provide work seekers with a key facts page would be on:

i) the work seeker; and
ii) the recruitment sector ?

26. The benefit should be similar, or the same, for the sector, hirers, and workers. There should be increased transparency, increased certainty and less opportunity for costly complaints and disputes between the parties involved. In addition, some hirers may consider that they could suffer some reputational damage if the agency workers they use may be regarded as enjoying poor working arrangements, or may have found themselves in arrangements which they did not understand, or which do not benefit them. In consultation with our members we have found overwhelmingly that they wish to understand the arrangements their agency workers are subject to and ensure that these arrangements are fair and transparent.

b What do you think the impact of this change would be on:
i. the work seeker, and
ii. the recruitment sector ?

27. The response is very similar to that above. There may be some transitional or familiarisation costs to all, but once established, the provision of the information should become part of the standard documentation provided to work-seekers and hirers.

Pay Between Assignments

Taylor Recommendation: *The government should repeal the legislation that allows workers to opt out of equal pay entitlements (the 'Swedish Derogation'). In addition the government should consider extending the remit of the EAS Inspectorate to include compliance with the Agency Workers Regulations (which would include enforcement of the Swedish Derogation, if not released).*

This consultation seeks evidence and views on these issues.

9) Have you used or are you currently using a pay between assignments (PBA) contract?

28. In consultation with our members, they have been generally unaware of when PBA contacts are used. Some manufacturers do specifically ask whether their agency

workers are directly employed, but this will not tell them necessarily by whom, (the exact entity) nor will it tell them if the contract is a PBA contract or not. There is then a need for hirers to be informed of when these contracts are in use, and who the parties to the contracts are. This could be information which agencies need to provide to hirers as part of the key-facts.

10) In your experience, what are the benefits and any problems associated with working on a PBA contract basis?

29. Given that the manufacturers we have consulted with have little visibility of the use of PBA contracts by agencies and agency workers, there is no obvious benefit which they derive from such contracts as they do not know when they are, or are not, used. In discussions with our member contacts, they perceive that the benefit to the agency workers is the guarantee of payment in the event that they do not have an assignment. However, they view this as needing to be set in context. Some EEF members engage agency workers over a relatively long period of time, and given the skills needs in manufacturing, for some workers the chances of being left without an assignment are low. For these workers, there is little benefit to a PBA contract. In addition, for longer assignments, the loss to the worker incurred by taking the PBA contracst is likely to be greater than the possible gain by having pay during a period between assignments.

11) In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?

30. We have little information on this matter, primarily as our members are generally unaware of when such contracts are in use. However, we can say that EEF members are not incentivised one way or another by the use of PBA contracts as they are almost always unaware of their existence.

12) Do you have evidence that there are wider issues (beyond equal pay) with PBA contracts, for example agency workers not being able to access to facilities, rest break, annual leave or job vacancies?

31. We have no such evidence.

13) Do you believe that that the above issues would justify wider state enforcement?

32. There is we believe a case for change and intervention, but before decisions are taken on wider or greater state enforcement, the reforms which are discussed above should be given an opportunity to work and change behaviours. Greater transparency, the provision of key facts to workers and hirers and making it very clear when PBA contacts are being used will enable parties to better understand the arrangements which they enter into. From discussions with our members, with this information, they are likely to then make more informed decisions about which agencies they then choose to do business with and can then require agencies to adhere to their criteria when they hire agency workers.

14) To what extent do you agree that enforcement of the Agency Worker Regulations 2010 should come within the remit of the Employment Agency Standards inspectorate?

33. This would provide greater clarity for hirers and workers, and the EASi could then provide both a regulatory function and a supportive function. Most businesses operating in this arena want to understand the arrangements which their agency workers are subject to and in discussions with our members, some are confused by the various models that already exist. There is a need for an informative function which tells hirers what the various models are, how agency workers are affected by each model, and who the other organisations are that they may be involved with. The EASi could provide this information service and raise awareness amongst hirers of the arrangements which they are supporting, albeit potentially without their knowledge.

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