



Temporary agency work: national reports

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Temporary agency work

Introduction

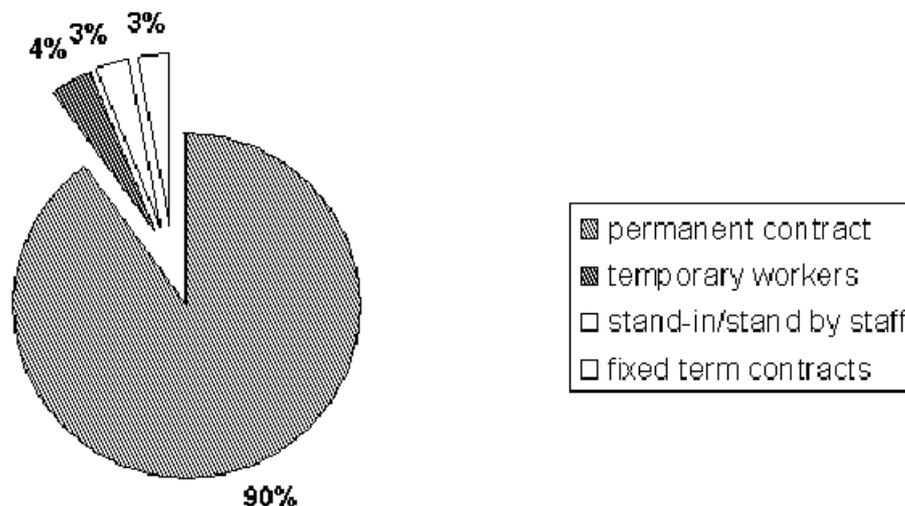
This report has writing as part of the work on Temporary Agency Work from the European Foundation for Improvement on Working and Living Conditions. The present report constitutes a descriptive view of the current state of affairs concerning TAW in the Netherlands, without aiming to provide a full description of all developments in this sector since the sixties. This national report will be used as a background document covering the work done by other researcher in all Member States.

The report specifically focuses on Temporary Agency Work, although other forms of flexible labour are also briefly reviewed. For a full definition and explanations of the terms used throughout this report, please refer to Annex 1.

Facts and figures

In 1999, 6,072,000 employees were working the Netherlands. As shown in chart 1, 90.6% were employed on the basis of permanent contracts, 9.4% on the basis of some form of a flexible contract. Of these flexible contracts, 3.5% were temporary agency workers, 2.5% entailed stand-in or standby staff, and the other 3.4% worked on fixed-term contracts. In absolute numbers, 300,000 persons a day were employed by around 18,200 temporary agencies¹.

Chart 1: *Employees by type of contract*



Source: CBS, *Inquiry Labour Force*, 1999.

In recent years, temporary agency branches experienced enormous growth. Since 1995, the number of agencies tripled, the number of temporary agency workers increased by 40%, and the number of temp-jobs in full time equivalents increased by 50%. This rise in temporary labour must be seen as part of an increase in flexibility in the labour market in general. In this national report, we shall, therefore, examine the developments in temporary work besides other forms of flexible labour.

¹ Number of enterprises, including inactive enterprises.

Compared to other European countries, the market for flexible labour in the Netherlands is huge. Some characteristic factors affect the size of the Dutch flexible-labour market. The Dutch labour market is marked by high statutory protection against unemployment. This makes it difficult for employers to lay off surplus staff. If the expected working period is brief, wage cost of flexible labour are lower than those of permanent labour. In the Netherlands, temporary work agencies were granted operating licences already in the early Sixties. Compared to other European countries, the institutionalisation of these agencies materialised much sooner.

Reading guide

Throughout the underlying report, several types of atypical forms of employment will be discussed. The main focus is on flexible and temporary agency workers. Temporary Agency Work can be seen as a specific kind of flexible work. The definition of flexible work covers all atypical forms of employment such as stand-in staff, zero-hours staff, standby staff, workers contracted by temporary employment agencies and employees holding fixed-term contracts. For a complete definition of Temporary Agency Work and other atypical forms of employment, see Annex 1.

In chapter 2, working conditions in the Netherlands in general and for temporary agency workers in particular are reviewed. Specific regulations relating to these issues are outlined. Chapter 3 covers the relationship between Temporary Agency Work and the labour market. Development and characteristics of temporary agency workers are outlined in qualitative and quantitative terms. In section 3.3, the main economic actors and their strategies are outlined. Chapter 4 narrates the regulatory framework in the Netherlands. Finally, in chapter 5, the Collective Agreements relating to temporary agency workers are discussed.

TAW and working conditions

Working conditions in the Netherlands

In the Netherlands, the Act on Working Conditions of November 1999 (Arbeidsomstandighedenwet) applies to all workers, including temporary employees and all other atypical forms of employment. The aim of this law is to promote safety, health and well-being of employees. The law obliges all employers to implement a policy to prevent illness and incapacity for work. The person who has authority over the employee, also has the responsibility for the working conditions of that employee. This law on working conditions provides a general framework: employers have freedom to implement a working condition policy in their own way, applicable for their own situation.

Moreover, since January 1998, employers are obliged to have a contract with a working conditions service (Arbodienst). This service advises enterprises about working conditions, guides and controls employees during sick-leave and carries out (obligated) evaluations of risks on the work-floor.

Specific features in working conditions for flexible workers

Table 1 shows that workers with a flexible contract² in general have jobs where they have to use more physical strength. Temporary workers are more frequently exposed to high-level noise. Concerning the other risk factors, working conditions for flexible workers, including temporary agency workers, are equal or better compared to those of workers on a permanent basis. Time pressure, for instance, occurs less to workers on a flexible contract. Differences between employees with a permanent and those with a flexible contract are the most evident in jobs with 20 or more working hours.

Table 1: *Specific features in working conditions; percentage of employees, 1999*

	Employed on permanent basis	Employed on flexible basis	Temporary- agency contract	Stand-in or standby staff	All employees
Regularly working under high time pressure	35	21	21	21	33
Regularly exposed to vibrations	20	15	20	8	19
Regularly exposed to vibrations caused by vehicle	12	9	12	5	12
Regularly exposed to vibrations caused by instruments/equipment	13	9	11	5	12
Regularly exposed to high-level noise	21	20	25	19	21
Regularly using physical strength	34	39	37	41	35

Source: CBS, *Inquiry Labour Force, 1999*.

² Fixed term shorter than 1 year, temporary agency workers and stand-in/standby staff.

