

Hiring of labour from staffing enterprises

On 1 April 2023 the rules relating to the hiring of labour from staffing enterprises were tightened. Hiring from staffing enterprises is only legal if certain terms are met. The hiring of labour to carry out construction work on construction sites in the counties of Oslo, Akershus, Buskerud, Østfold og Vestfold is prohibited.

Changes to the regulations applicable to the hiring of labour took effect on 1 April 2023. In some cases these rules will not apply until a later date. Read more about the [transitional arrangements and specific exceptions](#).

As a general rule, employees should be employed on a permanent basis in the enterprise in which they are carrying out their work. Nevertheless, the enterprise may legally cover any temporary need for labour if the rules are met through:

- [Direct temporary employment \[in Norwegian\]](#)
- [Hiring labour from a manufacturing enterprise \[in Norwegian\]](#)
- Hiring labour from a staffing enterprise

When are you allowed to hire staff from a staffing enterprise?

For the hiring of staff to be legal, [the staffing enterprise you use must be registered with the Norwegian Labour Inspection Authority](#).

As a general rule, it is only legal to hire staff from staffing enterprises in the following circumstances:

To carry out work on behalf of someone else (temporary post)

You may hire temporary staff from a staffing enterprise (temp agency) if your own employees are temporarily absent due to issues such as:

- Sickness
- Leave
- Holiday

If there is an agreement in place relating to hiring from staffing enterprises with the enterprise's employee representative

The Working Environment Act makes provision for employee representative/s to enter into written agreements with employers relating to the hiring of staff on a time-limited basis. This means that the usual rules do not necessarily have to be met. In order for the hire of staff to be legal on this basis, it is required that:

- The enterprise is subject to a collective agreement entered into with a trade union with nomination rights. This requires the trade union to have at least 10,000 members. The employer must be able to document that the enterprise is subject to such a collective agreement.
- The employer and the employees' employee representative/s must have entered into a written agreement relating to the hiring of staff on a time-limited basis.
- The employees' representatives must collectively represent the majority of the employee category that the hire relates to.

Example of majority in an employee category

In an enterprise where employee representative/s represent 40 per cent of office staff, the employee representative/s will be unable to enter into an agreement relating to the hiring of office staff because they do not represent a majority of this employee category. If the enterprise wishes to hire warehouse employees then this is in a different employee category, which means the employee representative/s are also unable to enter into agreements relating to this employee category.

Who can be an employee representative?

In this context, employee representative/s do not have to be representatives of employees organised by means of a traditional trade union. Employee representatives may be elected to represent employees who are not members of a trade union. Nevertheless, the enterprise must be subject to a collective agreement entered into with a trade union with nomination rights in order for the employer and the employee representatives to be permitted to enter into an agreement relating to the hiring of staff on a time-limited basis.

Read [Marte Mjøs Persen's response issued during Storting parliamentary questions pertaining to the right and access to enter into agreements relating the hiring of staff on a time-limited basis and who is permitted to be an employee representative \(stortinget.no\) \[in Norwegian\]](#)

If there is a temporary need for specialist expertise in the areas of advisory and consultancy services

It is permitted to hire staff with specialist expertise in advisory and consultancy services if:

- The employer requires specialist knowledge or advice in a specific professional subject area (specialist expertise) that the enterprise lacks.
- If the work is to be carried out within a clearly defined project.

The right to hire specialist expertise is a narrow exception to the rules.

What is meant by specialist expertise?

The term "specialist expertise" does not have a fixed or clearly delimited definition. Specialist expertise can be acquired in a number of ways, including through relevant education, experience or non-formal qualifications. There is thus no absolute requirement in order to fulfil the requirement for specialist expertise.

What is meant by advisory and consultancy services?

Advisory and consultancy services may relate to services in:

- Finance and auditing
- Law
- Software development and ICT solutions
- Organisational development
- Communications consultancy

Read more about this in [the Agency for Public Management and eGovernment's guide to the procurement of consultancy services \(anskaffelser.no\) \[in Norwegian\]](#).

Are advisory and consultancy services on a contract basis?

Advisory and consultancy services have in many cases been regarded as independent assignments/contracts. Nonetheless, this is not always the correct classification of the relationship. Advisory or consultancy services performed in close cooperation with the client (management) and where the result cannot be clearly determined in advance will generally be regarded as hired labour.

