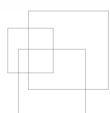




International  
Labour  
Organization

# NON-STANDARD EMPLOYMENT AROUND THE WORLD

Understanding challenges, shaping prospects



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Understanding challenges, shaping prospects

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# PREFACE

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In February 2015, the International Labour Organization held a Tripartite Meeting of Experts on Non-Standard Forms of Employment that assembled experts nominated after consultation respectively with governments, the Employers' group and the Workers' group of the Governing Body, to discuss over four days the challenges for the decent work agenda that non-standard forms of employment can generate.

The conclusions of the meeting called on member States, employers' and workers' organizations to devise policy solutions to address decent work deficits associated with non-standard forms of employment, so that all workers – irrespective of their employment arrangement – could benefit from decent work. Specifically, governments and the social partners were requested to work together to implement measures to address inadequate working conditions, support effective labour market transitions, promote equality and non-discrimination, ensure adequate social security coverage for all, promote safe and healthy workplaces, ensure freedom of association and collective bargaining rights, improve labour inspection and address highly insecure forms of employment that do not respect fundamental rights at work.<sup>1</sup>

The International Labour Office, the Secretariat of the Organization, was asked to support these efforts. A central part of the mandate is improving the knowledge and understanding of this important topic in the world of work. This report is part of that effort. It builds on preparations made for the 2015 Meeting of Experts, incorporating findings from a broad range of studies undertaken on economic and legal aspects of non-standard forms of employment in many countries and regions of the world, as well as on specific topics of relevance including the impact on firms and occupational safety and health.<sup>2</sup>

The report also forms part of the Office's work in support of the Future of Work Centenary Initiative, launched by the Director-General of the ILO. The changes in the world of work have brought forth new challenges and hardened old ones; the Organization

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1 For more details, see the "Conclusions of the Meeting of Experts on Non-Standard Forms of Employment", GB.323/POL/3, available at: [http://www.ilo.org/gb/GBSessions/GB323/pol/WCMS\\_354090/lang--en/index.htm](http://www.ilo.org/gb/GBSessions/GB323/pol/WCMS_354090/lang--en/index.htm).

2 Many of these studies have been published as working papers and are available at: <http://www.ilo.org/travail/info/working/lang--en/index.htm>.



must prepare itself if it is to respond effectively to them as it pursues its mandate for social justice during its second century.

We hope that this report will be a useful reference for those interested in bettering the world of work.

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# LIST OF ABBREVIATIONS

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<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations (ILO)
<b>CEEP</b>	European Centre of Employers and Enterprises providing Public Services
<b>CFA</b>	Committee on Freedom of Association (ILO)
<b>CIETT</b>	International Confederation of Private Employment Services
<b>DWCP</b>	Decent Work Country Programme
<b>ELFS</b>	European Labour Force Survey
<b>ETUC</b>	European Trade Union Confederation
<b>EU</b>	European Union
<b>Eurofound</b>	European Foundation for the Improvement of Living and Working Conditions
<b>EUROSTAT</b>	Statistical Office of the European Communities
<b>EU-SES</b>	European Union Structure of Earnings Survey
<b>EU-SILC</b>	European Union Statistics on Income and Living Conditions
<b>FDI</b>	Foreign direct investment
<b>FLSA</b>	Fair Labor Standards Act (United States)
<b>FTC</b>	Fixed-term contract
<b>GAO</b>	Government Accountability Office (United States)
<b>ICSE</b>	International Classification by Status in Employment
<b>ILC</b>	International Labour Conference
<b>ILO</b>	International Labour Office / Organization
<b>IT</b>	Information technologies
<b>LFS</b>	Labour Force Survey
<b>NDLON</b>	National Day Laborer Organizing Network (United States)
<b>NSE</b>	Non-standard employment
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSH</b>	Occupational safety and health
<b>SWTS</b>	School-to-Work Transition Surveys (ILO)
<b>TAW</b>	Temporary agency work
<b>UNICE</b>	Union of Industrial and Employers' Confederations of Europe

# EXECUTIVE SUMMARY

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**N**on-standard forms of employment (hereinafter “non-standard employment”, or “NSE”) have become a contemporary feature of labour markets around the world. Their overall importance has increased over the past few decades in both industrialized and developing countries, as their use has become more widespread across economic sectors and occupations.

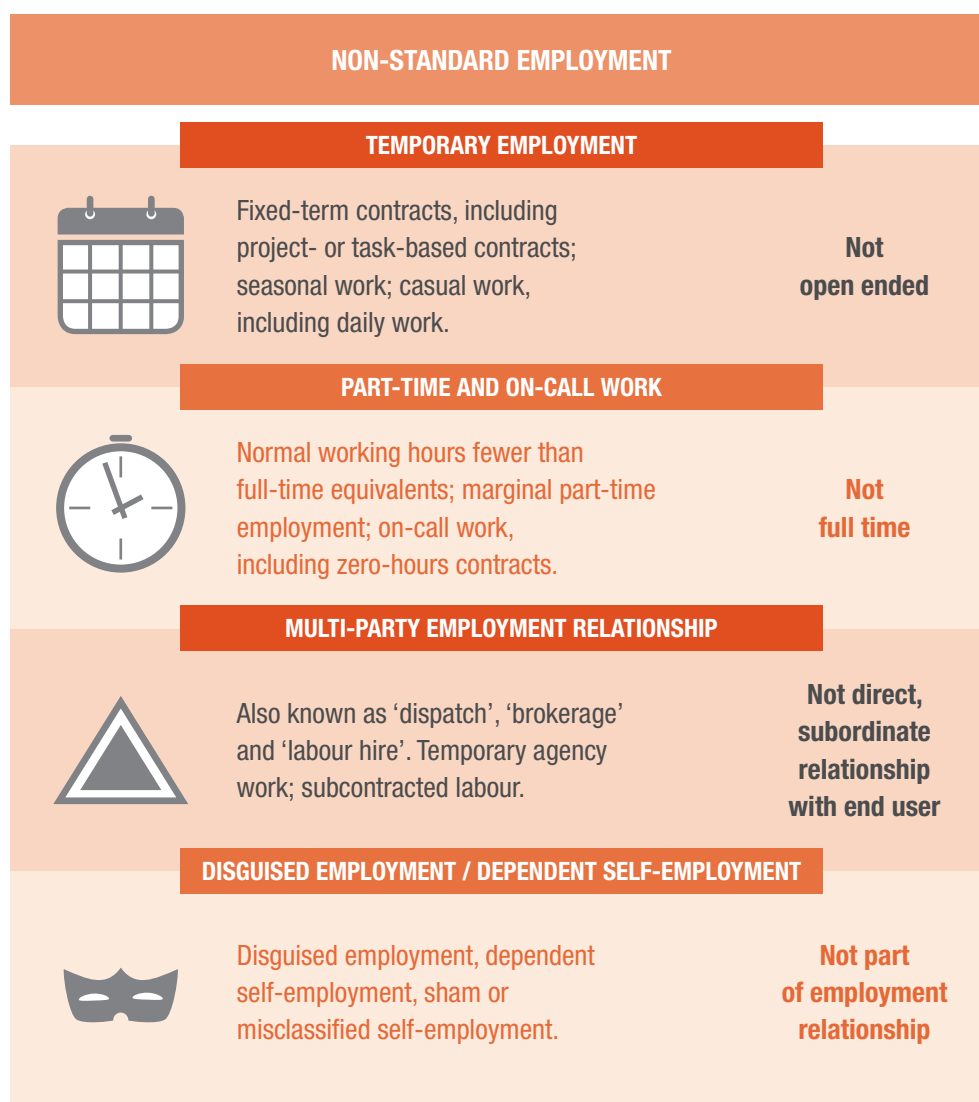
NSE comprises four different employment arrangements (see figure below) that deviate from the “standard employment relationship”, understood as work that is full time, indefinite, as well as part of a subordinate relationship between an employee and an employer.