The aspects shown in table 1 do not give a complete overview of the working conditions of the different types of flexible workers. Different aspects of working conditions have different effects on the well-being of workers. Some are causing higher risks to become unfit for work than others. The Netherlands National Institute for Social Insurance (Landelijk Instituut Sociale Verzekeringen) analysed the risks to become unfit for work in the Netherlands and made a list of the aspects of working conditions that are causing the highest risk to become unfit. The aspects of working conditions with the highest relationship to incapacity for work, in order of impact, are:

- Not able to choose tempo of work
- Physically heavy work
- Unfriendly atmosphere at work
- Using physical strength
- Working at very high speed
- Different work than working with a PC
- No possibilities to unfold one's capacities
- Low remuneration
- No autonomy.

Table 2 shows different risk factors in relation to hours worked and kind of contract. The table illustrates that working under time pressure and using physical strength are counting as a more important risk factor compared to the other factors.

Table 2: *Working conditions risk factors in relation to hours worked and kind of contract*

Working hours	<12		12-19		20-34		>34	
	Permanent	Flexible	Permanent	Flexible	Permanent	Flexible	Permanent	Flexible
Kind of contract								
Time pressure	0.1	0.2	21.2	19.3	29.6	21.8	34.7	26.1
Physical strength	0.0	0.1	24.3	26.0	21.2	28.1	23.5	27.9
High-level noise	0.0	0.3	4.2	5.7	6.3	8.2	11.6	14.3
Vibrations instruments/equipment	0.0	0.1	1.9	1.9	3.5	3.2	10.4	9.9
Vibrations vehicle	0.0	0.0	1.0	1.1	2.9	3.5	11.0	11.7

Source: *TNO Labour, 1999.*

Research conducted by the Ministry of Social Affairs and Employment³ show that temporary agency workers have to use strength during their work more relatively more often. Furthermore, they more often than average have to work in a noisy environment. These features are only partially explained by the fact that they are working in companies and occupations in which these forms of stress are more common than in other companies and occupations. Within different sectors and occupational groups the differences between temporary agency workers and other workers remain noticeable. In the lower occupational groups temporary agency workers have to use strength relatively more often as well as that they are working in a noisy environment more often.

Being a part-time worker or flexible worker implies a higher risk to become unfit for work. flexible workers become 1.7 times more often disabled, compared to workers with a permanent contract⁴. This higher risk is strongly linked to the percentage of female workers amongst flexible workers. Female workers in general have a higher risk to become unfit for work than men do. Temporary workers, however, have a lower share of female workers (compared to all flexible workers, including part-time jobs), which reduces the risk of this subgroup to become unfit for work.

The LISV also mentions other factors explaining the risk to become unfit for work, such as the sector where one is working. It seems that working in healthcare gives the highest risk compared to all other sectors. In 1997, most flexible workers were working in the sectors agriculture, hotel and catering, retail trade and indeed, healthcare⁵. However, most temporary agency workers are working in the metal industry, wholesale trade and business services, while only 6% of them are working in healthcare. Particularly the sectors agriculture and metal industry imply, because of the fact that people have to use regular physical strength, a relatively high risk to become unfit for work.

Besides gender, also other personal characteristics are linked to the risks to become unfit for work. A higher age, being low educated and having no partner are all factors that increase the risk to become unfit for work. With regard to personal characteristics, temporary workers do not seem to be in a high-risk group. In general, temporary agency workers are quite young, have a medium education level, and female workers are equally represented as men, 49% against 51%.

Concerning the characteristics of type of work, table 2 shows that although time pressure is not higher for flexible workers compared to permanent workers, it is still relatively high. On the other side, flexible workers experience less autonomy in their job compared to permanent workers. Having more autonomy reduces the risks to become unfit for work as well⁶.

Sick-leave and incapacity for work of temporary agency workers

Taking notice of the risk factors in the working conditions of temporary workers, it is not surprising to see that the percentage of absenteeism is relatively high. Over the past two years, temporary agency workers had a sick-leave percentage (absenteeism, short term) of 7.4 compared to the national average of 6.0%.

³ Ministry of Social Affairs and Employment, Working conditions, 2000

⁴ A.M. van der Giezen. Langdurige arbeidsongeschiktheid in 1998. Een analyse van arbeidsongeschiktheidsrisico's en ontwikkelingen in de tijd. LISV, January 1999.

⁵ 12% of all workers in healthcare are flexworkers, the majority on the basis of standby or stand-in contracts.

⁶ SZW. Arbobalans 1999.

Unfortunately, the exact reason for this high number is unknown to temporary agencies and insurance companies. However, the fact that it is not clear who is responsible for a sick temporary agency worker will also be an explanation of the high sick-leave number. Moreover, workers receive normally 70% of their wages during absenteeism due to illness. However, the ABU CAO 1999-2003 stipulates that ill employees receive 90% of the wages, after two days of sick-leave. The responsibilities of employers towards temporary agency workers should also be seen in the light of the Flexicurity legislations and the changes in the law on sickness benefits as well. The Flexicurity law will be analysed more indepth below.

In 1999, 34,264 employees in the temporary agency sector (including intermediaries) received benefits for being unfit for work (WAO, long term). This accounts for 8.8% of all temporary agency workers. This relatively low percentage can be explained by the fact that the average employee is young. Although this percentage is relatively low, it is increasing very fast, by 14%⁷.

Of these unfit workers, 10.5% were working in the manufacturing industry. The entry rate of this sector is 2.13% higher than the average entry of 1.9% for all temporary agency workers. Compared to other branches and the average of 1.4%, the entry rate of 1.9% is relatively high.

Recently report a research into the disability benefit (Veerman, 2001) became available. The report gives insight into background, responsibilities and explanations for the influx of temporary agency workers into the disability benefit system (WAO).

Key points with regard to absenteeism and disability risk are:

- Absenteeism in the sector is relatively high.
- The influx into the WAO is much higher than the national average.
- The TAW sector is responsible for approximately 20% of the growth in the WAO. This is despite the fact that in the TAW mostly younger workers are employed.

The largest chance for influx into the WAO is with psychological complaints: the change of influx through these types of complaints is almost twice as high as the national average. The changes of influx into the WAO through complaints from the mobility system is a quarter higher than the national average.

