

New forms of employment

Casual work, Romania

Case study 59: Clock Advertising

This article documents the case of Clock Advertising, a company with a database of around 1,000 intermittent workers, formed over many years of employing casual or intermittent staff.

Introduction

Intermittent work, the type of casual work considered in this case study, is understood as labour by the day, provided and contracted outside a regular work contract. It has been traditionally encountered in Romanian rural areas, in agriculture and related sectors, for seasonal activities, and in the informal economy.

Intermittent work is regulated in Romania by Law 52/2011 governing activities of an occasional nature performed by day workers (henceforward intermittent workers), published in the Official Journal No. 276 on 20 April 2011. The regulation is in line with the country's commitments in the memorandum with the European Commission, under the Balance of Payment (BoP) assistance in conjunction with the International Monetary Fund (IMF). Since then, it has been amended twice (Law no. 277/2013, published in the Official Journal No. 661 on 29 November 2013; and Law 18/2014 published in the Official Journal No. 192 on 19 March 2014), with the newest legislation coming into force on 17 June 2014.

Whereas the initial draft bill allowed this simplified employment form only in economic sectors related to agriculture, the subsequent consultation process expanded the list of sectors where intermittent work was allowed to include advertising, as a result of an organised industry-level lobby.

When the draft proposal on intermittent work was made public, the company in this case study, Clock Advertising, was among companies that asked the Romanian office of the International Advertising Association (IAA) to start a dialogue with the Ministry of Labour on potentially including advertising in the list of sectors eligible to use this employment form. Clock Advertising was also involved in internal consultations within the International Advertising Association to coordinate the industry's lobbying effort.

While, in the initial regulation of 2011, intermittent work was not considered a labour relationship as such, in the latest version of the law this has been established as a proper work or employment relationship, albeit outside the Labour Code. Under this regulation, a beneficiary (henceforward employer) can hire the services of an intermittent worker ('day labourer') through an agreement of intent, without a written individual work contract.

This case study is based on interviews with the Managing/Executive Director of Clock Advertising (also the sole shareholder in the company), the Human Resources Manager, one HR administrator (a former intermittent worker, now a permanent employee with the agency), and an

intermittent worker with a one-year tenure with the agency. The interviews were complemented by desk research.

General characteristics of Clock Advertising

S.C. Clock Advertising srl, a limited liability company, is an agency specialised in 'below the line' advertising (which tries to reach consumers directly, for example through a mail shot, rather than promoting a product generally through media such as radio, television, billboards, print, film and the internet). Established in 2002, Clock Advertising is part of a larger group of advertising agencies; there is one shareholder who is also the executive manager of the company. The agency has representatives and employees in the 10 major cities of Romania (by population). It specialises in in-store promotions – which includes sampling, leafleting and consulting clients. Their clients are multinationals from the fast moving consumer goods industries.

The group employs a total of 41 people in Romania with a permanent work contract. Half of the female employees in their consulting department are former intermittent workers that were previously hosts or promoters for in-store promotions or similar campaigns, and have transferred to regular employment.

In 2013, besides the permanent staff, they employed 580 intermittent workers, according to the data provided during the interview with the executive manager. The casual workers they use are mainly female students, who work as promoters, product counsellors and hostesses for in-store campaigns. Occasionally they also employ men, for more specific products and brands. Most of the intermittent workers work with the company until they complete their university studies. Some of them stay with the company and are offered permanent working contracts, if there is a position that fits their professional and educational profiles and if they wish to stay in the industry.

Clock Advertising has a database of around 1,000 intermittent workers, formed over many years of employing casual or intermittent staff (the national and local labour exchange offices are not involved in mediating this type of labour). Although there is a formal HR policy, there are no eligibility criteria set out in a specific internal policy document, as the database is formed according to the clients' campaigns and needs. The company used to employ intermittent workers before Law 52/2011 came into force, by offering them part-time or even full-time work contracts, depending on their clients' needs and budgets. The database is managed by the HR department and the subsequent network of HR management units in locations where Clock Advertising operates.

There is no works council in the agency or any other form of worker organisation.

The workers interviewed were females, aged 24 and 25. One of them was a former intermittent worker, employed in the past by the agency as a promoter and host for in-store promotion, currently an employee with a full-time and permanent work contract for the position of HR administrator. She is 24, and studied for an economic studies degree in Bucharest. During her studies, she worked with two other agencies besides Clock Advertising as an intermittent worker. She had worked as a day labourer with Clock Advertising for six years, before becoming a proper employee in 2013, after graduation. She found out about Clock Advertising from a friend and began to work for them when she was asked by her friend to step in as a replacement at short notice. Now she is in charge of the recruitment and selection process of intermittent workers (promoters, hosts and team leaders).

