



# Ireland: Agency Workers and Employment Law

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# Ireland: Agency Workers and Employment Law

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## I. Introduction

Ireland has a number of employment laws that apply to different employment arrangements in varied jurisdictional contexts, and which create causes of actions in different forums, including both specialist bodies and courts.<sup>1</sup> In the case of individuals employed through agencies, a number of laws apply, with European Union (EU) laws applying to persons who are hired overseas through cross-border employment contracts.

## II. Traditional Agency Work

The laws of Ireland provide that workers hired through agencies are considered to be in the employment of the agency who supplied the worker to the firm, creating a triangular relationship between the employee, the employment agency, and the hiring company. As these parties are typically based in Ireland, Irish law applies, regardless of the domicile of the employment agency. While such workers are deemed employees of the agency for most purposes, for the purposes of unfair dismissal and health and safety legislation, the employer of the worker is considered to be the firm the employee is working for, rather than the agency.<sup>2</sup> For social welfare payments, the agency worker is considered to be employed by the person that pays his or her wages.<sup>3</sup>

Workers hired through employment agencies are covered under the same laws as workers hired directly in Ireland in the areas of payment of wages, unfair dismissal, maternity protection, adoptive leave, hours of work, and equality.<sup>4</sup> Agency workers are also entitled to the same basic working terms and conditions of employment as those who have been directly hired from the firm at the same time and perform similar work.<sup>5</sup>

The traditional view of agency workers, according to the case of *Construction Industry Training v. Labour Force Ltd.*,<sup>6</sup> is that workers operating under an agency contract are engaged under a contract *sui generis*, as the contract that exists between the agency and the workers, and the

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<sup>1</sup> NEVILLE COX ET AL., EMPLOYMENT LAW IN IRELAND, 2009, ¶ 1.11.

<sup>2</sup> DOING BUSINESS IN IRELAND § 6.04 (last updated Mar. 2014).

<sup>3</sup> Social Welfare (Miscellaneous Provisions) Act 2003, No. 4 of 2003, <http://www.irishstatutebook.ie/eli/2003/act/4/enacted/en/html>, archived at <https://perma.cc/3EWE-HFH6>.

<sup>4</sup> DOING BUSINESS IN IRELAND, *supra* note 2, § 6.04.

<sup>5</sup> *Id.*; Protection of Employees (Temporary Agency Work) Act 2012, No. 13 of 2012, <http://www.irishstatutebook.ie/eli/2012/act/13/enacted/en/pdf>, archived at <https://perma.cc/49JK-K8UM>.

<sup>6</sup> *Construction Industry Training v. Labour Force Ltd.* [1970] 3 All ER 220, available via LexisNexis (by subscription), archived at <https://perma.cc/E8TE-A34Y>.

workers and the end user, are not considered employment contracts. In *Minister for Labour v. PMPA Insurance Company*, a similar situation arose where a typist was hired by a company through an employment agency. The terms of the contract were that the typist's work would be supervised and controlled by the company, and the company would pay the agency for the work the typist did. The court held that two separate contracts existed in relation to this employment—one between the company and the employment agency, and another between the employment agency and the typist, with no implied contractual relationship existing between the typist and the company.<sup>7</sup>

### III. Law Applicable to International Airline Crews

Some airlines registered in European countries have recently begun hiring workers through employment agencies from another country, basing the workers in a third country, and structuring the employment relationships under contracts for services by self-employed persons in order to reduce labor costs.<sup>8</sup> This method of recruiting pilots and crew has frequently been referred to as an atypical employment arrangement in aviation.<sup>9</sup>

Parties to a cross-border employment contract are free to choose the law that governs the employment relationship. The primary piece of EU legislation that regulates contractual relations in cross-border employment contracts is Regulation (EC) No. 593, on the law applicable to contractual obligations. This regulation applies in cases of disputes between the parties and provides that cross-border employment contracts are to be governed by the law chosen by the parties in accordance with the provisions of this regulation.<sup>10</sup> The choice of law must not deprive the employee of any protection that cannot be derogated by agreement under the law that, in the absence of choice, would otherwise be applicable. In cases where the parties to an individual employment contract have not made a choice of law, the contract must be governed by the law of the country in which, or from which, the employee habitually carries out his or her work in performance of the contract. If this cannot be determined, “the contract is governed by the law of the country where the place of business through which the employee was engaged is situated.”<sup>11</sup>

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<sup>7</sup> *Minister for Labour v. PMPA Insurance Co.* [1986] JISLL 215, cited in COX ET AL., *supra* note 1, ¶ 3.44.

<sup>8</sup> EUROPEAN COMMISSION & UNIVERSITEIT GENT, ATYPICAL EMPLOYMENT IN AVIATION: FINAL REPORT 22 (2015), [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/tran/dv/report\\_atypicalemploymentinaviation/Report\\_AtypicalEmploymentInAviation\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/tran/dv/report_atypicalemploymentinaviation/Report_AtypicalEmploymentInAviation_en.pdf) (last visited May 16, 2016), archived at <https://perma.cc/Z5RX-PPTE>.

<sup>9</sup> See, e.g., *id.* Airlines that employ crew in this manner are often accused by labor organizations of “social dumping.” See, e.g., EUROPEAN TRANSPORT WORKERS’ FEDERATION, SOCIAL DUMPING IN CIVIL AVIATION (June 4, 2014), <http://www.eesc.europa.eu/resources/docs/social-dumping-in-civil-aviation-adopted-040614.pdf>, archived at <https://perma.cc/5HBN-ZJHV>.

<sup>10</sup> Regulation (EC) No. 593/2008 of Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I), art. 8, 2008 O.J. (L 117) 6, entered into force Dec. 17, 2009, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R0593>, archived at <https://perma.cc/CWG6-KTOP>.

<sup>11</sup> *Id.* art. 8(3).

The application of these atypical employment arrangements has resulted in a European Commission report noting that,

[a]s a result of the increasing complexities in the structures of airlines, and of the increasing complexities in the employment relations between airlines, agencies and individuals, transparency is lost and legal ambiguity prevails.<sup>12</sup>

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<sup>12</sup> EUROPEAN COMMISSION AND THE UNIVERSITEIT GENT, *supra* note 8, at 33.