For some, working in NSE is an explicit choice and has positive outcomes. However, for most workers, employment in NSE is associated with insecurity. NSE can also pose challenges for enterprises, the overall performance of labour markets and economies as well as societies at large.

Supporting decent work for all requires an in-depth understanding of NSE and its implications. This report details trends and consequences of NSE and draws on international labour standards and national experience to advance policy recommendations that help to ensure protection of workers, sustainable enterprises and well-functioning labour markets.

## TRENDS IN NON-STANDARD EMPLOYMENT

The growth of NSE is the outcome of multiple forces. It reflects changes in the world of work brought about by globalization and social change – such as the increased role of women in the world’s labour force – but also regulatory changes. At times, laws have encouraged the use of NSE – either purposefully or unwittingly – by creating incentives for its use by enterprises. In other cases, there are gaps or grey areas in the law that have provided fertile ground for the development of non-standard work arrangements. Some of these gaps have resulted from the decline of collective bargaining in countries where collective agreements had previously been the dominant form of regulation.



Key trends in NSE include the following:

- In over 150 countries, the average use of temporary employees in registered private sector firms is 11 per cent, with about one-third of countries around this mean. There are wide divergences in the use of temporary employment, however, ranging from under 5 per cent in Jordan, Latvia, Norway and Sierra Leone to over 25 per cent in Mongolia, Peru and Spain. There are also considerable divergences in its use by firms: more than half of enterprises do not use temporary labour, whereas around 7 per cent use it intensively (more than half of their workforce is on temporary contracts).
- While women make up less than 40 per cent of total wage employment, they represent 57 per cent of part-time employees. Many women work part time as it allows them to combine paid work with domestic and care responsibilities. In countries such as Argentina, Germany, India, Japan, the Netherlands, Niger and Switzerland, there is more than a 25 percentage point difference in women's participation as part-time employees when compared to men.



- Casual employment is a prominent feature of labour markets in developing countries, and has grown in importance in industrialized countries. In Bangladesh and India, nearly two-thirds of wage employment is casual; in Mali and Zimbabwe, one in three employees is casual. In Australia, where casual employment is a specific employment category, one out of four employees is casual.
- In industrialized countries, the diversification of part-time work into “very short hours” or “on-call” work, including “zero-hours” contracts (with no guaranteed minimum hours), has parallels with casual work in developing countries. In the United Kingdom, 2.5 per cent of employees were on zero-hours contracts at the end of 2015. Approximately 10 per cent of the workforce in the United States have irregular and on-call work schedules, with the lowest-income workers the most affected.
- Data on temporary agency work (TAW) and other contractual relationships involving multiple parties are scarce. In countries with available data, TAW spans from 1 to over 6 per cent of wage employment. Asian countries have witnessed the growth of various forms of dispatched, agency, subcontracted or outsourced work throughout the past decades. In Indian manufacturing, contract labour reached 34.7 per cent in 2011–12, up from negligible levels in the early 1970s.

### **NON-STANDARD EMPLOYMENT POSES RISKS FOR WORKERS, FIRMS, LABOUR MARKETS AND SOCIETY**

NSE, particularly when it is not voluntary, may increase workers’ insecurities in different areas. While insecurities can also be present in standard employment relationships, they are less prevalent than in the different forms of NSE. Key findings include:

- *Employment security.* Transitions from temporary to permanent employment range from a yearly rate of under 10 per cent to around 50 per cent, in countries with available data. The greater the incidence of temporary employment in the country, the greater the likelihood that workers will transit between NSE and unemployment, with the possibility of transitioning to better jobs less likely.
- *Earnings.* Workers in NSE face substantial wage penalties relative to comparable standard workers. For temporary employment, penalties can reach up to 30 per cent. Part-time employment is associated with wage penalties in Europe and the United States but carries wage premiums for higher-skilled workers in Latin America.
- *Hours.* Workers in on-call employment and casual arrangements typically have limited control over when they work, with implications for work–life balance, but also income security, given that pay is uncertain. Variable schedules also make it difficult to take on a second job.
- *Occupational safety and health (OSH).* There are significant OSH risks due to a combination of poor induction, training and supervision, communication breakdowns (especially in multi-party employment arrangements) and fractured or disputed legal obligations. Injury rates are higher among workers in NSE.

- *Social security.* Workers in NSE are sometimes excluded by law from social security coverage. Even when they are formally protected, lack of continuity in employment and short working hours may result in inadequate coverage or limited benefits during unemployment and retirement.
- *Training.* Workers in NSE are less likely to receive on-the-job training, which can have negative repercussions on career development, especially for young workers.
- *Representation and other fundamental rights at work.* Workers in NSE may lack access to freedom of association and collective bargaining rights either for legal reasons or because of their more tenuous attachment to the workplace. They may also face other violations of their fundamental rights at work, including discrimination and forced labour.

There are also important and under-appreciated consequences for firms, particularly if their use of NSE is intensive, as well as for labour markets and society at large:

- *Implications for firms.* Firms that rely heavily on NSE need to adapt their human resource strategies from training and development of in-house employees to identifying the sets of skills that the firm needs to buy from the market. An over-reliance on NSE can lead to a gradual erosion of firm-specific skills in the organization, limiting its ability to respond to changing market demand. While there may be some short-term cost and flexibility gains from using NSE, in the long run, these may be outweighed by productivity losses. There is evidence that firms that use NSE more, tend to underinvest in training, both for temporary and permanent employees, as well as in productivity-enhancing technologies and innovation.
- *Labour markets and society.* Widespread use of NSE may reinforce labour market segmentation and lead to greater volatility in employment with consequences for economic stability. Research shows that for temporary and on-call workers, it is more difficult to get access to credit and housing, leading to delays in starting a family.

## **POLICIES TO ADDRESS DECENT WORK DEFICITS IN NON-STANDARD EMPLOYMENT**

Building on guidance from international labour standards and current practices observed at the national level, this report advances policy recommendations to address decent work deficits in NSE in four main policy areas.

*Plugging regulatory gaps.* Ensuring equal treatment for workers in NSE is essential; it is also a way of maintaining a level playing field for employers. Establishing minimum guaranteed hours and limiting the variability of working schedules can provide important safeguards for part-time, on-call and casual workers. Legislation also needs to address employment misclassification, restrict some uses of NSE to prevent abuse, and assign obligations and responsibilities in multi-party employment arrangements. Efforts are needed to ensure that all workers, regardless of their contractual arrangement, have access to freedom of association and collective bargaining rights. Improving enforcement is also essential.

*Strengthening collective bargaining.* Collective bargaining can take into account particular circumstances of the sector or enterprise and is thus well-suited to help lessen

insecurities in NSE. However, effort is needed to build the capacity of unions in this regard, including through the organization and representation of workers in NSE. Where it exists, the extension of collective agreements to all workers in a sector or occupational category is a useful tool to reduce inequalities for workers in NSE. Alliances between unions and other organizations can be part of collective responses to issues of concern to non-standard and standard workers alike.

*Strengthening social protection.* Countries should strengthen, and sometimes adapt, their social protection systems to ensure that all workers benefit from social protection coverage. This may include eliminating or lowering thresholds on minimum hours, earnings or duration of employment so that workers in NSE are not excluded, or making systems more flexible with regard to contributions required to qualify for benefits, allowing for interruptions in contributions, and enhancing the portability of benefits between different social security systems and employment statuses. These changes should be complemented by efforts to guarantee a universal social protection floor.

*Instituting employment and social policies to manage social risks and accommodate transitions.* Macroeconomic policies should support full, productive and freely chosen employment, including through public employment programmes, when needed. Unemployment insurance programmes should cover a broader range of contingencies such as reduced working hours during periods of economic recession, as well as temporary absences of workers who are undergoing training. Policies to support parental and other care leave and to facilitate transfer from full-time to part-time work and vice versa, as well as the provision of care facilities, help workers to reconcile work and family responsibilities.