Occupational safety and health policies

In order to increase the safety and health of all workers, the Netherlands Ministry of Social Affairs is trying to reach agreements (arboconvenanten) with employees as well as employers in the branches with the highest risks in working conditions. A declaration of intent is foreseen to be signed in May 2001. The aim is to cover 40% of the employees by these agreements. Most of these branches are industrial and employing many temporary agency workers. The agreement will, therefore, affect the working conditions of temporary agency workers in an indirect way. However, in the near future the Ministry will prepare an agreement with the

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B. Paarlberg, 2000.

temporary agency branch as well. Due to this agreement, temporary agencies should assume more responsibilities for the working conditions of temporary agency workers.

In order to reduce absenteeism due to illness, temporary agencies and several connected insurance companies have created a taskforce. Presently, these organisations are conducting an inquiry into the reasons behind the high sick-leave numbers and how temporary agency workers can be motivated to start working again after absenteeism due to illness. The Netherlands Ministry of Social Affairs is working at a new law, which can give temp-agencies, if they want, full responsibilities for the cost of the sick-leave. The expectation is that when the agencies carry the responsibility they have more incentives to implement adequate prevention and sick-leave policies. This will reduce absenteeism due to illness and costs for benefits .

⁸ B. Paarlberg, 2000.

Developments in Temporary Agency Work

Temporary Agency Work increased enormously over the past few years. Table 3 shows an increase in all kinds of flexible labour from 7.6% in 1992 to 10.3% in 1998, followed by a decrease to 9.4% in 1999. Until 1998, the share of temporary agency workers rose to 3.8%, and decreased to 3.5% in 1999. The total number of employees, however, increased during the whole period.

Developments in the labour market in general, mostly result in a clear effect in the temporary agency market. The CBS (see Index 7, 2000) has compared the development of the number of labour hours provided by temp-agencies to the growth in the labour force. In the first half of the Nineties, economic developments were unfavourable. Economic growth was low, and unemployment increased. The growth in the active labour force steadily declined to zero. In the meantime, the number of temp-hours declined by 5 to 10% (see table 4). This reduction may be explained by the fact that in times of economic down-turn, enterprises first get rid of temporary workers instead of laying off permanent workers. Since the economic situation improved, Temporary Agency Work boomed. This favourable economic situation sustained; demand for labour kept increasing. Employers now prefer to employ people on a permanent basis instead of temporary workers. This explains why the growth in temp-hours steadily declined after a peak in 1995.

After the end of the old licence system for placing temporary agency workers, the number of new temporary work agencies has increased considerably since mid 1998. Furthermore, in 1998 the ban on use of temporary agency work in construction was lifted. (Please also refer to chapter four on developments in legislation).

At the base of the growth of the sector lies the favourable economical situation and an general increase in flexibility, however also demographic developments (aging of the population and a reduction in the number of school-leavers play a role. Nonetheless, the position of the TAW sector is becoming increasingly more stable and less dependent on developments in the economic situation.

Table 3: *Development of flexible work in the Netherlands, 1992-1999**

	1992	1993	1994	1995	1996	1997	1998	1999
Total no. of employees (x1000)**	5,258	5,261	5,222	5,357	5,459	5,644	5,874	6,072
Share of flexible workers (%)	7.6	7.5	8.1	8.9	9.9	10.0	10.3	9.4
Of whom:								
Temp-workers	1.9	1.9	2.2	2.8	3.4	3.7	3.8	3.5
Standby staff	1.5	1.5	1.7	2.0	2.1	2.1	2.3	1.8
Stand-in staff	0.7	0.7	0.7	0.6	0.9	0.8	0.8	0.7
Fixed-term contracts	2.1	2.3	2.4	2.4	2.3	2.4	2.2	3.4***
No fixed no. of hours	1.3	1.1	1.2	1.1	1.1	1.1	1.2	

* The Dutch labour-force survey includes only people working 12 hours a week or more. In case a person holds more than one job, the job with the most hours is included.

** All percentages: share of total number of employees.

*** For 1999, only a combined figure is available for fixed-term contracts and workers with no fixed number of hours.

Source: CBS-Statistics Netherlands, *Inquiry Labour Force (Labour Force Survey)*, 1999.

⁹ Veerman, 2001.

Table 4: *Development of temp-hours**

	1992	1993	1994	1995	1996	1997	1998	1999
Million hours	183,1	164,7	198,0	252,6	306,1	352,4	374,6	
Phases 1 + 2								323,2
Phases 3 + 4								60,8
Percent change	-6.1	-10.1	20.2	27.6	21.2	15.1	6.3	
Full-time temp-jobs ** (x 1000)	88	79	95	121	147	169	180	
Phases 1 + 2								155
Phases 3 + 4								29

* Starting from 1999, the CBS makes a distinction between phases 1 and 2 (temporary agency workers not on a permanent contract) on the one hand and phases 3 and 4 (temporary agency workers on a permanent agreement and secondment) on the other. As a result, the number of working hours (phases 1 and 2) is not comparable to the number of labour hours provided by temp-agencies in previous periods. Neither is the total of phases 1 to 4 comparable to previous data, because the secondment hours are now included in phases 3 and 4.

** Based on 2,080 working hours a year.

Source: CBS, *Commerciële Dienstverlening, 1999*.

Characteristics of a temporary agency contract

In any labour contract, the authority relationship is important. A contract is a contract of employment if a person performs work personally, in a position of legal subordination to an employer, in return for pay. Temporary Agency Work is a 'triangular' relationship involving a worker, a temporary work agency and a client enterprise. The agency employs the worker, and subsequently places him or her at the disposition of the client enterprise. The relationship between client enterprise and temporary agency worker is not clearly specified, but is not a contract of employment. Obviously, the lending enterprise will give instructions to the hired worker. Non-compliance by the worker may result in terminating the contract with the temporary work agency (there is no notice period).

The majority of temporary agency workers have a contract covering a duration of 4 to 12 months (see Annex 3, table 9). Table 5 shows that more than 70% of all temporary agency workers work more than 34 hours a week.

Table 5: *Type of contract and working hours, percentage*

	Permanent contract, or permanent in near future	Fixed-term contract	Stand-in and standby contract	Temporary worker	Freelance	Remaining
<12 hours/week	2.7	2.3	34.2	3.4	16.2	33.1
12-19 hours/week	5.1	8.9	26.1	5.9	13.2	5.0
20-34 hours/week	20.0	26.8	25.1	19.5	23.5	22.5
>34 hours/week	72.2	62.0	14.6	71.2	47.1	39.4

Source: CBS, 1999.

