

## **Draft recommendations for an action plan to tackle excessive flexibilisation at the University of Amsterdam**

**From the Temporary Personnel Committee (March 2016)**

**To the Executive Board of the University of Amsterdam**

In addition to its ambitions for teaching, research and valorisation, it is right and proper that the University of Amsterdam also aspires to be a good employer. Excessive flexibilisation of labour relations does not fit in with that as it encourages a cavalier employment policy<sup>1</sup> and is unfair to employees in failing to protect their personal interests. Offering the personnel who work for the University a stimulating work environment, job security and career prospects does fit in with that. The quality of teaching and research and the welfare of individual employees must be our priority. It should be remembered that the intrinsic commitment of the academic personnel in particular generates a great willingness on their part to put up with poor employment conditions, including long-term job insecurity<sup>2</sup>. Despite scarce resources we must therefore resist the temptation to use, or abuse, this willingness and to give up on what being a good employer entails.

Furthermore, the continuity of the organisation, for both colleagues and students, benefits when the overwhelming majority of personnel are not constantly changing.

A high staff turnover such as is inherent in a highly flexible workforce involves extra costs for recruitment, selection and entering into employment contracts (transition costs) as well as the loss of much tacit knowledge. In so far as permanent employment contracts are more costly, due to higher gross costs and risks under the Unemployment Insurance Act, it is advisable to critically examine the internal settlement model and own-risk bearer status and adjust it where necessary.

The principles and recommendations below are intended as policy recommendations for the UvA Executive Board in order to put limits on the flexible workforce, in accordance with point 8 of the ten-point plan that was the starting point of the reform agenda.<sup>3</sup> Apart from adjusting the appointment policy, it is also necessary to tackle the incentives that encourage the use of temporary employment contracts.

In addition to current legislation and regulations, the principles and recommendations are actually based on the trend in the University with respect to non-permanent staff as

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<sup>1</sup> The absence of a full assessment when an employment contract comes to an end contributes to this.

<sup>2</sup> Certainly in a labour market where the supply of personnel exceeds demand; compare with the Social and Economic Council's exploration of the labour market in the cultural sector (2016).

<sup>3</sup> See <http://democratisation.uva.nl/ten-point-plan/update-december/december/december/content/folder/point-08-restricting-the-number-of-temporary-employment-contracts.html>

surveyed by AIAS<sup>4</sup> as well as facts and background information as identified and listed by the works councils and the University Local Consultative Committee (UCLC) in recent years.

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<sup>4</sup> See [http://www.uva-aias.net/news\\_agenda/news/824](http://www.uva-aias.net/news_agenda/news/824)

## Basic assumptions

When appointing or contracting personnel at the UvA, we must act in accordance with both the letter and the spirit of labour laws and regulations that are designed to protect employees, even if that involves greater financial risks for the organisation than following the letter but evading the spirit of the prevailing legislation and regulations.

Putting a stop to the steady decrease in the percentage of permanent employment contracts<sup>5</sup> with the University is desirable, firstly to secure continuity within the organisation and, secondly, to offer legal certainty to the employees. Long-term and improper use of temporary employment contracts<sup>6</sup> should be avoided as much as possible.

Flexibility must be sought as much as possible through staff development and training enabling the workforce to be deployed in many roles, and use of the (temporary) nature of employment contracts should be kept to a minimum. This requires timely management on the part of the employer to adapt the deployability of employees.

Even if in relative terms significantly more permanent appointments were to become available, we need to constantly guard against ways being sought and found to undermine the concept of a 'permanent appointment'.

The basic assumption must be that regular ongoing duties<sup>7</sup> should be performed by permanent staff. Even if a specific course group or research project is non-recurrent, the broad programme of teaching and research<sup>8</sup> is certainly regular and ongoing at a large organisation such as the University of Amsterdam. In so far as temporary employment contracts are used, it is important to give the employee a valid explanation of the need for this. That is another aspect of being a good employer. The reason may lie in the circumstances (replacement during sick leave) or in the person of the employee (inexperience).