\* \* \*

Policies are needed to ensure that all types of work arrangements constitute decent work, as no contractual form is immune to the ongoing transformations in the world of work. While the years ahead will undoubtedly bring new changes, the dependence on work for one's livelihood and the effect of work on a person's overall well-being will not change. It is thus incumbent on governments, as well as employers, workers and their organizations, through national, regional and international efforts, to focus on these challenges in the context of the future of work, with the goal of promoting decent work for all.





*Textile factory, Ad-Dulayl Qualified Industrial Zone near Zarqa, Jordan*

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# INTRODUCTION

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The year 2019 marks the centenary of the International Labour Organization's founding at the end of the First World War. During the first century of the Organization, the world has been marked by impressive social and political transformations and technological advances that have led to unprecedented gains in social and economic development and changed the world of work. Nevertheless, much of these gains have not been fully shared, many workers continue to face important deficits in their working conditions, and the prospects for improvement are being tested by the emergence of new types and forms of work. Looking into the future, there are important debates about how to address these challenges, and how fresh technological advances will further transform the world of work, altering the role of human minds and hands in the workplace. Yet, reflecting on the future, it is important to bear in mind that, in general, fundamental aspirations around work have endured and will continue to do so.

Most workers want continuity in employment so that they can know when they will be paid next. They want work that allows them to balance their professional and personal life and that at the same time provides sufficient earnings. They expect a fair wage and equal treatment in pay – no one is pleased when the person beside them is earning more for doing the same work. Workers want protection in the event of illness, accident, unemployment or old age. They want safe and healthy workplaces. They want to have opportunities for training and learning so that they can develop their skills and further their careers. And they want the right to be represented at the workplace, and to be treated as human beings.

Employers and governments throughout the world have not only recognized such needs, but have also increasingly realized that fulfilling them can be advantageous for the prosperity of enterprises and for the well-being of societies at large. This is why advances in legislation and the implementation of policies regulating work, often grounded in social dialogue, have improved the working conditions of many workers in industrialized countries. Even in developing countries, where the gains have not been as widespread, there are still sizeable segments of the working population that have benefited from such developments, so that many jobs have met, or at least approached, these aspirations.

In most parts of the world, the laws regulating employment have hinged on a type of work characterized as continuous, full time, and part of a subordinate and bilateral

(or direct) employment relationship between an employer and an employee – commonly referred to as the “standard employment relationship”. The standard employment relationship provides important protections for workers but it also helps employers, who can rely on a stable workforce for their enterprise, retain and benefit from their workers’ talents and gain the managerial prerogative and authority to organize and direct their employees’ work.

However, over the past few decades, in both industrialized and developing countries, there has been a marked shift away from standard employment to non-standard employment. Non-standard forms of employment (hereinafter “non-standard employment”, or “NSE”)<sup>1</sup> are a grouping of employment arrangements that deviate from standard employment. They include temporary employment, part-time work, temporary agency work and other multi-party employment relationships, disguised employment relationships and dependent self-employment.

The rise in NSE is evident in the employment statistics of many industrialized countries. In developing countries, workers in NSE have always constituted a substantial share of the labour force, as many of them are employed temporarily in casual work, but NSE has also grown in segments of the labour market previously associated with standard jobs. Some forms of NSE lack data to track trends, but an increase is still discernible in public discourse and in the growing anxiety that many workers have about their jobs, standard and non-standard alike.

The growth of NSE is a concern because these employment arrangements are associated with greater insecurity for workers when compared with standard employment. There are also important and under-appreciated consequences for firms, who may underestimate some of the managerial demands that NSE entails, particularly if significant parts of their workforce are in non-standard arrangements. In addition, what may be desirable and beneficial for the individual worker or enterprise, especially in the short run, can have negative repercussions at the more aggregate level in the longer term, warranting policy responses. Such negative repercussions may include underinvestments in innovation, a slowing of productivity growth, risks to the sustainability of social security systems, increased volatility in labour markets and poor economic performance. There are also important social consequences that require further attention.

The rise in NSE is the outcome of multiple forces. It reflects changes in the world of work brought about through globalization, best expressed through the interconnectedness of businesses across the world by means of global supply chains, technological advances that have facilitated this connectedness, the shifting of manufacturing to developing countries and the growth of the services sector around the world; but also because of social changes such as the increased role of women in the world’s labour force, continuing international migration, as well as the needs of some workers for greater flexibility in the organization of their work and personal life. In some instances, the use of NSE in enterprises reflects a legitimate response to volatile market demands; in others, it embodies a breakdown of social norms regarding workplace solidarity and responsibility.

Regulation has played a central role in the growth of NSE, responding at times to economic and political forces, though also not responding at other times when it



was needed. In some instances, the law has encouraged its use – either purposefully or unwittingly – by creating incentives for enterprises to use such arrangements. In other cases, there are gaps or grey areas in the law that have provided fertile ground for their emergence. Collective bargaining, while still important in many countries of the world, has nonetheless seen a decline in its regulatory role. With this decline arose substantial gaps in the regulation of many workplaces, giving rise to alternative employment practices, including non-standard arrangements.

Responding to the challenge of globalization, the International Labour Organization adopted in 2008 the Declaration on Social Justice for a Fair Globalization, which calls upon the Organization to assist its Members in their efforts to “achieve social justice by promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity”.<sup>2</sup> Decent work is work that is productive and delivers a fair income, that ensures security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.

The ILO recognizes that work can have varied contractual forms. The goal is not to make all work standard, but rather to make all work decent. As the International Labour Organization enters its second century, it is incumbent on its constituents to reflect and respond to the significant transformations in the world of work. Just as the transformations in the world of work are ongoing, so too must be the policy responses. Understanding the sources and implications of this shift, and reflecting and adapting the laws, policies and institutions that currently govern national and international labour markets is essential for ensuring that the outcomes of this change are positive rather than negative.

## THE STRUCTURE OF THE REPORT

This report seeks to improve understanding of non-standard employment as well as provide guidance on policy measures to support the ILO’s mandate of decent work for all. It draws extensively on the guidance of international labour standards, including those governing some forms of NSE, as well as the eight Conventions that embody the fundamental principles and rights at work.<sup>3</sup> It aims to provide an objective, evidence-based overview of trends in NSE around the world and its consequences for workers, firms, the labour market and society, as well as to advance policy recommendations that support the ILO’s mandate of providing decent work for all.

The report begins, in Chapter 1, with an explanation of what is meant by non-standard and standard employment, and a consideration of the overlaps and differences with other concepts used to explain types of work, such as informality and precariousness. It then provides a definition of each of the different forms of NSE, both in law and in practice.<sup>4</sup>

Chapter 2 gives an overview of the incidence and trends of the different forms of NSE in a vast number of countries around the world. These trends are explained through a discussion of economic and regulatory changes that influenced these trends.



Chapter 3 takes a closer look at the incidence of NSE among three groups in the labour market – women, young people and migrants – to better understand why they are over-represented in some forms of non-standard employment.

Chapter 4 turns to an analysis of firms. It discusses the motivation of firms for using non-standard work arrangements and provides evidence on the degree to which businesses use these arrangements, based on available statistical data. It then reviews some of the possible consequences for businesses of this decision.

Chapter 5 looks at the implications of NSE for workers and labour markets in general. It addresses the extent to which different types of labour market insecurities affect workers in non-standard arrangements, resulting in decent work deficits. The chapter incorporates findings from a wide body of literature on the implications of NSE for workers and also draws on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the conclusions of the Committee on Freedom of Association (CFA), two important bodies in charge of supervising the application of ILO standards by member States.<sup>5</sup>

In the final chapter, Chapter 6, the report advances a series of policy recommendations, based on ILO standards and the experience of countries throughout the world, that reflect the specific objective of making decent work a reality for all workers and balancing the needs of workers and employers in the labour market and the economy. These are: (1) plugging regulatory gaps; (2) strengthening collective bargaining; (3) strengthening social protection; and (4) instituting employment and social policies to manage social risks and accommodate transitions. These policies aim to make non-standard jobs better, as well to provide support to workers, irrespective of their employment status.