The main economic actors in the temporary agency market

Employees

Table 11 in Annex 3 shows that females are in general more often employed on the basis of a flexible contract than men are. In the category 'stand-in or standby', the difference is most distinct; almost three times as much as their male counterparts.

Most flexible workers are relatively young, particularly the fixed-term and stand-in workers. However, also relatively more people in the 55-64 age category are represented in the cluster of stand-in workers. With regard to education level, the group of highly educated workers contains relatively the lowest share of workers with a flexible contract. Among employees with primary education, a relatively larger share has an atypical form of contract. If highly educated employees have a flexible contract, they are mostly working on a fixed-term basis. The lower educated employees mostly work on a stand-in or standby contract. Concerning the educational level of temporary agency workers, table 10 in Annex 3 shows that the lower educated are relatively high represented. The population who is medium or higher educated, however, is much larger than the population of lower educated. This implies that the average educational level of temporary workers will be medium/high.

Organisation

temporary agency workers, as well as intermediary personnel, are represented by the following trade unions ¹⁰:

- FNV Bondgenoten
- Dienstbond CNV
- De Unie, vakbond voor industrie en dienstverlening

The number of temporary agency workers who are a member of a trade union is difficult to measure. In the databases of the trade unions FNV Bondgenoten, CNV and De Unie, numbers of temporary agency workers and intermediaries working for temporary work agencies are not separated. Roughly, it may be stated that around 10,000 temporary agency workers are represented by a trade union. One of the reasons for this relatively low representation is the fact that temporary agency workers do not become a member of a union on the basis of their status as temporary agency worker, but on the basis of the sector in which they are employed. One of the trade unions, FNV Bondgenoten, is now also actively trying to register temporary agency workers based on their status as temporary agency worker. Moreover, traditionally unions have been more focussed on permanently employed personnel. In addition, only a very small percentage of temporary agency workers works for a longer period of time.

In the Netherlands, sectors marked by a low degree of union coverage (e.g. the service sector) know a union representation of 9 to 10%, while highly organized sectors (e.g. policy and construction) have a union coverage of around 80%. Irrespective a sector's union coverage, the extent of organization among temporary agency workers still seems to be very low.

¹⁰ These trade unions represent 90 percent of all temporary agency workers and sign the ABU Collective Agreement.

Strategy

Over the course of the past decades the positions of trade unions regarding flexible work in general (including TAW) has changed dramatically.¹¹ In the seventies a strong opposition against any form of external flexibilisation of work was advocated. This related to the fact that Trade Unions wanted to protect the interest of employees that were already working within a certain enterprise.

In view of the developments over the course of time, trade unions have recognized the need of companies to have a certain degree of flexibility in order to maintain their competitiveness. The relief of peaks in workload and of illness and vacation of regular staff are seen as legitimate reasons to use external labour force, e.g. temporary agency workers. Nonetheless, using external flexible labour force was seen as an option, only after serious considerations of alternatives by using internal labour.

The present policy of the trade unions is to try to improve the situation of temporary workers as established by law and Collective Agreement in conjunction with representative from the employers, as far as possible. Flexibilisation of work and flexible contract forms can also be acceptable for longer periods of time, if this is well organised and structured in (new) forms of regulation and collective agreements. On the basis of collective bargaining, the unions attempt to narrow the gap in legal status between temporary agency workers and permanent workers, and will thus make it less attractive for employers to switch from permanent to temporary agency workers exclusively on the grounds of cost saving.¹²

Employers

In 1998, the group of temporary work agencies in the Netherlands comprised 48.7% small agencies (<10 employees), 39.7% medium sized agencies (10-100 employees) and 11.7% large agencies (>100 employees). The number of agencies increased three-fold since 1994. In general, agencies located in the highly populated areas in the west of the country increased more in numbers than in the rest of the country.¹³

Organisation

The representative of most temporary agencies is the General Union for Temporary Agency Workers (Algemene Bond Uitzendkrachten) (ABU). This organisation represents almost 70% of the temporary agencies,¹⁴ and 90% of the earnings of the entire sector, and had 207 members in 1999, mostly larger sized agencies, although smaller firms are also represented.

The smaller agencies are represented by the Dutch Union for Intermediate and Temporary Work (Nederlandse Bond van Bemiddelings- en Uitzendondernemingen) (NBBU). This organisation has 215 members, and covers 5% of the earnings of the sector.

Strategy

Since the labour market in the Netherlands is getting ever tighter, all employers try to bind employees to their organisation. This is no different for temporary work agencies. Temporary work agencies are trying to become

¹¹ See page 10, Passchier, 1998

¹² Clauwaert, 1999.

¹³ Stichting Orbis, 1999.

¹⁴ ABU, Annual Report, 2000.

a 'regular and attractive employer' for temporary agency workers. This means that temporary agency workers are provided with pension schemes, training, etc. in order to persuade them to sign a contract with a temporary agency work agency.

At the same time, tariffs of temporary agency work agencies have increased by 7 to 10% during recent years to compensate for the higher risk of temporary agency work agencies not being able to offer work to a temporary agency worker with a fixed contract. This is caused by inflexibility, under utilisation, administrative burdens and costs for training¹⁵. The temporary work agency's strategy with regard to pay negotiations will be dealt with in chapter 5.

Temporary Agency Work versus permanent work

Every year, research is coordinated by the ABU to examine entry of new temporary workers. Characteristics of the workers and the job, as well as the relation of temporary agency work versus permanent employment are analysed. This survey shows that 52% of all new temporary agency workers in the year 1999 were looking for a permanent job, as illustrated by table 6.

Table 6: *Type of contract temporary agency workers look for in their first temp-job, 1999*

Type of contract	1998	1999
Temporary work	50	48
* Vacation work	26	22
* No fixed work	24	26
Permanent job	50	52

Source: ABU, *Influx study temp-agency workers, 1999*.

Temporary Agency Work indeed offers temporary agency workers a stepping-stone to a permanent job. Around April/May, already 36% of the temporary agency workers who started their job in January had found a permanent job, half of them found this job at the company that initially hired them as a temporary agency worker. Almost 74% of these workers experienced a strong influence of their former temp-job on finding this permanent job. The most important sectors where temporary agency workers found their permanent job were hotel and catering (20%) or the manufacturing industry (19%). The percentage of temporary agency workers finding a permanent job within one year is increasing since 1995¹⁶. This result shows that the labour market for Temporary Agency Work in the Netherlands is undeniably a transitional labour market.