Where duties turn out not to be regular and ongoing due, for instance, to policy changes or lack of funding, permanent staff can still be dismissed because their job has become redundant, but in that case of course there is an obligation to redeploy them which we should make it a point of honour to fulfil. Improving (including broadening) the deployability of individuals, an internal labour market and a different way of looking at dismissed employees in the organisation should be elements in a staffing policy that

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<sup>5</sup> Where the term 'permanent employment' is used, this should be read as 'employment for an indefinite period of time'.

<sup>6</sup> Where the term 'temporary employment' is used, this should be read as 'employment for a specific period of time' or personnel who are not employed by the University.

<sup>7</sup> Regular ongoing work is in contrast with non-recurrent work. Teaching within the regular curriculum is regular ongoing work, despite student numbers fluctuating from year to year. Teaching on a new course for a different target group, when it is unclear in advance how many students that will attract is, in theory, not regular ongoing work. Research funded by the 2nd or 3rd flow of funds is non-recurrent work, but if, at the end of the temporary period, the member of staff is still working on his/her research in accordance with the Collective Labour Agreement or there is work for him/her on a subsequent research project, that person is engaged in regular ongoing duties and so a permanent appointment is justified.

<sup>8</sup> The government provides over €4.5 billion for scientific research every year.

prevents permanent appointments from becoming guaranteed jobs for life so that the employer wishes to make as few such appointments as possible because of the risks involved. This requires a change in the business culture.

The permanent/temporary ratio needs to be brought into better balance, not only at the level of the total workforce but also within the units with respect to specific groups of staff, jobs and job levels. The University should not allow its percentage of flexible workers (in the sense of not permanent) to differ from the general percentage for working people in the Netherlands to the detriment of the University.

For those jobs and age groups where the ratio between permanent and flexible personnel has got seriously out of balance, we recommend a maximum of 40% temporary employment contracts (in FTE)<sup>9</sup> for personnel in the junior academic positions (lecturer, researcher) and for personnel under the age of 45<sup>10</sup>. No personnel should be taken on under arrangements with employment agencies or secondment arrangements and this does not only apply to the primary process of teaching and research. In so far as the University participated in partnerships for teaching or research, personnel may be seconded from an appointment at the UvA to an external research institute.

To make it possible to reduce flexible working and increase permanent appointments in practice, a critical examination and, if necessary, a reform of social insurance and the method used to calculate overheads is needed, because that is where the incentives lie that drive the trend towards flexible personnel. Disproportionately high overheads allocated to employed staff act as an incentive to seek a way out through hiring and using external personnel (self-employed).

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<sup>9</sup> At the end of 2015, regardless of age, only 10% of FTE researchers and 40% of teaching staff had permanent employment contracts.

<sup>10</sup> The 30 to 45 age group is the age at which people are starting families and need to get in the housing market.

## Recommendations<sup>11</sup>

### 1. Clear personnel capacity planning

Plan personnel capacity (numbers of FTEs per field of activity and staff category, such as a staffing plan), based on aligning ambitions for activities with the available or foreseeable budget per unit<sup>12</sup>. The job level should always be based on the range of duties that has to be carried out and not on the pressure to assign staff to the lowest possible pay scale which leads to their assignment to an unrealistically low job level. Treat as many planned staff positions as possible as permanent positions and explain why the other positions are not permanent, as the starting point for the employment relationship is a permanent appointment.

Inform staff about this overview of personnel capacity planning (including staffing level and vacancies), so that they are informed about the possibility/impossibility of getting a permanent contract in a suitable position. It cannot be that anticipated cuts and the consequent need to reorganise is systematically factored into the widespread use of temporary staff. The director should monitor HR policy in order to prevent this.