## NOTES

- 1 For ease of reading, this report uses the term “non-standard employment” rather than “non-standard forms of employment”. Both expressions are equivalent, and represent a grouping of different forms of employment arrangements that deviate from the standard employment relationship.
- 2 ILO, 1999, p. 3.
- 3 The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Forced Labour Convention, 1930 (No. 29) and its Protocol of 2014; the Abolition of Forced Labour Convention, 1957 (No. 105); the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182).
- 4 The information provided in this report reflects findings as of September 2016; any developments subsequent to that date are not reflected in the report. Although the report has strived to be as comprehensive as possible in its legal analysis, there may be some unintended omissions. Readers who may be aware of any developments are encouraged to share this information by writing to us at: [inwork@ilo.org](mailto:inwork@ilo.org).
- 5 The CEACR is composed of high-level and independent legal experts who meet annually and whose mandate includes the assessment of the conformity of national laws and practice to the provisions of ratified ILO Conventions. The CFA is a Governing Body Committee and is composed of an independent chairperson and three representatives each of governments, employers and workers. It examines complaints about violations of freedom of association, whether or not the country concerned has ratified the relevant Conventions.



*Call centre worker, Bangkok, Thailand*

# CHAPTER 1

## What is non-standard employment?

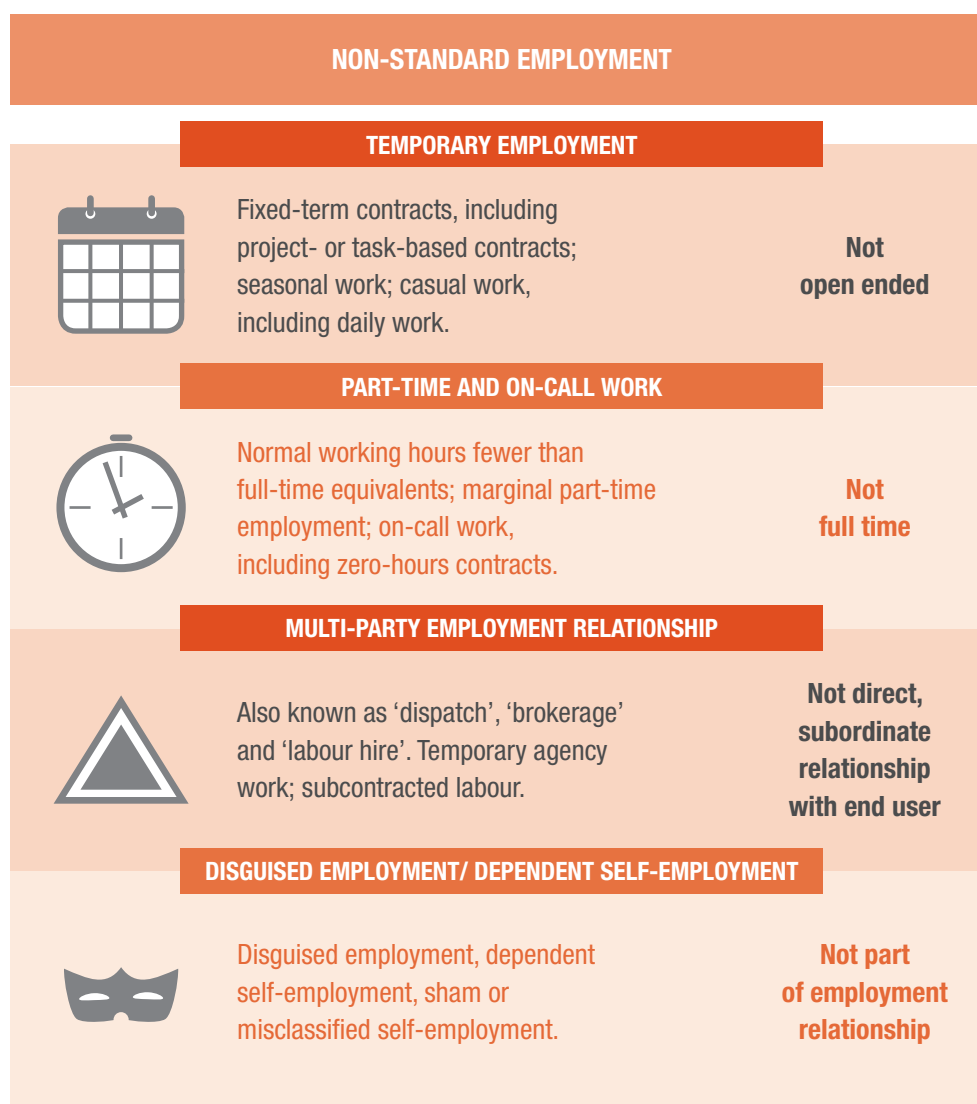
**T**here is no official definition of non-standard employment (NSE). Typically, the term encompasses work that falls out of the realm of the “standard employment relationship”, understood as work that is full time, indefinite, as well as part of a subordinate and bilateral employment relationship. In some instances, researchers also define the standard employment relationship as occurring at a set place of work outside the home. When this characteristic is included, then an even broader scope of tasks falls under NSE, including telework and other forms of remote work.

This report addresses four types of non-standard employment: (1) temporary employment; (2) part-time work; (3) temporary agency work and other forms of employment involving multiple parties; and (4) disguised employment relationships and dependent self-employment. The analysis is mainly focused on employees and therefore excludes independent, self-employed workers.

The classification of non-standard employment considered in this report follows the conclusions of the February 2015 ILO Meeting of Experts on Non-standard Forms of Employment.<sup>1</sup> The conclusions of this meeting were recognized by the Governing Body of the ILO. As a result, the definition cited above is the outcome of significant consensus at the international level. Within the four categories of non-standard employment, there are various forms of employment arrangements, some of which are specific to particular countries. Figure 1.1 gives an overview of some of the main forms of NSE and how they are different from the “standard” employment relationship. More detailed legal explanations of these categories are given later in this chapter.

Temporary employment whereby workers are engaged for a specific period of time includes fixed-term, project- or task-based contracts, as well as seasonal or casual work, including day labour. Fixed-term contracts (FTCs) can be either written or oral, but are characterized by a predefined or predictable term. In the majority of countries, FTCs are regulated by specific legal provisions on the maximum length of the contract, the number of renewals, and valid reasons for its use. Fixed-term contracts, as well as project- or task-based work, are found in both formal and informal employment relationships. Casual work is the engagement of workers on a very short-term or on an occasional and intermittent basis, often for a specific number of hours, days or weeks, in return for a wage set by the terms of the daily or periodic work agreement. Casual

Figure 1.1. The different types of non-standard employment



Source: Authors' illustration based on ILO, 2015a.

work is a prominent feature of informal wage employment in low-income developing countries, but it has also emerged more recently in industrialized economies in jobs associated with the “on-demand” or “gig” economy.

In part-time employment, the normal hours of work are fewer than those of comparable full-time workers. Many countries have specific legal thresholds that define part-time versus full-time work, thus distinguishing part-time work in legal terms. For statistical purposes, part-time work is usually considered as working fewer than 35 hours, or 30 hours, per week.<sup>2</sup> In some instances, working arrangements may involve very short hours or no predictable fixed hours, and the employer thus has no obligation to provide a specific number of hours of work. These arrangements come under different contractual



forms depending on the country, including so-called “zero-hours contracts”, but are commonly referred to as “on-call work”. Their main characteristic is the high variability of the number and scheduling of working hours. Yet because a substantial number of these workers are employed on a part-time basis, in this report they will be considered under “part-time work and on-call work”, even though these arrangements overlap with the concept of casual work.

When workers are not directly employed by the company to which they provide their services, their employment falls under contractual arrangements involving multiple parties, for example when a worker is deployed and paid by a private employment agency,<sup>3</sup> but the work is performed for the user firm. In most countries, an employment contract or relationship normally exists between the agency and the worker, whereas a commercial contract binds the agency and the user firm. Generally, there is considered to be no employment relationship between the temporary agency worker and the user firm; nonetheless, certain jurisdictions impose legal obligations on the user firm towards the temporary agency worker, especially with respect to health and safety. The user firm pays fees to the agency, and the agency pays the wages and social benefits to the worker. Although temporary agency workers are commonly recognized as being in an employment relationship, because of the multiple parties involved there may be limitations imposed on the rights of the worker or confusion regarding rights, particularly if the worker has provided services at the user firm for an extended period of time.