The other worker is 25 and, at the time of the case study (April 2014), was studying for a Master's degree in Human Resources Management. She started working with Clock Advertising in 2013, after seeing an ad on Facebook. She has been working as an intermittent worker for three years, with various advertising agencies. Before Law 52/2011 on intermittent work came into force, she was employed on conventional work or collaboration contracts.

Design and implementation process

This industry has had a constant need for short-term workers to meet their clients' advertising needs and budgets. The 'below the line' advertising agencies, including Clock Advertising, took the opportunity to introduce this economic sector into the scope covered by the law when the Ministry of Labour announced its intention to regulate intermittent work. The agencies asked the International Advertising Association (IAA) in Romania to start discussions with the Ministry of Labour, and the Parliament. Clock Advertising was one of these agencies and they were involved in meetings within the IAA in order to decide on their objectives regarding the new draft bill and on the strategy to employ in approaching the Ministry of Labour and the Romanian Parliament. According to the director of the IAA Romania, the dialogue with the Ministry of Labour was one of their most successful experiences with a public authority. After the initial experience in 2011, the IAA was approached by the Ministry of Labour when revisions of the law were proposed in 2013 and 2014 (Eurofound, 2015). This report is also complemented by findings from a study carried out as part of this project – see the case study on intermittent law in Romania.

Below the line agencies noted that they had to bear the costs of signing and terminating work contracts, with all the bureaucracy and social protection costs associated with them, even though they needed to employ workers for only a few days in a given month. In addition, some of the agencies were using intermittent work de facto, as the advertising budgets offered by their clients would not allow proper employment, considering all the costs associated with it. The implications of this situation meant that some agencies were gaining an unfair business advantage, as they avoided the costs involved with legal employment. The new law and the opportunity to employ intermittent workers allowed Clock Advertising to compete with agencies that were already employing intermittent workers illegally and without a work contract, which according to the interviewed managers was common practice in the industry before the law was adopted.

Clock Advertising started to use intermittent work as soon as the law came into force in May 2011, at which point they stopped offering intermittent workers regular work contracts. Despite this, such workers stayed in the industry and continued to work under this new mode; the interviewed workers said this was because being an intermittent worker was an easy way of getting income while studying.

For the employees, the limitation of working with the same employer for a maximum of 90 days within one calendar year for one employer means they have to move from one agency to another after the expiration of the 90 days. However, finding a new employer in the industry as an intermittent worker does not seem to be difficult for the workers interviewed, as each of them works with several other agencies besides Clock Advertising. When choosing which agency to work with, workers take into account, among other things, the reputation of the agency in the industry, especially the degree of reliability in making timely payments. The intermittent workers form an informal network of friends and colleagues who spread the word about job offers, know the 'good' agencies and the 'bad' agencies, those who pay on time and those who do not.

The intermittent workers' decision regarding who they work with is influenced by factors unrelated to the framework provided by the law. They usually select the agencies they work with based on their word-of-mouth reputation. Many intermittent workers choose to work for Clock Advertising because of its good working relationships and fairness in dealing with the casual staff. Also, the workers interviewed appreciate that the agency's campaigns require intermittent staff more frequently than other agencies, even if they involve lower staff numbers.

The overall recruitment process is mainly run through Facebook. When agencies cannot find enough suitable workers from their own day labourers' database, they also post job ads on specialised websites (recruitment/jobs websites).

The agency is still using permanent work contracts for any work that is related to organising the campaigns and the proper functioning of the agency, especially in their consulting services.

However, intermittent workers are far more numerous and are solely used in the actual development of below the line campaigns. It is the specific nature of such campaigns, normally very short-term and organised with little prior warning, which makes the use of day labourers a sensible choice for Clock Advertising.

Working method, processes and procedures

The law does not provide specific guidelines for organising intermittent work and, in this industry, specific HR structures were developed for running this type of work. The case agency's HR manager coordinates the HR policy (such as staffing needs for different advertising campaigns/projects, work contracts, recruitment and selection) together with the Executive Manager and the project manager when it comes to their specific projects. Their strategy and decisions are influenced by their clients' needs and the campaigns (in-store promotions or product counselling where intermittent workers are needed).