### 2. The University of Amsterdam as a single legal employer

Formulate appointment policy university-wide as far as possible, where the University of Amsterdam is treated as a single legal employer and HR departments are managed centrally. Where exceptions have to be made due to special circumstances, present this appointment policy at faculty or departmental level to the relevant works council for approval and inform all personnel working at the University via the intranet. A culture needs to develop among managers, P&O and professors in which people take responsibility for a decent staffing policy instead of a culture of passing on responsibility for staffing policy. Managers should be educated in careful staffing policy and what being a good employer entails. The Eligibility for Permanent Incapacity Benefit (Restrictions ) Act (Wet poortwachter) and the Work and Security Act necessitate professionalisation in the P&O chain.

### 3. Lobby for more financial resources

Work to lobby government and industry, in or outside the Association of Universities of the Netherlands (VSNU), for more, and especially more stable, financial resources for the UvA and other universities so that relatively more permanent staff can be funded. Although it has not yet been demonstrated that permanent staff cost more than flexible staff, management believe that a larger proportion of permanent staff requires greater certainty with respect to financial resources.

### 4. Own-risk bearer status under the Unemployment Insurance Act should not be an incentive to temporary employment

Regard the own-risk bearer status under the Unemployment Insurance Act as an

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<sup>11</sup> These recommendations are intended to supplement Art. E.11 of the CAO NU 2015/2016.

<sup>12</sup> Given the Strategic Plan, this concerns the ambitions of the individual units; once the Strategic Plan has been revised, the ambitions of the UvA as a whole will also come into play. The average work force over the past three years could be the starting point, if that was realistic for the duties to be performed.

incentive for good social policy on internal and external mobility, but not as a reason to prevent individual staff members from building up benefit entitlements as much as possible. Taking responsibility for the own risk as an employer does not mean transferring the risk to the employee by using the appointment policy to prevent him or her from building up employee rights. The University must review the way in which the social insurance schemes are regulated with a view to preventing them from incentivising flexibilisation of staffing and experience being seen as a disadvantage.

5. Overhead costs should not be an incentive to temporary employment  
Review the on-charge method (allocation of overheads to staff deployment) so that it does not become a strong incentive to use flexible employment relationships.
6. Internal labour market for internal mobility of temporary staff  
Increase the chance of temporary staff transferring to a permanent position by setting up an internal labour market for employed staff (PID) and personnel not employed by the UvA (PNID) for as many vacancies as possible, both for academic staff and for administrative and support staff. Abandon the informal assumption that internal candidates should always have to compete with the entire external labour market<sup>13</sup>. Facilitate a logical internal mobility within the columns of the University Job Classification System (UFO). Use clear criteria for appointment and promotion with reference to the UFO job profiles; submit the faculty-level specifications to the Works Council for approval.
7. Development opportunities for temporary staff  
Make an extra effort on development (in the form of training, development plans and career pathways) for staff without a permanent contract who come into the categories PID-temporary or PNID (scholarship students, seconded students, temporary staff, independent contractors (VAR or IB47 status) and guest/non-salaried <67 years). The aim must be to offer members of staff in each job category the right qualification opportunities (such as gaining research as well as teaching experience or a UTQ for researchers and for level 4 lecturers; training in entrepreneurship and valorisation for researchers) to improve their chance of moving on to a permanent position. The allocation of personal development budgets to replace the current collective training and employability funds could help here.
8. No displacement by guests  
Avoid the use of guests or non-salaried people in the planned personnel capacity so that this type of employment relationship does not displace what should be paid temporary or permanent jobs. If a guest academic is not being paid by any institution at all for his/her work at the University, there has to be a valid reason for this which the person involved agrees with. Create a unique framework for the employment relationship with the non-salaried member of staff.

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<sup>13</sup> An internal labour market improves the career prospects for UvA staff and reduces losses from transition costs associated with external recruitment and large-scale selection.

9. No avoidance schemes

Prevent avoidance schemes (if necessary by means of a sanction); avoid methods of evading the application of the provisions on succession of fixed-term employment contracts<sup>14</sup> or the build-up of employees' rights more generally<sup>15</sup>.