According to the ILO, disguised employment lends “an appearance that is different from the underlying reality, with the intention of nullifying or attenuating the protection afforded by law”.<sup>4</sup> It can involve masking the identity of the employer by hiring the workers through a third party, or by engaging the worker in a civil, commercial or cooperative contract instead of an employment contract and at the same time directing and monitoring the working activity in a way that is incompatible with the worker’s independent status. Thus the worker is purposefully misclassified as independent, self-employed worker, even though he or she is, in fact, in a subordinate employment relationship.

Some employment relationships can be ambiguous when the respective rights and obligations of the parties concerned are not clear, or when inadequacies or gaps exist in the legislation, including on the interpretation of legal provisions or their application. One area that sometimes lacks legal clarity concerns dependent self-employment, where workers perform services for a business under a civil or commercial contract but depend on one or a few clients for their income or receive direct instructions on how the work is to be carried out. These workers are typically not covered by the provisions of labour law or employment-based social security, although a number of countries have adopted specific provisions to extend some protections to dependent self-employed workers.

“Non-standard employment” is thus an umbrella term which groups together distinct forms of work contracts that deviate from the standard employment relationship. In many cases it is preferable to analyse and refer to each form individually, especially since the policy responses to any potential decent work deficits may need to be distinct. Nonetheless, it can be useful to have a general framework when examining non-standard work, for example, when addressing situations in which two or more “non-standard” dimensions are present. For instance, a worker may be hired on a fixed-term

contract by a temporary work agency and work a part-time schedule. Thus forms of non-standard work can often be associated and should not necessarily be regarded only on a discrete basis. Moreover, referring to a more general group of such work contracts can prove worthwhile, particularly when it is necessary to examine and address problems that are common to various forms of non-standard employment.

### **1.1. THE REGULATION OF EMPLOYMENT AND THE CONCEPT OF THE “STANDARD EMPLOYMENT RELATIONSHIP”**

While non-standard forms of employment bring together several distinct employment arrangements, an underlying commonality is that they are not “standard” employment. Yet there is no legal definition of “standard employment”. Rather, the idea of “standard employment” and more specifically, of a “standard employment relationship” comes from the legal regulation or “contractualization” of the employment relationship, which began to emerge in the United Kingdom and other European countries in the latter half of the nineteenth century, shaping the legal distinction between employment and self-employment.

The legal regulation of the employment relationship did not come about automatically in response to economic needs, nor was it a direct legal response to demands by workers or employers. Rather, employment law emerged and evolved along with economic changes.<sup>5</sup> In the United Kingdom, the Industrial Revolution produced a “hierarchical model of service, which originated in the Master and Servant Acts and was assimilated into the common law”.<sup>6</sup> As British scholars Simon Deakin and Frank Wilkinson explain in their seminal history of the evolution of labour law:

What emerged from the industrial revolution was not a general model of the contract of employment... It was only gradually, as a result of the growing influence of collective bargaining and social legislation and with the spread of large-scale enterprises and of bureaucratic forms of organization, that old distinctions lost their force, and that the term “employee” began to be applied to all wage or salary earners.<sup>7</sup>

In the United Kingdom, the “contractualization” of the employment relationship followed the development of social protection which began in the sixteenth and seventeenth centuries with the Poor Laws, and extended over the nineteenth and early twentieth century to the areas of workmen’s compensation, social insurance and employment protection.<sup>8</sup> The onset of these more encompassing forms of social protection was due in part to the arrival of democratic politics which made possible the emergence of collective bargaining and, with it, “solidaristic forms of social insurance”.<sup>9</sup> As these forms of social insurance developed, it became necessary to impose on employers the obligations of revenue collection and compensation for interruptions to earnings. An understanding emerged, by which the employee became subject to the managerial control of the employer, in return for “the basic conditions for participation in society”.<sup>10</sup>

The employment relationship gave management the power to direct labour, within certain limits, allowing firms to invest in the skills of their workforce. This was something that could not be done when labour was provided independently as a service. In order for a



worker to invest in learning firm-specific skills, which had limited value beyond the particular firm, it was necessary to establish an employment relationship. Thus the worker gained stability and continuity in work in exchange for the managerial prerogative and authority granted to the firm. This was a more efficient outcome than investing in repeated economic exchanges, which was the case in the absence of an employment relationship.

The emergence of the employment relationship, coupled with the introduction of limited liability that unleashed important sources of finance, propelled the rise of the vertically integrated “modern business enterprise”.<sup>11</sup> At the same time, the emergence of large-scale business provided the occasion for the extension of social protection within the employment relationship. Thus the State “became the implicit third party to the contract, channelling the risks of economic insecurity throughout the workforce as a whole through the social insurance system, and using social security contributions and income taxation to support the public provision of welfare services”.<sup>12</sup> As a result, in the British common law system, the courts began to view employment as a “relational” contract that would be maintained over time and in which there were mutual commitments from all parties.<sup>13</sup>

Similarly, in civil law systems, the employment relationship evolved in tandem with economic changes, departing in most instances from the established principles regulating other contracts. Specific regulation came to be built around the employment, which also integrated principles of managerial control as well as protective elements.<sup>14</sup> With the emergence of the vertically integrated firm, “in several legal systems the boundaries of the legal concept of employer have been drawn so as to coincide with the boundaries of the economic organization within which the work is performed”.<sup>15</sup> This contributed to reinforce the construction of the employment relationship as “bilateral”, namely between one worker and one employer who is in charge of the economic organization, exerts control over the worker and is the recipient of the obligations stemming from the employment relationship.

As mentioned, the word “standard” does not appear in any legal texts governing employment. Nonetheless, the regulation of employment came to be viewed as “standard” as it was part of greater transformations in the world economies and in business. With these transformations came the understanding that the work would be sufficient to satisfy a person’s “fundamental needs” and would therefore provide a stable and adequate income sufficient to take care of a growing family, provide security against unforeseen events that could impede the ability to work, and offer security in retirement.<sup>16</sup> As a result, the design of the social insurance systems that accompanied the employment relationship came to be based on the assumption of a full-time, indefinite and subordinate relationship.

From the standpoint of legal classification, this relationship is “linked to the notion of subordination of one person to another. Be it through the ‘control test’ devised by English courts [...], or through the concept of *lien de subordination juridique* typical of French law and of other civil law systems, all national notions of contract of employment are premised on a paradigm of work that is based on an inherently vertical power relationship between employer and employee.”<sup>17</sup> In the last few decades, however, significant organizational changes have occurred and business practices arisen that have put pressure on the notion that the employment relationship is exclusively bilateral,<sup>18</sup> as well as reducing the grip of legal tests based on strict hierarchical control.<sup>19</sup>

Figure 1.2. The multiple functions of the employment relationship



Source: Adapted from Rubery, 2015.