Read more about the distinction between hiring of staff and contracts below on this page.

If there is a need for health personnel to ensure the proper delivery of health and care services

The hiring of health personnel from staffing enterprises is permitted in order to ensure the proper delivery of health and care services. In order for the hire of staff to be legal, it must be on a temporary basis. A need will be considered temporary in the event of the following examples:

- Unforeseen stoppages in work
- General seasonal fluctuations

Unforeseen stoppages in work in the health sector can arise quickly and there is not always time to carry out standard appointment processes. Before an employer makes the decision to hire in on this basis, they must always:

- Assess whether the rules relating to the hiring of staff on this basis have been met, including whether the work is of a temporary nature and whether the hire is necessary in order to ensure the proper delivery of health and care services.
- Discuss the need for hired labour with the employee representative/s.

The employer must be able to document the basis for its hire of health personnel upon request from the employee representative/s and the Norwegian Labour Inspection Authority.

The right to hire health personnel to ensure the proper delivery of health and care services is a narrow exception to the rules.

Health personnel refers to those personnel who are defined in [Section 3 of the Health Personnel Act \[in Norwegian\]](#). See also [the Norwegian Directorate of Health's guide \[in Norwegian\]](#) to the term health personnel.

Hiring of labour for construction work is prohibited in some counties

The hiring of labour from staffing enterprises in order to carry out construction work on construction sites in the counties of Oslo, Akershus, Buskerud, Østfold and Vestfold is prohibited.

This ban applies to the hiring of labour for actual construction work. Construction enterprises may continue to hire in staff in other employee groups for other types of work, including engineers and administrative personnel.

How are construction work and construction sites defined?

Construction work relates both to the construction of new buildings and work on existing buildings such as rehabilitation, refurbishment and extensions.

Construction work refers to:

- The construction of buildings
- Interior furnishing, decoration and installation works
- The assembly and disassembly of prefabricated elements
- The demolition, dismantling, restoration and restoration of buildings
- Decontamination and maintenance, excluding work that is routine or less extensive in its nature
- Excavation, blasting and other groundworks associated with a construction site
- Other works carried out in connection with construction work

A construction site refers to any job site where temporary or varying construction works of a certain scope are being carried out.

The fact that construction work is temporary or variable in nature means that works that are carried out on a permanent basis, such as the production of elements for prefabricated buildings, are not subject to the ban on hiring labour. In borderline cases, the duration of the work will be material to determining whether it is temporary and variable in its nature. It will also be material to the assessment whether machinery and equipment is permanently located on site or whether it is natural for the equipment to be moved on following the completion of works.

Read more about construction work in [the Construction Client Regulations \[in Norwegian\]](#).

Where is the boundary between hiring labour and contract work?

A clear starting point is to note that it is a hire if the entity that orders the work to be carried out is overseeing works and is responsible for the outcome.

If there is any doubt as to who is overseeing the works and is responsible for the outcome, the following factors will indicate that it is likely to be a hire:

- It is primarily labour that is being supplied
- Work takes place in close proximity to the client's activities
- Work covers the client's ongoing need for labour
- Work takes place within the client's main or principle activity

Not all these factors must be fulfilled in order for it to be considered a hire. An overall assessment must be made.

The facts of each case are decisive and take priority over whether the relationship is referred to as a hire or contract in any documentation.

What are the consequences of the illegal hire of labour?

If you do not meet the requirements to hire labour from staffing enterprises, the following may happen:

- Hired workers may sue and demand permanent employment. If the court finds that the hire has been illegal in character, it may rule that the hired individual is a permanent employee of the hirer.
- Hired workers may claim compensation from the hirer.
- The Norwegian Labour Inspection Authority will order you to terminate the illegal hire.
- The Norwegian Labour Inspection Authority will issue you a fine for violating the regulations.

A trade union with members in an enterprise that hires labour may also bring a case before the courts if they believe the hire is illegal in character. Hired personnel do not have to be members of the trade union in question. Workers may still sue on their own behalf to demand permanent employment.

What are your obligations when hiring labour from staffing enterprises?

A hirer has both duties and rights vis-à-vis the staffing enterprise and the hired worker.