Usually the workers find out about this intermittent employment from other colleagues or friends already employed under such contracts. Some workers find out about it when they are recruited via social media as a short-term emergency replacement, as one interviewee's experience showed. Workers may, and do, work with different agencies, as the law sets a limit of 90 days to be contracted by the same employer within one year. The HR administrator that transferred to permanent employment after intermittent work is also recruiting from among her former colleagues.

Intermittent workers are organised per project that can last from a few days to a few months.

Each project is run by a project manager (a permanent employee in the agency), assisted by HR administrators and supervisors or team leaders, the latter being in direct contact with the intermittent workers. Any problems encountered by intermittent workers are first addressed by the team leader. The team leader is also an intermittent worker, recruited from the pool of intermittent workers assigned to a specific project, or recruited specifically for the job. They have the task of training, monitoring, evaluating and reporting on intermittent workers' performance to the project manager in the agency.

The agency starts recruiting four or five days before actual work begins.

Normally, the HR administrator calls those intermittent workers in the database that fit the profile for a specific campaign and informs them of the task to be performed, the duration and net hourly payment. The day labourers are free to choose which campaigns to work on.

If the agency can't get enough workers from the database, there is a selection process, run by the HR administrator assigned to the project. A few days before the actual campaign or project begins, the agency provides free (and unpaid) training on the product or brand to be promoted and, if necessary, there are promotional or advertising materials (products, samples, leaflets and so on) provided. Many of the intermittent workers have a driving licence, especially team leaders, as sometimes they have to carry certain materials provided by the client to the workplace (team leaders' transportation expenses are covered by the agency, such as fuel expenses if they use their own car).

The schedule of each promoter is agreed upon with the team leader. Usually, workers are required to arrive in advance in order to set up their work station and be ready to start working the minute their programme starts (many regular intermittent workers have to commute in order to perform their work). Depending on the hours they need to work, they are entitled to breaks of 15 minutes for every six hours, and 20 minutes for eight hours, according to the worker we interviewed. For a total of 12 hours in a working day, the worker is entitled to a 40-minute break, which can be used throughout the day. Nevertheless, breaks have to be announced well in advance to the supervisor.

The most frequent conflicts between intermittent workers and the agencies in the industry occur because of delays in payment. Even though, until 2014, the law specified that payment should be made in cash at the end of the day for each day's work, after signing in the intermittent workers' registry or booklet, the workers said most payments were made at the end of the services performed or afterwards (a week, a few weeks or even a few months) and very often through bank transfer.

Even though the intermittent workers are often asked to open accounts with different banks, depending on the agency they are working with, Clock Advertising accommodates its employees in this respect. The agencies usually make payments when they receive the final payment from their own clients, while other constraints – such as the necessity to employ a few hundred intermittent staff from around the country – make it very difficult for agencies to pay at the end of each day of work, as they cannot provide team leaders with the necessary amount of cash. Some agencies inform the day labourers in advance about the time frame for the payment to be made, such as Clock Advertising, while others, despite an announced time frame, do not pay on time or at all, forcing intermittent workers to find informal ways of settling such situations, since there are no legal provisions covering this situation. The payment at the end of the day is no longer the only way to pay an intermittent worker, as Law 18/2014 allows for weekly payments in cash or via bank transfer, or the payment to be processed at the end of the activity, provided that there is a written agreement between the two parties.

The hourly tariff for intermittent work practised in the industry does not differ from agency to agency, but from campaign to campaign and from client to client. The tariff is agreed with the client. The most commonly used tariff in Clock Advertising campaigns is RON 7 (€1.60 as at 7 May 2014) per hour, net, according to the agency's executive manager. There is no negotiation involved between the agency and the specific intermittent workers, as the budgets are fixed by the client. The most frequent difficulty for the agency in employing day labourers is that, with so many new people always joining in the business, the agency does not always know how reliable they are, and often workers are late or fail to show up as agreed. Since the law does not provide for a way of dealing with such situations, and there is no contract or agreement involved, the practice is to subtract a penalty payment from the labourers' wage corresponding to the time considered as 'missed' from work.

If unable to show up for work, intermittent workers have to give a few days' notice; however, the agency has the means to keep track of such occurrences, and this may result in fewer future employment opportunities for such workers. For example, if the workers call in sick more than two or three times, the agency is not likely to consider them for future employment.

The labour protection and safety instructions are given to workers before they start their activities, as specified by the law. However, agencies have differing degrees of concern over occupational security, with some taking it more seriously than others. The stores where campaigns are run provide the specific instructions, depending on the location of the worker concerned within the store (near potentially hazardous spots, such as heavy merchandise shelves). The intermittent workers appreciate when labour protection is given proper attention and are aware of the fact that some clients perceive it as a mere formality.