These socio-economic changes have prompted a renewed reflection on how to address the gaps in legal and social protection arising from the disintegration of the vertically integrated firm and the subsequent distribution of the functions and managerial prerogatives traditionally concentrated into one single employer among several business entities.<sup>20</sup> In addition, these changes “have strained the narrow readings of most of the early definitions of employee or salaried worker”,<sup>21</sup> based on the notion of subordination. As discussed below in this chapter and in Chapter 6, this has, on the one hand, led courts to develop new “multi-factor” tests that go beyond the control test in common law countries, such as in the United States, or to adopt an “expansive” notion of subordination in some civil law countries, such as Italy and France. On the other hand, it has contributed to an increase in the number of dependent self-employed workers, prompting lawmakers in several industrialized countries to extend some labour and social protections to them even if the arrangement with their counterparts does not meet the legal criteria to be classified as an employment relationship.<sup>22</sup>

Such actions have been prompted by the recognition that the employment relationship serves multiple purposes, in addition to the provision of social protection. These purposes are represented as nodes in figure 1.2 to illustrate the separate, though interrelated, functions arising from the employment relationship. First and foremost, the employment relationship provides “employment and income security” by ensuring continuity in work and, in most jurisdictions, by requiring valid reasons for dismissal. Employment

and income security is the issue for which the differences between standard employment (with set hours and unlimited duration, and thus an assured income stream) and some forms of NSE (where hours are variable and not guaranteed or where there is no expectation to continue the employment relationship beyond a certain date or event) are most apparent. By establishing an employment relationship, earnings from work may be regulated through working time and minimum wage laws or collective bargaining agreements in order to deliver a level of income that provides decent compensation for performed work and ensures the well-being of the worker and his or her family, while laws regulating dismissal are aimed at protecting the worker from arbitrary and unfair dismissal.

Moving clockwise around the circle, the second node, on “safe and healthy workplaces”, recognizes that ensuring the safety and health of the worker – while a responsibility of both employer and worker – is primarily regulated at the workplace and secured through the employment relationship. Complying with occupational safety and health (OSH) may require specific changes in the production process: worker involvement is critical and bipartite workplace committees on OSH help to avoid unnecessary risks. ILO standards protect workers’ right to refuse unsafe work, yet this is difficult to ensure when the employment relationship is tenuous or non-existent, or when the workplace is different from that of the principal employer.

The third node, “enhancing productivity”, acknowledges that the employment relationship makes labour a “quasi-fixed cost in production”, meaning a cost that is not completely variable, which is the case when labour is hired “as a service”.<sup>23</sup> Because of these fixed costs, businesses have an incentive to improve productivity by investing in the skills of their workforce and in technological and organizational improvements that enhance productivity. Safe and healthy workplaces also contribute to enhancing productivity at the workplace through the organizational improvements that they typically bring, as well as the avoidance of costly accidents and sickness.

The fourth node, “stable economy”, is the outcome of the employment and income security provided by the open-ended employment arrangement. With predictable and reliable incomes, workers can invest in housing as well as purchase other goods and services that stimulate aggregate demand and hence contribute to economic growth, stability and prosperity. Moreover, employment protection legislation, coupled with the investments made by firms in workers’ skills, means that employers will not necessarily dismiss workers at the onset of an economic recession, thereby mitigating job losses and the negative economic effects of a recession.

Continuing around the circle, the employment relationship provides the mechanism by which workers can organize their collective “voice” in the workplace. Union representation allows workers to raise concerns, which is especially important with regard to workplace safety issues, while the collective bargaining rights of workers allow them to negotiate pay, working hours and other working conditions on a more equal footing with employers.<sup>24</sup> “Voice” in the workplace is often seen as a pillar of democracy, as voicing concerns can allow workers to reach more equitable and fair outcomes, thereby establishing social norms that influence wider societal behaviours.

Many workplace institutions that support “fair treatment” in the workplace rely upon the recognition of an employment relationship. The mechanisms of “fair treatment” include dispute resolution systems, labour courts and tribunals and provide workers with legal protection in cases of unfair treatment – for example in cases of pay discrimination – as well as opportunities for redress.

“Equality of access” recognizes that “employers are the gatekeepers to employment; their hiring, selection and retention strategies determine access to employment”.<sup>25</sup> Laws prohibiting discrimination in employment and occupation,<sup>26</sup> which constrain employers from discriminating on grounds such as race, colour, sex, religion, political opinion, national extraction, social origin, age or sexual orientation, ensure a more inclusive labour market. These laws can provide important protection against exclusion and marginalization, but often their scope is limited to the employment relationship.

Finally, “social protection” – although sometimes mistakenly considered to be the only function of the employment relationship – is nonetheless a critical function. While some forms of social protection can be, and often are, provided outside of the employment relationship, other forms such as unemployment benefits, workers’ compensation and pensions are tied to employment. These programmes are essential components of a comprehensive social security system that allows for a higher level of protection.

These principal functions of the employment relationship are not necessarily limited to “standard” employment. However, with certain forms of NSE discussed in this report, especially the more casual forms of work, there may be difficulty in achieving income and employment security, with ramifications for many of the other nodes of the circle, such as social protection, productivity enhancements and stable economy. Also, depending on how these non-standard forms are regulated and complied with, there may be consequences for equality of access, safe and healthy workplaces, fair treatment and voice.

Although the “standard” employment relationship is not a legal concept, it has been widely associated with the typical male “breadwinner” in industrialized countries. The tendency to categorize full-time, open-ended and subordinate employment as “model” or “standard” employment, and the subsequent development of labour protections attached to this model, has perpetuated gender biases in the labour market with respect to paid work outside of the household and unpaid care activities in the home. Thus men were presumed to be the breadwinners and women the caregivers, in an unspoken “gender contract”.<sup>27</sup> As a result, women were often relegated to the “margins of paid work”. Because of care responsibilities, women were presumed not to be able to dedicate themselves to full-time work, and these obligations also kept them from doing so.<sup>28</sup> Moreover, some original laws and standards were designed to limit women’s working hours and, in female-dominated industries, minimum wages were set below those of comparable men’s wages, in effect legislating for their secondary role in the home and the labour market.<sup>29</sup> For these reasons, women’s participation in the labour market has often taken the form of non-standard employment, as will be discussed in Chapter 3.

Another shortfall of the concept of the standard employment relationship is its relevance to developing countries, where wage employment is more limited and often takes the form of casual work. For countries with lower levels of economic development,

“standard” employment as commonly described is not standard. Nonetheless, the regulation of the employment relationship in developing countries is similar to that in developed countries and many of the concerns about the effects of NSE on workers, businesses and the labour market are as applicable to developing countries as they are to developed countries. While some forms of NSE such as casual employment have been a regular feature of labour markets in many developing countries, other forms, such as temporary agency work, have begun to appear in the past few decades.

## 1.2. NON-STANDARD EMPLOYMENT IN DEVELOPING COUNTRIES AND OVERLAP WITH INFORMALITY

Rather than making a distinction between standard and non-standard employment, most discussion of labour markets in developing countries has focused on whether employment is formal or informal. Like NSE, formality and informality are umbrella terms for a diverse set of employment arrangements. In the ILO’s Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), informality is described as referring to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. The International Conference of Labour Statisticians (2003) defines informal employment to include: (1) own-account workers and employers in their own informal sector enterprises; (2) contributing family workers; (3) members of informal producers’ cooperatives; and (4) employees holding informal jobs. Employees with informal jobs are those whose employment relationship is,

...in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.). The reasons may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions); employment by unincorporated enterprises or by persons in households; jobs where the employee’s place of work is outside the premises of the employer’s enterprise (e.g. outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason. The operational criteria for defining informal jobs of employees are to be determined in accordance with national circumstances and data availability.<sup>30</sup>

It is clear from the above definition that there are important overlaps between NSE – in which many forms do not provide legal protection, either in law or in practice – and informality (figure 1.3). In many developing countries, much of the labour force is employed informally, often as self-employed but also as casual workers, homeworkers or domestic workers. Formal and “standard” wage employment does exist – even in low-income, predominantly agrarian countries – but in many instances limited to the public sector, including basic services and manufacturing. Nevertheless, the concept of the employment relationship is still highly relevant to developing countries as it forms the basis of labour law for all countries, rich or poor. Thus, even if many workers in developing countries have never “performed work that corresponds to the industrial employment model around which ‘conventional’ labour law protection is shaped”,<sup>31</sup> the

Figure 1.3. Overlap of non-standard employment with informality and precariousness



Source: Authors' illustration.

standard employment relationship is still at the centre of labour law and arguably an aspirational goal for most countries of the world.<sup>32</sup>

There are important distinctions between the concepts of standard/non-standard and formal/informal that warrant separate consideration. For this reason, the report does not classify all informal employment arrangements as “non-standard”. Several studies of non-standard employment in industrialized countries consider self-employment as non-standard employment.<sup>33</sup> In an industrialized country context this may make sense as the self-employed do not constitute a large part of the labour force, and there is evidence of a rise in “self-employment” – much of which is disguised wage work – in many parts of Europe and North America.<sup>35</sup> Yet at a global level, the large presence of self-employment is often not the result of a misclassification of wage work, but rather the direct result of lower levels of economic development and the subsequent lack of wage employment opportunities. Without these opportunities, many workers depend on self-employment as a means of subsistence. The policy responses for informal



self-employment, whether directed at the worker (through the extension of social protection to the individual or finance and training to grow their business) or at the macroeconomic environment (growth in GDP to stimulate the shift from self-employment to wage employment) are distinct from those that would be applied to bogus self-employment in industrialized countries. In addition, for genuine self-employment there is no employment relationship, with many self-employed workers toiling independently to produce and sell goods and services on the market.