¹⁵ Klaver, 2000

¹⁶ ABU, *Influx study temp-agency workers, 1999*.

Regulatory framework

Introduction

This chapter only deals with the current state of affairs with regard to legislation in the Netherlands. Since TAW already existed in the Netherlands since the sixties, many developments have occurred in that time span. The legislative framework has developed from a prohibition of the use of temporary agency work through a licence system into the present total liberalisation. Still, this liberalisation of the legislation should be viewed together with the agreements made by Social Partners in Collective Agreements, discussed in the next chapter.

The regulations governing TAW have changed drastically over the last few years. First, all temporary work agencies are - as an effect of WAADI - no longer obligated to have a licence to offer labour to third parties. Furthermore, user firms - also covered by WAADI - can now make use of the one and the same temporary agency worker for an indefinite time period. The Flexicurity Law provides the TAW contract the same status as an employment contract.¹⁷ Based on the Flexicurity legislation it is now possible that temporary agency workers after a certain period and under certain conditions can sign a permanent contract with the temporary work agency. In the TAW Collective Agreement these periods and conditions are set-out in the “four-phase system”. This is a division of temporary agency workers based on their employment history with the temporary work agency. The phasing system is in force since the implementation of the Flexicurity Law on 1 January 1999.

In the Netherlands, the legal position of temporary agency workers is regulated by the Flexicurity Act and by the law on allocation of labour forces through intermediaries (WAADI). In the following sections, both the Act and its implications (section 4) will be outlined. In section 4, the WAADI is briefly discussed.

Flexibility and Security

In the Netherlands, Flexibility and Security legislation (Flexicurity Act) came into force on January 1st, 1999. The objective of this Act is to adequately match employers' demand for flexibility and employees' demand for working-life security and income. The Act governs various types of flex-labour. In the first place, the Act places temporary agency work under the regular labour law. This means that flexible workers, besides two exemptions, have the same rights as employees with a regular employment contract. Second, the Act governs Temporary Agency Work. A temporary work agreement between a temporary agency worker and a temporary agency work agency is by this act considered as an employment agreement. After 6 months, all regulations regarding an employment agreement fully apply. During the first 6 months, however, some specific rules apply:

- Contrary to other fixed-term contracts, more than three temporary agency work agreements can be concluded without this automatically leading to conversion into a fixed-term contract.
- Temp-agency and temporary agency worker can agree in writing that the temporary agency work agreement is dissolved in case the hiring company sends back the worker. On the other hand, temporary agency workers can quit their job anytime they like.

¹⁷ See definition on uitzendovereenkomst in CAO? (p. 61) of al in national report?

The Flexicurity Act contains a number of provisions that allow employers a greater flexibility in the utilisation of labour:

Trial period

The trial period in employment contracts used to be two months, irrespective of the type of contract. The Act stipulates that in the case of temporary contracts, this period will be limited to one month for contracts with a duration of less than two years. Trial periods may be extended in Collective Agreements, but not longer than to a legal period of two months.

Term of notice

Previously, the term of notice depended on various factors: period of wage payment, duration of employment and age. Currently, only the employment duration determines the term of notice for the employer. In the case of an employment contract (relation) of less than 5 years, the term of notice is one month. This period goes up to 4 months in case an employee has been employed for 15 years or longer. For employees, the term of notice is always one month. Notice periods can be extended in writing, but no longer than 6 months for the employee. If the notice period for the employee has been extended, it will be twice as long for the employer. In Collective Agreements only can be stipulated that the extended notice period is equal for both parties.

Dismissal

If an employer wants to dismiss an employee, s/he needs to ask the Public Employment Service for permission. The Flexicurity Act makes the route through the employment service more attractive for employers:

- The procedure is shortened
- Completion of this procedure gives the employer the right to decrease the term of notice period by one month (as long as one month always remains)
- The employer may terminate the contract in case of illness of the employee, provided his or her illness started after the employment service received the request for dissolution of the contract.

Effects of the Flexicurity Act

Already prior to the Flexicurity Act, commotion concerning undesired side effects arose in the media. In public opinion, the Act tended to be associated with protection of flexible workers and - hence - act as a deterrent to the use of flexible work by companies. In its entirety and combined with the Collective Agreement on temporary agency work, the Flexicurity Act turned out to be very complicated. Not much is known as yet about the effects. The Netherlands Ministry of Social Affairs and Employment commissioned a study into initial experience gained with the Act¹⁸. The study comprised polls among relevant employees (i.e. flexible workers), employers in general and temporary employment agencies. The polls were conducted two months after adoption of the Act. Since at that stage, many cases qualified for the transitory measure stipulated, and because no or hardly any concrete experience had been gained in respect of several elements of the Act, no conclusion may be drawn as regards the ultimate structural effects of the Flexicurity Act. However, a new evaluation of the Act has become available recently.¹⁹ Figures from this research will also be presented.

¹⁸ Grijpstra, 1999.

¹⁹ Klaver, 2000.

Impact on flexible workers

Compared to the number of flexible workers in the Netherlands, the number who factually encountered the impact of the Flexicurity Act was comparatively small, i.e. 45,000 employees approximately. Primarily, these entail stand-in staff that had not been called up, stand-in staff that had been referred to temporary employment agencies, temporary contract holders who had not been issued new contracts, temporary workers whose employment contracts had been terminated temporarily, or who had been referred to temporary employment agencies, and workers contracted by temporary employment agencies with whom relations had been terminated. The major reason underpinning these disadvantageous effects entails that employers either did not want or were not in the position to offer permanent-employment contracts.

In addition, the number of flexible workers encountering the Flexicurity Act in a positive way was small. Approximately 35,000 stand-in staff had been offered permanent-employment contracts. The number of temporary employees who had been offered permanent-employment contracts is estimated at 12,500.

The long-term effects depend on collective bargaining, avoidance behaviour by employers (new constructions, adaptation of HRM policy) and labour market trends. Regarding the latter, the tight labour market limited the number of flexible workers since employers were more inclined to bind staff by means of permanent contracts.

Totalling 31%, demand for training among workers contracted by temporary employment agencies was low. In the first two months, 13% of the workers had had a training demand interview. More than half of the temporary employment agencies introduced retirement schemes. Those who had introduced a retirement scheme, stated that, on average, the scheme covered one-third of the workers contracted. This holds to a higher extent for large than for small enterprises. For some background on the provisions for training and pensions, please refer to Chapter five on Collective bargaining.