Since 2013, a new legal provision requires employers to record specific training provided for their intermittent workers in a collective training file, as regulated by the specific labour health and security law. In 2014, both the employers' and workers' obligations were extended in this area. The workers now have to sign a declaration confirming that their state of health allows them to perform their work. The training and information on potential work risks must also take place when the working location changes. The employer has to provide adequate working and protective equipment.

The intermittent workers are not entitled to any social security, as the law provides only for a simplified form of employment and workers are subject only to a flat-rate tax on income. The affected workers are aware of the fact that they are not entitled to any social benefits. However, in Romania, students under the age of 26 benefit from healthcare without having to pay the relevant tax. According to the 2014 version of the law, the employers can also be liable in case of accidents: employers have the obligation to declare the work accident to their respective territorial unit and the labour inspectorate will investigate in order to establish liability.

Intermittent workers are also aware of the different types of labour contracts and generally prefer a work contract over intermittent work arrangements. However, considering that they need to fit work around their study arrangements, they accept working as a day labourer despite the pitfalls of this employment form. The workers interviewed were aware of many provisions of the law – those regarding payment, labour and security protection, the workers' registry and the 90-day limitations with the same beneficiary, but as they said, they were not counting the days, but the money. Those who have been working in the industry longer said they were given collaboration contracts or proper work contracts before the adoption of the law on intermittent work in 2011, and they found the intermittent work contracts were preferable as they had income security at the end of the month.

For Clock Advertising, it is quite easy to respect the law when it comes to the procedural or administrative aspects of organising intermittent work, compared to the more bureaucratic procedure for standard regular employment contracts. The agency has acquired the special booklet for recording day labour from the labour inspectorate and follows the instructions set by law (detailed in the annexes of the law) on how to fill in the booklet (each worker employed on a given day is counted as a new position or entry in the booklet). Payment is co-confirmed by the workers' signature in the booklet for each position recorded. The agency also submits copies of the booklet to the labour inspectorate monthly, as required by the law.

The agency complies with the obligation of transferring the 16% income tax payable by the workers (in Romania most labour tax, including this income tax, is paid by the employer).

External support

Clock Advertising did not encounter any major difficulties in using Law 52/2011. They do not know about any awareness campaign or assistance offered by the labour inspectorate on how to fill in the day labourers' booklet or other documentation.

Outcomes

The impact of Law 52/2011 on the industry was considerable, as it legalised what, in some cases, was undeclared work.

For Clock Advertising specifically, the law allowed the company to remain competitive, especially against those agencies that were not paying the costs associated with proper work contracts before Law 52/2011 came into force. The Clock Advertising managers consider the practice of dumping labour costs was a decision made by agencies pushed by the small budgets the clients provided for this type of advertising campaigns; budgets that would not have been compatible with permanent work contracts.

By reducing their staffing costs, Clock Advertising could be more flexible in meeting the demands of their clients. Also, the simplified employment procedure translated into reduced administrative costs for the company when using intermittent workers.

Even if, overall, the agency provides fewer work contracts, being able to use intermittent workers with a simplified employment procedure, the agency still employs staff on regular contracts for

those positions that require permanent staff, and they do offer permanent contracts to those intermittent workers they want to keep.

For the workers, in practice, the law has not changed much, as many aspects of the work remained the same as before the adoption of the law.

For instance, they were not getting paid in cash at the end of the working day and allowing for electronic payment and at the end of the activity was a way of legalising a current practice in the industry. The current day labourer interviewed appreciated having a proper work contract before Law 52/2011 came into force, as at least, payment was made on time and offered some security. Even if, for the mainly student day labourers in this industry, being an intermittent worker is a way of supporting themselves, the risks or insecurity associated with this type of work still pushes them to look for work with a permanent work contract. In addition, the former on-call worker mentioned the comfort of having a desk job with a proper work contract compared with the previous work for in-store promotions. The comfort comes not only from the social protection costs covered by the regular work contract, but also from the reduced level of stress coming from not having to stand for hours, with few breaks and working long or unusual hours, or both. Also, the payment gained for a few days of labour is sometimes barely enough to cover the costs associated with performing the work (food during working hours, transportation to and from the workplace).

There are few benefits for employees; one said the only one was the opportunity for quick income. In comparison to being unemployed and not learning any skills, however, being an on-call worker in the industry increases workers' employability for other positions within one of the agencies they work with, by getting to know potential employers and becoming known as a reliable worker.