For these reasons, this report does not consider genuine self-employment as part of non-standard employment. It does, however, consider disguised employment relationships (also known as “sham” or “bogus” self-employment), as well as “dependent self-employment”, which in some jurisdictions is specifically regulated and granted partial labour protection. These two specific forms of “self-employment” have emerged in the last decades as a result of new business practices, and are often associated with risk-shifting on the part of firms. The workers continue to exhibit some types of dependency on the firm, and as a result the relationship between the worker and the firm falls into a grey area, necessitating policy responses.<sup>35</sup>

Furthermore, this report considers wage workers in an open-ended employment arrangement as “standard” even if their employment contract is not registered with the public authorities, or, in other words, if they are “informally” employed. Such workers have the expectation of a continuation in employment, even if that employment is regulated principally through social norms. Moreover, most jurisdictions recognize oral and tacit employment arrangements as legitimate employment relationships. Although it is less likely that a worker in a tacit employment arrangement will seek redress in the case of dismissal without valid reasons, this relationship is nonetheless treated as “standard” in most legal jurisdictions.

Temporary contracts – be they formal or informal – are considered as non-standard, in recognition of the non-continuous nature of the employment relationship and the different legal rights accorded to temporary workers in most jurisdictions. In developing countries, the predominant form of temporary employment is casual. While it is not “new” and is primarily informal, it is nonetheless regulated in many jurisdictions (see section 1.4). Moreover, in some developing countries, as will be discussed in Chapter 2, there has been a rise in the use of formal, fixed-term contracts, which have been substituted for open-ended contractual arrangements. Thus even though the work is “formal”, it has shifted from standard to non-standard. Some developing countries have also witnessed a growth in subcontracting arrangements, many of which are informal. This practice has been referred to as the “informalization of the formal economy” by some scholars, as it also represents the replacement of jobs that were formal, standard jobs, with jobs that are non-standard, and often informal.<sup>36</sup>

Finally, while some occupational categories such as domestic work may feature a high incidence of non-standard employment, this report does not single out domestic work explicitly, as the analysis is focused on the form of the employment relationship and not on a specific occupation. Domestic work was the subject of two international labour standards adopted in 2011 – Convention No. 189 and its accompanying Recommendation No. 201 – which catalysed a global effort to bring “decent work” to domestic workers.<sup>37</sup> Home work is also sometimes considered as a form of non-standard employment, but it is also

not explicitly considered in this report. It is covered under the Home Work Convention, 1996 (No. 177), and, like domestic work, is often governed by specific legal provisions.

### **1.3. THE DISTINCTION BETWEEN NON-STANDARD EMPLOYMENT AND PRECARIOUS EMPLOYMENT AND THE NEED TO ADDRESS INSECURITIES AT WORK**

Non-standard employment is sometimes referred to as “precarious work”, though there are important distinctions to be made between the two descriptions. Although “precariousness” has its own varying definitions, it is typically understood as work that is low paid, especially if associated with earnings that are at or below the poverty level and variable; insecure, meaning that there is uncertainty regarding the continuity of employment and the risk of job loss is high; with minimal worker control, such that the worker, either individually or collectively, has no say about their working conditions, wages or the pace of work; and unprotected, meaning that the work is not protected by law or collective agreements with respect to occupational safety and health, social protection, discrimination or other rights normally provided to workers in an employment relationship.<sup>38</sup> A defining characteristic of precariousness is that the worker bears the risks associated with the job, rather than the business that is hiring the worker.<sup>39</sup> In addition, precariousness has been linked to certain demographic characteristics, so that specific attributes of the worker – their sex, ethnicity and place of origin – often predispose them to be channelled into precarious work. Certain sectors are also more commonly associated with precarious work, reflecting, in part, the different degrees of regulation that govern various sectors, including the presence – or absence – of trade union representation and collective bargaining.<sup>40</sup>

Like informality, precariousness can be found within both standard and non-standard jobs<sup>41</sup> (see figure 1.3). Indeed, it is important to bear in mind that although “standard employment” is taken as a benchmark in discussions of NSE, there are differences between and within countries in the working conditions of many “standard” jobs, and many workers in “standard” jobs may end up in a precarious situation, for example, if their wages are at the poverty level, if the continuity of their job is uncertain, or if the job exposes the worker to occupational hazards. The use of “standard” as a benchmark is not because the working conditions are always good, but rather that new contractual forms have emerged which deviate from the principal characteristics associated with standard work (that it is continuous, full time and part of a bilateral employment relationship). But, just as standard jobs can be precarious, it is also the case that non-standard jobs are not necessarily precarious – the two are not synonymous. Non-standard is about a contractual form, whereas precariousness refers to the attributes of the job. Nonetheless, both “reflect changing employment conditions and the loss of conditions held or aspired for”.<sup>42</sup>

Rather than labelling non-standard employment as precarious, it is more useful to consider the insecurities that may be associated with any work – whether standard or non-standard. Building on the past work of the ILO,<sup>43</sup> this report considers seven areas of potential insecurity. These insecurities, depicted in figure 1.4, cover many



Figure 1.4. Seven areas of potential work insecurity



Source: Authors' illustration.

of the areas regulated by ILO standards and provide a useful prism for analysing potential decent work deficits in non-standard employment.

1. *Employment.* Employment insecurity centres on concerns over remaining employed, or the risk of losing income-earning work. These risks are higher if there are no, or very limited, impediments to dismissal, if there is a low expectation of continued employment, but also if there are limited prospects in the labour market if the worker does lose their job.
2. *Earnings.* Earnings' insecurity stems from earnings that are so low that they do not provide a "minimum living wage",<sup>44</sup> or from uncertainty with respect to future earnings if, for example, work is uncertain.
3. *Hours.* Too few hours, too many hours, or hours that are constantly changing pose specific problems for workers. Hours that are insufficient or unpredictable can lead to concerns over insufficient earnings. Hours that are excessive create risks for workers' safety and health and can lead to conflicts over work–life balance. Hours that are unpredictable, especially if workers cannot voice concerns over their schedules or influence the setting of their hours, can also lead to work–life conflict, as well as having repercussions on safety and health and leading to insecurity over earnings. In addition, certain scheduling patterns can also be an obstacle for interaction with unions or other workers and thus hinder representation of the workers' concerns.
4. *Occupational safety and health.* Insecurity with respect to occupational safety and health arises from workers not having, or not being sufficiently protected by, OSH provisions that shield workers from hazards, work-related diseases and injuries, but

also general conditions of work that can affect health and well-being. Insufficient training on occupational safety and health exacerbates this risk.