Consider Article 2.3, paragraph 9 subparagraph a<sup>16</sup> and d and also paragraph 11<sup>17</sup> of CAO NU as having been rendered inoperative (i.e. recognition of the chain in the spirit of the Work and Security Act (WWZ)), so that the application of the provisions on succession of fixed-term employment contracts is no longer evaded through non-recognition of activities or through changing employers.

10. Increase in working hours with reference to an existing appointment

In the event of more than occasional increases in working hours link up with the existing (permanent) employment rather than accumulating a temporary employment or agency agreement/secondment into a (permanent) employment, especially if this is within the same job. The need to increase the length of the working week over the long term, unless the invitation to do so came from the employer, may be apparent from a real increase in work load over a period of at least 3 months.

11. Duty to give reasons for a temporary employment

Introduce an obligation to give reasons for every temporary employment contract and the hiring of every agency worker, seconded student<sup>18</sup> or self-employed person from outside. The explanation should be based on the work not being regular and ongoing (because of temporary funding or temporary replacement of a member of staff) or on it being a probationary period for regular work, or because there are reasons justifying this to do with the individual or his/her circumstances.

12. Permanent employment not to be used as a form of promotion

Avoid using temporary employment<sup>19</sup> as a selection instrument as much as possible (outside the probationary period and outside Article.2.3, paragraph 3 subparagraph b of CAO NU). Do not set any substantial and/or grant acquisition requirements other than 'good performance' for obtaining a permanent position rather than a temporary position.

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<sup>14</sup> E.g. treating a job as a training programme or the organisation of an overlapping series of temporary employments.

<sup>15</sup> E.g. employing someone on a temporary contract for less than two years in order to avoid the transitional compensation; contracting pseudo self-employed people.

<sup>16</sup> Intended to keep the employment of doctoral students outside the provisions on succession of fixed-term employment contracts.

<sup>17</sup> This means that employment and secondment agencies under university holdings are treated as different employers with respect to the same work.

<sup>18</sup> Directive 1999/70/EC requires employers to do this in order to avoid abuse of successive fixed-term employments.

<sup>19</sup> Although the lengthy and cyclical nature of academic work means that it is sometimes difficult to do a proper assessment within the maximum probationary period, try to exercise caution in using recurrent temporary employment contracts as a form of probationary period.

13. Minimum term and scope of temporary employment contract

Enter into temporary employment contracts for at least one year and wherever possible for two years, with at least 0.5 FTE.

14. No additional agreements that compromise the legal status

There should be no agreements in the individual appointment or employment contract or in the form of an additional settlement agreement that impair the employee's legal status or damage his/her interests in any other way<sup>20</sup>.

15. Retention of hours on conversion

In the event that the maximum period or the maximum number of employments is exceeded and the employment is converted by law into a permanent employment contract, the length of the working week should remain unchanged.

16. Restoration of rights

Restore rights where possible and necessary in those cases of chains that were not in accordance with the CAO (2/3 of 95<sup>21</sup>), even if there are costs associated with this and it is conceivable that this would change the order of seniority within a unit which would be relevant in the event of redundancies during a reorganisation.

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<sup>20</sup> E.g. penalty clause, relinquishment of rights under the Unemployment Insurance Act at the end of the employment or contract.

<sup>21</sup> See p.5 and 24 – 25 of the AIAS report 'Flexible employment at the University of Amsterdam'. Academic staff 160 Nov. 2015.

## **Evaluation of the policy to limit flexible working**

Two years after the introduction of measures aimed to put limits on the flexible workforce, the effect must be investigated by examining:

1. the percentages of temporary employment contacts (in FTE and head count) per unit and per job group (including hiring of external self-employed people) to identify changes and to allow adjustment of the maximum percentage per unit and per job agreed in CAO NU, as well as the maximum percentage flexible employment as recommended here for the positions of lecturer and researcher and for the < 45 age group;
2. internal mobility from temporary employment to permanent employment (within the UvA), to other temporary employment (within the UvA), to employment outside the UvA and to unemployment;
3. absence of revolving door arrangements;
4. improvement of the deployability of temporary staff through training and development pathways.