One positive aspect of the work now properly covered by the law is the higher degree of protection required in the work place. Even if some clients treat it as a formality, for workers it is important to know there is an obligation to provide them with the proper protection, equipment and training.

Strengths and weaknesses

Intermittent work, as it is organised in Romania, has some strengths and weaknesses, for both workers and employers.

Overall, the agency welcomed the adoption of the law on intermittent work and the inclusion of the advertising industry under the scope of the law, even though there are still aspects of it that could be improved. BTL agencies were able to formalise what was, in some cases, undeclared work. In the case of Clock Advertising, it meant they could compete fairly against agencies dumping costs for labour by hiring casual workers off the books.

Also, because of the simplified procedure for hiring day labour, the agency saves money because of the reduced administrative burden related to drawing up and terminating contracts. This was a very important aspect of the law for them because they employ a large number of staff for short periods within a given year and, before 2011 they had to provide hundreds of working contracts each year.

The agency welcomed the latest amendments to the law which now allow payment at the end of the project (and not daily, as in the initial version of the law), and also offer the possibility of electronic payment.

The law does, however, have a few weaknesses, especially when it comes to its actual application, according to the agency managers. Clock Advertising has been subject to a number of visits from the local branches of the labour inspectorate to various stores where they were running campaigns. Following one of the visits, they were fined for 'using labour without a work

contract'. Clock Advertising is now contesting the fine in court and is ready to prove they were employing intermittent workers in accordance with Law 52/2011.

Other labour inspectors deemed that Clock Advertising was hiring day workers 'for the benefit of a third party', as they considered the agency was employing casual workers for the benefit of the agency's clients, something that is forbidden by Article 4 of the law. This is also being challenged in a court, in a case between the agency and the labour inspectorate.

Also, as Clock Advertising runs campaigns in their clients' sectors of activity the labour inspectors considered the agency to be in breach of the law. Clock Advertising understands that it is the employer's sector of activity that is covered by the scope of the law – hence, advertising – and not the activity as such (ranging from selling cosmetics to food and toys, sectors not under the scope of the law).

Another aspect that can be seen as a weakness of the law was pointed out by the executive manager interviewed. To circumvent the rule that an employer can only hire a specific day worker for a maximum of 90 days per year, agencies sometimes create more companies and use different registers for the same worker. This was not the case for Clock Advertising, as they have not reached the 90-day limit for any individual worker.

The main strength of the law, from a worker's perspective, is that it allows them to earn some money while carrying out their main activity, namely studying, as they can choose their jobs, based on their availability, the duration of the project and level of pay offered by the agency.

For intermittent workers it is also considered to be a way of gaining work experience and other skills they consider useful (in communication, public speaking, and work ethic), even though this type of work is not in line with their professional aspirations and does not offer opportunities for future professional development.

On the other hand, the workers consider that besides the immediate benefits, being employed for a long time as a day worker actually hinders their future professional careers, because it limits them to a single industry. For the workers, a history of employment as a day worker can have a negative effect on the transition into standard employment, as many potential employers are merely looking at their working experience, and do not look further into their university studies, or motivation for a different career, for example. Moreover, such work can be stressful; the HR administrator who used to be a day worker said she would not be willing to work again under such an arrangement.

An aspect still not covered by the law that has consequences for the workers is the lack of legal means of making the employer pay. If workers do not get paid, they have no legal means of forcing the employer to pay. This situation was mentioned by both day workers, although not in relation to the case study company.

Also, in the absence of proper work contracts, the years spent in intermittent work do not count towards social security and social protection benefits such as pensions or unemployment. In the longer term, this might put workers in the position of actually becoming beneficiaries of social assistance programmes, if the transition into proper employment is not successful.

Future plans

The agency intends to continue using day workers and monitor legislation on labour relations, as labour costs make up the bulk of their budgets and of industry costs overall. This is despite the legal challenge the company faces from the labour inspectorate as outlined above, which will be settled in court.

Commentary

Intermittent work is intrinsic to the activities of below the line advertising agencies Law 52/2011 has allowed them to organise their work without the costs associated with regular work contracts.

The main benefit of intermittent work for labourers in this industry, mainly students, is that it provides an easy way of gaining supplementary income. It is also an opportunity to acquire certain skills such as those related to communication, and work ethics. Also, it allows a certain flexibility while studying. Yet, a few years spent as a day worker in the industry may impact negatively on the prospects of finding different, conventional, employment, unless work contracts are offered within the industry and this is in line with the worker's professional aspirations.

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