Impact on temporary employment agencies

Most temporary employment agencies, too, initially rated the Flexicurity Act as negative. In the past, occasionally, constructions had been employed so as to avoid maximum terms. Workers contracted by temporary employment agencies, for instance, had been offered interim temporary contracts by the contractor (client enterprise), and had subsequently been contracted anew on a temporary-employment basis. The maximum temporary-employment term had thus not been an insurmountable obstacle as such. These type of constructions are no longer possible under the new legislation.

Presently, temporary employment agencies face the new rules governing training and retirement schemes. Various issues such as working life antecedents have to be recorded.

In view of the tight labour market, temporary employment agencies probably would also have unfolded activities to bind staff to an increasing extent, even without adoption of the Flexicurity Act. As for the coming years, it will be even more difficult to recruit temporary workers.

The Flexicurity Act caused a major increase in the tariffs of temp-agencies of 7 to 10% on average. Especially smaller firms demanded extra financial security in exchange for the risk of idle temporary workers in phases 3 and 4²⁰.

*Findings from the second evaluation of the Flexicurity Act*²¹

Figures resulting from the second evaluation give a more favourable picture of the experiences with the Flexicurity Act. For instance:

- to about 145,000 temporary contract holders a new temporary contract holders (including amongst others temporary agency workers) was offered;
- to about 72,000 temporary contract holders a permanent employment contract had been offered;
- for 93.000 stand in or stand by staff the employment relationship was continued via a temporary work agency or transferred into a contract for a fixed number of hours per week or year, or into a temporary work contract;
- for only 25,000 stand in or stand by workers the contract was terminated.

Law on allocation of labour force through intermediates (WAADI)

Preceding the adoption of the Flexicurity Act on July 1st, 1998, the law on allocation of labour force through intermediates (WAADI) was adopted. The WAADI forms an important liberalisation of the TAW system compared to the previous licence system under the so-called ARBVO Law. Nevertheless, the legislation also sets norm for the use of TAW. In the WAADI the prohibition to use temporary agency workers to replace workers on strike is maintained. Furthermore, standards are set relating to social security by using a system that guarantees that social security and tax obligations are met by temporary work agencies.

The main points of the WAADI are in the first place that temporary workers in principle should earn the same pay and remuneration as workers in the client enterprise in the same or similar positions. Furthermore, the agencies are no longer obliged to have a licence, which also implies that the restriction of a maximum duration of a temp-contract of 6 months is neutralized.

Concerning working conditions, the temporary work agency should provide the temporary worker with information relating to safety regulations in the client enterprise and information concerning the prerequisite professional qualifications. In case of a work-floor accident, both the client enterprise and the temporary work agency are responsible.

The WAADI leaves room to deviate from the general requirements if agreed upon in Collective Agreements.

²⁰ Flexmarkt, No. 4, April 2000.

²¹ Klaver, 2000.

Collective Agreements governing TAW

Collective bargaining in the TAW-sector in the Netherlands has already existed since the sixties. In chapter 3 a brief overview of the developments of the position of e.g. the trade unions is provided.

The Flexicurity Act and the WAADI, discussed in the previous chapter, allow employers and employees to diverge from the acts. Workers and employers in the temporary agency work industry have already used this possibility. Both ABU and NBBU regulated the position of temporary workers and intermediary personnel by a Collective Agreement. The Collective Agreement of the ABU, however, covers the legal position of most temporary agency workers, around 800,000 a year. This agreement became effective January 1st, 1999, for the 1999-2003 period, and was concluded in April 1998 by ABU and three trade unions: FNV Bondgenoten, Dienstbond CNV and De Unie.

The most important aspects of this Collective Agreement on Temporary Agency Work (ABU CA) entail the following:

- Phasing system
- Wages
- Continued pay (70%) in case of absenteeism due to illness
- Continued pay in case of unemployment in phases 3 or 4 status or permanent contract
- Pension rights; the pension premium is fixed at 3.5% of the gross salary.

Within the ABU CA covering 1999-2003, each year new wage bargaining is effected. This year, the ABU and the unions arrived at a new agreement by the end of August, after several broken-down negotiations. The issues at stake were not only the wage increase of 3.9% as per 18 September 2000, but also an increase in the guaranteed wage²², and a new classification system governing tasks or positions, which will take effect on January 1st, 2001.

The following sections narrate the most important elements of the ABU CA, i.e. the phasing system, wages and task-classification system.

The phasing system

The Collective Agreement agreed upon by employers and employees, covering the 1999-2003 period and governing workers contracted by temporary employment agencies, comprises a phasing system. This phasing system entails that an increasing duration of a worker being contracted to work via a temporary employment agency entitles that worker to increasing privileges, which will eventually result in a permanent-employment contract granted by the temporary employment agency. A.o., this phasing system implies the following:

- After 6 months, a temporary agency worker has a right to a training-needs interview and inclusion in a pension scheme. A percentage of the temp-fee is reserved for training of temporary agency workers by the temp-agencies.

²² The minimum wage the temporary employee earns.

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- After one year, temporary agency workers will receive only contracts of at least 3 months. In addition, they will continue to be paid if no work is available during that period.
- After 1.5 years, and after having worked with the same client enterprise of the temp-agency, the temporary agency worker is entitled to an open-ended contract with the temp-agency.
- temporary agency workers who worked for the same agency but for different client enterprises have the same right after three years.

The phasing system is summarized in table 7.

Table 7: *Flexibility and Security*

Phase 1	Phase 2	Phase 3	Phase 4
6 months	6 months	3a: 6 months 3b: 24 months	

Legend:

Source: *Randstad, Annual Report, 1999.*

- Phase 1: No practical difference from traditional staffing
- Phase 2: Employee starts accumulating pension benefits
- Phase 3: Employee receives renewable three-month contract
- Phase 3a: After 18 months with one client enterprise - to phase
- Phase 3b: After 36 months with various client enterprises - to phase 4
- Phase 4: Employee gets unlimited contract from agency.

Instead of the phase system, temp-agencies may also conclude so-called chain contracts with their workers. In that case, in principle no more than three fixed-term agreements may be concluded within a maximum period of three years. After that, an employment agreement will in principle come into force/be assumed with the next agreement.

