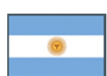


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Temporary employment agencies

Introduction

In this article, we explore the key Argentine regulation on Temporary Employment Agencies ('TEA'), as set out in *Decree No. 1694/06* ('TEA Decree').

Argentine labour laws and case law are protective towards employees. Therefore, the main labour principles are mandatory and cannot be disregarded by either party. According to one of these principles, employment relationships should be for an indefinite period of time until the employee meets the eligibility requirements to apply for retirement related social security benefits. This is known as the Principle of Continuity of the employment relationship.

TEAs services can only be used in certain specific cases and a breach of the TEA regime will be viewed as a fraudulent act under labour law. This can result in the employee being deemed to be a direct employee of the company that benefits from his/her service.

In light of these principles and the protective nature of local labour laws, the Federation of Companies of Temporary Work (Federación de empresas de intermediación laboral - 'FAETT') issued a report. The report stipulates that temporary agency work is not considered a tool for flexibility. Instead, it offers an alternative option in times of economic crisis to tackle unemployment, with the ultimate ambition of converting temporary positions into permanent ones (although, in practice, this is not always possible).

General legal framework

Exclusive purpose

TEAs must have an exclusive corporate purpose of supplying industrial, administrative, technical and professional staff to third party companies ('Hirer') to:

- perform, on a temporary basis, extraordinary services defined in advance; or
- meet the specific and temporary needs of the Hirer.

Registration

TEAs are to be registered with the Ministry of Labour, Employment and Social Security (the 'Ministry of Labour') and provide certain warranties. For example, the law provides that the TEA must deposit certain amounts of money as real warranties with the Ministry of Labour together with their registration. The amount varies depending on the capital and size of the TEA and time of registration. In addition, TEAs must provide, every two months, specific information to the Ministry of Labour.

Situations allowing Hirers to engage staff through a TEA

Hirers may engage employees through a TEA only in the following cases:

1. To cover for the absence of a permanent employee, during the term of his/her absence.
2. Leave of absence of a permanent employee, legal or contractual suspension due to strike or force majeure, reduction or absence of work.
3. In the event of increased business activities of the Hirer, requiring more workers, on an exceptional and extraordinary basis.
4. To organise or participate in congresses, conferences, fairs, exhibitions or programmes.
5. To perform urgent tasks to prevent accidents or repair equipment when such duties cannot be performed by regular staff.

6. When, due to extraordinary or temporary needs, tasks not related to the usual business activities of the Hirer are required.

Therefore, to hire employees through this route, the Hirer will have to provide evidence that the hiring responds to one of these extraordinary circumstances.

In situations three, four, five and six above, the hiring period must not exceed six months in a one year period, or one year in a three year period. If the hiring exceeds these limits, the employee will be considered a direct employee of the Hirer.

In situations one and two above, the name of the employee who is on leave must be specified in the agreement and, if the substituted worker returns to his/her position and the employee hired through a TEA is still working, he/she will be considered a direct employee of the Hirer.

According to the law, there should be a 'reasonable and justified' balance between the number of employees hired through TEAs and the Hirer's permanent headcount, in addition to having an 'adequate' term of employment.

Liability

General principle: where workers are hired by one party, which then intends to make them available to other companies, the workers will be considered direct employees of the company for whom they render the services. Both parties will be liable for labour and social security obligations.

TEA regime: workers hired by a TEA and duly authorised by labour authorities, will be considered to be in a permanent employment relationship with the TEA, regardless of whether the actual relationship between the two is continuous or discontinuous in nature.

The Hirer is entitled to the employer's duties and rights but is not part of the legal relationship. However, the Hirer is jointly and severally liable with the TEA for all labour obligations, including acting as a withholding agent for social security obligations.

Implementation method

Workers hired by any TEA to provide services at its agencies or offices shall be considered bound by a continuous permanent employment relationship. However, workers that are hired to provide services at the Hirer's companies (i.e. in accordance with the permitted cases listed above), will be considered associated to the TEA under a permanent but discontinuous employment relationship.

In this case, the period between assignments must not exceed 45 days or 90 alternating days in a period of one year. If this time limit is exceeded and the TEA has not assigned the worker to a new position, the worker is entitled to consider him/herself constructively dismissed and claim severance compensation.

Conclusion

In this article, we explored how a temporary employment regime is regulated in a protective legal environment. Hiring through a TEA is the exception, not the rule, and certain requirements must be met, otherwise the hired employee will be considered a direct employee of the Hirer. In any event, the TEA agency and the Hirer are jointly and severally liable for labour and social security obligations of the hired employees.

As a distinguishing factor from many European countries, it has been acknowledged by the FAETT, the government and other labour market players, that hiring through TEAs is not considered a tool for flexibility but a means to battle unemployment and informal work, with the ultimate aim to increase permanent positions.

These aims are evidenced by statistics of the Argentine crisis in 2001-2003, where positions under TEAs increased from 35,000 (period 1995-2001) to 75,000 in 2004.

30% of workers assigned to companies, were subsequently engaged as permanent employees. This shows that the option of hiring through TEAs is an efficient tool to avoid informal work and an effective alternative to cover extraordinary needs of companies.

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