Duty of disclosure to staffing enterprises

The staffing enterprise is the employer of the worker that you hire. It is therefore the responsibility of the staffing enterprise to ensure that their employees enjoy the same rights and are treated in the same way as they would be if permanently employed by your enterprise ([equal treatment \[in Norwegian\]](#)).

To allow the staffing enterprise to uphold its duty to ensure equal treatment, you must as the hirer provide information in writing outlining:

- [The duration and location of work](#)
- [Overtime work](#)
- The duration and location of [breaks](#) and rest periods
- [Night work \[in Norwegian\]](#)
- [Holiday](#), holiday pay, days off and remuneration of such days
- [Salary](#) and reimbursement of expenses
- Employee benefit (e.g. access to canteens, transport, fitness centres, kindergartens)

Duty of disclosure to own employee representative

The hirer's employee representative may request disclosure of the salary and working conditions agreed between a hired worker and their staffing enterprise (the worker's employer). The hirer may thus request such documentation from the staffing enterprise in order to furnish their employee representative/s with this information.

Duty to discuss hiring of labour with own employee representatives at least once a year

The hirer and its employee representative must discuss the following at least once a year:

- The use of hired labour (both where there is a temporary need and by agreement with the employee representative)
- The application of the principle of equal treatment

The employee representative/s must be provided in advance with all necessary documentation that will facilitate such discussions. The discussions must be documented through minutes or a memo.

Clarification of responsibilities relating to HSE and internal routines

The hirer and the staffing enterprise must work together to determine who is responsible for the various aspects of HSE in the workplace. This clarification must be sought by written agreement.

It is the staffing enterprise that is the responsible employer in relation to the hired worker, but the hirer must also ensure that the individual's working environment is fully satisfactory. This includes the provision of necessary training and induction in relation to internal routines in order to ensure that the hired worker has the necessary qualifications, approvals and so on.

Responsibility for working hours

The hirer is responsible for ensuring that the working hours of hired workers adhere to the rules set out in the Working Environment Act concerning [working hours](#). The hirer is responsible for ensuring that the rules relating to working hours are adhered to for work carried out on their behalf.

The staffing enterprise is responsible for the total working hours of their hired out workers (both with your enterprise and any others).

Joint and several liability for hired labour

If it transpires that the staffing enterprise does not pay what the hired worker is entitled to in terms of salary, holiday pay or any other remuneration – either wholly or partially – then the hiring enterprise must pay this (joint and several liability). This is also known as a breach of contract. In order for the hired worker to receive what they are entitled to, they must lodge a claim for this from the hirer.

What a worker should do in the event of non-payment

- The worker must lodge their claim with the hirer in writing within three months of the date when they did not receive their salary, holiday pay or other remuneration.
- If the worker has not been paid their salary, they should also request any holiday pay they would have been entitled to had they been paid their salary in the written claim.

What the hirer must do after a worker lodges a claim in the event of non-payment

- The hirer should pay the claim within three weeks of its submission by the worker.
- The hirer may refuse the claim if the worker knew that the staffing enterprise was unable or unwilling to pay what the worker has claimed prior to entering into an agreement to carry out the work.

Joint and several liability does not apply if the staffing enterprise has entered bankruptcy proceedings.

Read more about [the non-payment of salary and holiday pay](#).

When can be labour be hired from enterprises other than staffing enterprises?

Employees may also be hired on a time-limited basis from enterprises that do not pursue the aim of hiring staff – known as manufacturing enterprises. For example, this applies when there is a temporary surplus of labour and is an alternative to lay-offs or redundancies.

In order for this to be permitted, the following must be met:

- The individual being hired must be a permanent employee of the enterprise they are being hired from
- The hire must occur within the same fields that constitute the ordinary employer's main occupation
- No more than 50 per cent of permanent employees of the ordinary employer may be hired out

The hire must also be discussed with the employee representative/s and in some cases the subject of agreement in the enterprise that is hiring the labour.

Read more about [hiring labour from manufacturing enterprises \[in Norwegian\]](#).

Transitional arrangements and specific exceptions

A transitional arrangement applies until 1 July 2023 in relation to:

- Specific staffing and hire agreements already in place on 1 April 2023.
- Assignment contracts entered into prior to 1 April 2023. The same applies in instances where binding offers were issued prior to 1 April 2023.

It will remain possible to hire labour from staffing enterprises in the following instances:

- To provide replacement labour in agriculture
 - When hiring for short-duration events
-