The modified legislation stipulates that an employer may offer several subsequent temporary-employment contracts to an employee. Only if the cases stated hereinafter occur, temporary-employment contracts will automatically be converted into permanent contracts and employees will be entitled to dismissal protection:

- Case: Three subsequent temporary-employment contracts entered successively within a three-months span. Contract no. 4 will thus automatically entail a permanent-employment contract.
- Case: Duration of subsequent temporary-employment contracts longer than 36 months on aggregate, i.e. including any intervals of maximally 3 months. As soon as the entire working relation consumes 36 months on aggregate, the temporary-employment contract will be converted into a permanent one. This may coincide with the start of a new contract if all previous contracts totalled 36 months on aggregate. If the 36-months span is exceeded during an employment-contract term, then that contract will be converted instantaneously into a permanent-employment contract.

The rule also applies to temporary-employment contracts offered by employers who act as respective successors as regards an employee's tasks. This may, e.g., pertain to cases where a worker contracted by a

temporary employment agency initially works for an employer via that agency, and is subsequently recruited directly by that employer.

Wages

The WAADI Act (article 8) stipulates that temporary agencies should pay temporary agency workers wages equal to those earned by workers in the client enterprise. There are two exceptional cases to this rule; viz.:

1. The Collective Agreement on temporary work comprises agreements in respect of temporary agency workers' wages.
2. The Collective Agreement of the client enterprise comprises agreements in respect of temporary agency workers' remuneration in the sector.

The Collective Agreement for temporary workers 1999-2003 contains indeed agreements on wages. This implies that the general rule within WAADI is not applicable for temporary agency workers. Article 32 regulates that temporary agency workers only receive the payment level of the client enterprise if this enterprise has registered its Collective Agreement with a foundation that collects all those different agreements called the SMU (Stichting Melding Uitzendbranche). If there is no Collective Agreement registered with the SMU for the client' enterprise, the temporary agency worker receives wages as laid down by the Collective Agreement for temporary workers.

The wages according to the Collective Agreement Temporary Agency Work are based on the average wages of 50 Collective Agreements in other sectors. The reason that client enterprises are willing to register their Collective Agreement is to keep both their permanent as well as their temporary agency workers satisfied. Paying temporary agency workers a lower wage than permanent workers implies that hiring temporary agency workers is more attractive than hiring permanent workers. To avoid this unfavourable situation, trade unions push client enterprises to register their Collective Agreements with the SMU.

Task-classification system

In case the client enterprise has not registered its Collective Agreement, temporary agency workers are paid conform the Collective Agreement for temporary agency workers. The payment of temporary agency workers is regulated by a task-classification system, which divides tasks into two 'boxes'. The first box includes special groups of starters in the labour market, such as school-leavers, vacation workers, people who reenter the labour market and long-term unemployed. The people in this box earn a low starting salary. All other employees are in box 2, where they earn a higher salary. People may only spent a maximum of 12 months in box 1.

During the last negotiations, this division of temporary agency workers between the two boxes was the main point of discussion. The employers would like to classify also temporary agency workers without relevant work experience in box 1. The trade unions are afraid that this gives the employers the opportunity to save cost by ranking too many workers in box 1.

Education and pension

Besides new regulations concerning TAW contracts,²³ in the TAW Collective Agreement also provisions concerning education and pension have been included.

²³ Klaver, 2000.

Temporary work agencies have an obligations to put a certain percentage of the gross wage into a educational fund.²⁴ From this fund, schooling activities for temporary agency workers can be financed. Schooling means “any form of a structured activity aimed at obtaining, keeping up-to-date,²⁵ broadening or deepening the knowledge and/or skills of the (aspirant) temporary agency worker”. In the TAW Collective Agreement a provisions has been included that in any case a meeting is held with the temporary agency worker concerning his needs for schooling. Temporary agency workers have a right to such a meeting, but no right (to schooling) can be obtained from that meeting.

In the past temporary agency workers in general could not be eligible for pensions. The Flexicurity Law and the Collective Agreements of the ABU and NBBU have changed that. The TAW Collective Agreement provides the possibility to building up a pension from phase 2 onwards (i.e. for employees of 21 years of age and older). For the exact provisions and details of this pension scheme we refer to the TAW Collective Agreement.

Collective Agreement for temporary agency workers and client enterprises

Since nine years, client enterprises may register their Collective Wage Agreements with the SMU. This replaces the Collective Agreement for temporary agency workers by the Collective Agreement of the client enterprise. Following registry, it takes 13 weeks before the Collective Agreement of the client enterprise is valid for temporary agency workers as well. During those 13 weeks, or when there is no Collective Agreement registered with the SMU by the client enterprise, temporary agency workers are paid according to the temporary agency work Collective Agreement of ABU or NBBU.

Sometimes, however, client enterprises not only register their wage agreements but also other agreements, such as those concerning the conditions of employment (*secundaire arbeidsvoorwaarden*). Due to this overlap in Collective Agreements for temporary agency workers and of the client enterprise, the Netherlands Ministry of Social Affairs refused to declare the Collective Agreement for temporary agency workers as generally binding.

Discussions concerning the influence of the Collective Agreement for temporary agency workers and the Collective Agreement for the user firms also relate to pay. In collective bargaining these issues have been resolved through the task-classification system that came into effect on 1 January 2001.

Another unwanted effect of the lower wages in the Collective Agreement for temporary agency workers is that enterprises try to present themselves as a temporary agency while they are selling specific skilled personnel. By doing this, these enterprises can avoid to pay their staff higher wages conform the Collective Agreement of the sector the personnel belongs to.

²⁴ In the ABU TAW Collective Agreement this is 0,7% of the gross wage of temporary agency work-ers within that year.

²⁵ Definition in lline with Article 34 of the ABU TAW Collective Agreement.

Conclusion

The market for Temporary Agency Work in the Netherlands is relatively well developed. The size of the market is huge compared to other European countries. The market is highly liberalised, but, at the same time, provisions are taken to protect the position of the temporary workers. According to temporary work agencies the situation in the Netherlands may serve as an example for other countries.

Although the market for temporary agency work is relatively large, some important developments must be noted. In the first place there seems to be a clear indication that the demand for temporary workers is decreasing a little since the labour market as a whole shows severe and structural shortages. Employers are more willing to bind the scarce employees by permanent contracts. Because of this shortage on the labour market the steppingstone function of temporary agency work is becoming more important. At the same time the demand for flexible workers remains.

The Flexicurity Act tries to balance between job security for the flex worker and flexibility for the employer. After the Act came into force it seemed that temporary work agencies tried to avoid temp workers to become eligible for a permanent contract. The risk aversion and commercial interest of temporary work agencies caused a selection in temp workers. Some were offered permanent contract, while others were fired as a result of the implementation of the Flexicurity Act. At the moment it is not clear how the acts will work out in the long term. This will strongly be determined by the developments of the labour market as a whole.

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Annex 1: Definition of TAW

In order to define Temporary Agency Work, we use the definitions as formulated in the latest Collective Bargaining Agreement.

- **Temporary work contract:** The contract of employment under which the one party, being the employee, is hired out by another party, being the employer, within the scope of carrying on the employers profession or trade, to a third party in order to perform work under the supervision and direction of this third party pursuant to an order placed by the latter with the employer.
- **Temporary employment agency:** The natural or legal person supplying (hiring out) temporary workers to clients, being the employer as referred to in A.
- **Temporary worker:** The natural person who is registered with a temporary-employment agency for the purpose of obtaining temporary work and who enters into a contract of employment with this agency, being the employer as referred to in A.

Temporary Agency Work can be seen as a specific kind of flexible work. The definition of flexible work covers all atypical forms of employment as stand-in staff, zero-hours staff, standby staff, workers contracted by temporary employment agencies and employees holding fixed-term contracts. The number of working hours will be defined by contract. A full-time job is a job with agreed working hours that correspond to full-time working hours. Part-time workers are those people who work between 12 and 34 hours a week.

TAW in statistics

The definitions outlined above pertains to legal issues. The interpretation of terms in statistical data is even more important in order to allow for a comparison of data across countries. Unfortunately, in the Netherlands, data is collected based on different definitions of part-time and Temporary Agency Work. The Central Bureau for Statistics (CBS) includes in its definition of the working force only people working at least 12 hours. In most surveys covering temporary agency workers, this distinction is not made. Branch organisations include in their figures of Temporary Agency Work mostly also people who are sent on secondment (detaching).

Starting from 1999, the CBS makes a distinction between phases 1 and 2 (temporary agency workers not on a permanent contract) on the one hand and phases 3 and 4 (temporary agency workers on a permanent agreement and secondment) on the other. As a result, the number of working hours (phases 1 and 2) is not comparable to the number of labour hours provided by temp-agencies in previous periods. Neither is the total of phases 1 to 4 comparable to previous data, because the secondment hours are now included in phases 3 and 4.

Annex 2: Persons contacted

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Annex 3: Tables

Table 8: *Temporary agency workers and type of work, percentage*

	1992	1993	1994	1995	1996	1997
Office & administrative	32.9	32.3	29.3	29.4	30.8	30.1
Medical, paramedical & nursery	4.7	3.7	3.0	4.3	3.1	2.1
Technical (higher education)	10.7	10.4	12.1	13.3	13.1	10.0
Technical (factory work & production)	48.0	49.4	52.0	49.6	49.0	52.3
Other	3.8	4.3	3.5	3.5	3.9	5.5

Source: CBS, *Commerciële Dienstverlening, 1998*

Table 9: *Type of contract per sector*

	N	Permanent contract, or permanent in near future	Fixed-term contract	Stand-in and standby contract	Temporary worker	Freelance	Remaining*
Agriculture	401	75.1	5.7	5.2	2.7	0.5	10.7
Metal industry	1.158	94.4	0.9	1.3	2.3	0.6	0.4
Food industry	709	92.4	2.0	3.0	1.1	0.8	0.7
Process industry	793	95.3	1.5	1.3	1.3	0.5	0.1
Remaining industry	794	92.2	3.1	2.0	1.0	0.4	1.3
Building industry	1.022	95.4	1.5	1.3	0.3	0.5	1.2
Retail trade	572	84.1	1.0	10.5	0.7	0.5	3.1
Hotel & catering	274	74.5	2.9	13.5	1.5	2.9	4.7
Transport & communication	454	92.3	1.1	4.2	0.4	0.7	1.3
Business services**	1.222	94.8	2.0	1.6	1.3	0.2	0.2
Healthcare	2.727	88.0	2.2	8.3	0.4	0.6	0.5
Wholesale trade	434	91.7	1.2	2.8	2.5	0.9	0.9
Non-commercial services	318	75.5	4.7	6.0	0.9	0.9	1.9

* The category remaining consists of home workers and seasonal workers.

Source: TNO Labour, *Labour conditions of flexible workers and part-timers, 1999*.

Table 10: *Temporary employees by duration of work contract, percentage*

	Total	Male	Female
Less than 1 month	2.2	1.0	1.2
From 1 to 3 months	9.7	4.8	4.7
From 4 to 6 months	22.2	10.6	11.8
From 7 to 12 months	39.0	16.5	22.5
From 13 to 18 months	2.6	1.0	1.6
From 19 to 24 months	4.6	2.6	2.0
From 25 to 36 months	3.5	1.4	2.0
More than 3 years	8.7	2.9	6.0
Non-response	7.6	3.6	4.0

Source: Eurostat, 1999.²⁶

²⁶ Eurostat data on the total number of temporary employees do not match CBS figures. The Eurostat data are based on a survey N = 33,000. Temporary employees who work less than 12 hours a week are also included.

Table 11: *Characteristics of different kind of flexible workers, 1998*

	N	Permanent contract, or permanent in near future	Fixed-term contract	Stand-in and standby contract	Temporary worker	Freelance	Remaining*
Total population	10,989	86.8	2.1	4.7	1.1	0.7	1.5
Male	6,227	92.1	2.0	2.8	1.1	0.8	1.3
Female	4,733	86.4	2.4	7.5	1.2	0.5	2.0
15-24 years old	977	74.7	4.5	12.7	2.1	1.5	4.4
25-34 years old	3,456	92.4	2.2	3.0	1.1	0.8	0.6
35-44 years old	3,312	92.9	1.4	3.8	0.8	0.3	0.8
45-54 years old	2,607	92.4	1.3	3.5	1.0	0.6	1.3
55-64 years old	448	89.5	0.7	4.5	0.2	0.2	4.9
Only primary education	459	83.4	2.4	5.0	2.6	20.7	5.9
LBO/Mavo	1,653	90.2	1.9	4.4	1.3	0.6	1.6
MBO/Havo	5,909	89.1	1.6	5.9	1.0	0.7	1.7
HBO/University	2,672	91.9	3.1	2.8	1.0	0.7	0.5

Source: *TNO Labour, 1999*.

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EF/02/32/EN