5. *Social security coverage.* Insecurity with respect to social security coverage stems either from not having social security coverage or having coverage that is inadequate. This can be as a result of exemptions in coverage or contributory requirements that are fixed in such a way that some workers will not have access to benefits.
6. *Training.* Insecurity with respect to training reflects concerns over not having access, or having inadequate access, to training opportunities that can develop skills to help promote professional development and career advancement.
7. *Representation and other fundamental principles and rights at work.* Representation insecurity concerns impediments faced by workers in exercising their rights to be represented by a trade union and protected by collective agreements, including having insufficient protection from reprisals over joining a union. It also concerns the ability to exercise the other three fundamental rights at work: freedom from discrimination in respect of employment and occupation, the elimination of forced or compulsory labour, and abolition of child labour.<sup>45</sup>

As will be seen, each of the different types of NSE considered in this report has its own particular insecurities, some of which are more pronounced than others. Some of this insecurity stems from the regulations governing the employment arrangement, which in certain jurisdictions provide more limited legal protection than that which is bestowed on the standard employment relationship. Chapter 5 of this report analyses in detail how, and the extent by which, workers in non-standard arrangements are affected by these insecurities. The next section presents in more detail the different types of NSE around the world, including their legal definitions.

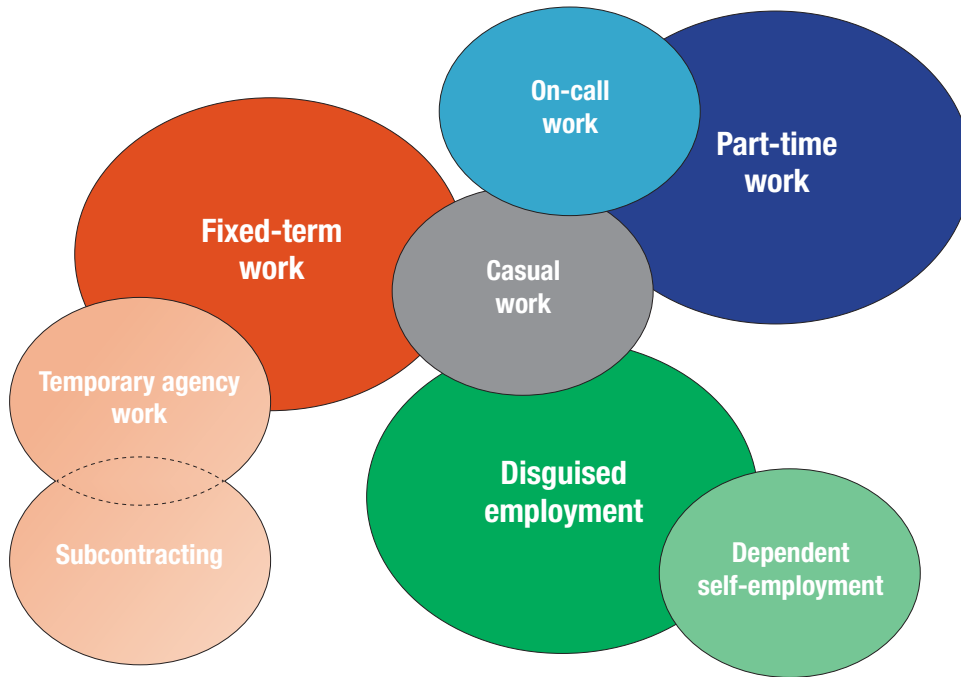
#### **1.4. DEFINING NON-STANDARD EMPLOYMENT IN LAW AND PRACTICE**

The four types of non-standard employment analysed in this report encompass a wide variety of employment arrangements found throughout the world. This section describes in broad terms how they are defined, based on their legal definitions in different jurisdictions, as well their more familiar uses. Before entering into individual descriptions, however, it is worth observing how the different forms of NSE can be interconnected.

As already mentioned, two or more dimensions of NSE may be present in a same work relationship (for example, a part-time worker may be employed by a private employment agency or a subcontractor under a fixed-term contract). Importantly, however, non-standard forms of employment are also related from a regulatory standpoint. Figure 1.5 offers an illustration of these legal relationships in the three main circles – fixed-term work, part-time work and disguised employment – as well as in the small adjoining circles, including those representing multi-party contractual arrangements.

The first large coloured circle is fixed-term work, which is a significant form of NSE, not only for its relevance in numerical terms, but also because the regulation governing it is often used at the national level as a reference for other non-standard forms of employment.

Figure 1.5. The legal forms of non-standard employment



Source: Authors' illustration.

Contractual arrangements involving multiple parties, and in particular temporary agency work and subcontracting, are included in the smaller adjoining circles. Temporary agency work intersects with fixed-term work because in various countries this is the legal form that the employment relationship between an agency and a worker can take. As is noted below, the boundary between this form of work and other relationships involving multiple parties – in particular subcontracting – is blurred both in law and in practice.

Part-time work, the second large coloured circle, is another key form of NSE, where the focus is not on the parties involved or the length of the employment contract, but on the length of the working time. In many countries, the legal definition of part-time work refers to a lower number of working hours compared to those of full-time workers, and sometimes sets specific thresholds. Part-time work is linked to two other forms: casual work and on-call work.

Casual work is a concept ordinarily associated with developing economies, where it is often the subject of specific provisions in labour laws. Nonetheless, casual arrangements are on the increase in industrialized countries,<sup>46</sup> where they frequently take the form of on-call arrangements such as zero-hours contracts.<sup>47</sup>

On-call work is characterized by variable and unpredictable hours – from zero hours to full-time work – and overlaps not only with casual work but also with part-time work.

The third big circle represents disguised employment – also called bogus self-employment – a situation where an employer wrongfully treats a worker as an independent contractor and hides their true status as a wage employee.

Dependent self-employment could seem legally detached from other non-standard forms, since it involves arrangements different from a normal subordinate employment relationship. As will be explained below, this form of work often occupies a legal grey area between employment and self-employment and its boundaries with disguised employment relationships are not always clear enough to be detected. Particular care is warranted when considering this form of non-standard work. Some countries have developed specific regulations for these workers, creating an intermediary status between independent self-employment and wage employment.

### **1.4.1. Temporary employment**

#### **Fixed-term work**

Fixed-term work is an employment arrangement whose end is implicitly or explicitly tied to conditions such as reaching a particular date, the occurrence of a certain event, or the completion of a specific task or project. Fixed-term or temporary employment contracts are not directly regulated by international labour standards. Nonetheless, the Termination of Employment Convention, 1982 (No. 158), requires that adequate safeguards be provided against using fixed-term contracts solely with the purpose of avoiding the protections mandated by the Convention.

At the regional level, the most detailed instrument regulating fixed-term work is the European Union Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-Term Work concluded by the social partners (ETUC, UNICE and CEEP). It is recognized in this Directive that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers, but that fixed-term employment contracts can respond, in certain circumstances, to the needs of both employers and workers. The Directive defines the term “fixed-term worker” as “a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event”.<sup>49</sup> Workers who are placed by a temporary work agency at the disposition of a user enterprise are thus excluded from its scope and are the subject of a separate Directive (see below).

In most countries, fixed-term contracts are regulated by specific legal provisions, but they can also be governed by collective agreements at the enterprise, sectoral or national levels, as they are in the Nordic countries. Examples of this regulation, including provisions of maximum durations or limits to successive fixed-term contracts, will be provided in Chapter 6.

#### **Casual work**

Casual work can be defined as work that is executed for a very short period, or occasionally and intermittently, often for a specific number of hours, days or weeks. Casual work is usually informal, and as such is very often assumed to be outside the scope of employment regulation. A comparative analysis of national labour

legislation shows, however, that casual work and daily work are explicitly defined or regulated in more than 40 countries in the world. Most of these are developing countries, though casual arrangements are also present and regulated in industrialized economies. Needless to say, enforcement of provisions governing casual and daily work varies and in some cases is non-existent.

Although a systematic overview of the national regulations of casual work is beyond the scope of this report,<sup>49</sup> examining national definitions of casual and daily work provides an understanding of the problems faced and some of the solutions adopted in regulating this phenomenon. This can also serve as a blueprint for countries, including industrialized ones, which seek to address casual work arrangements in their labour markets, including on-call work, as discussed below in this chapter and in Chapter 6.

On-call work, including zero-hours contracts, will be analysed together with part-time work, as they share with so-called “marginal part-time” important policy dimensions related to the short and unpredictable character of working hours. It is also important to bear in mind, as already discussed at the beginning of this section, that there are often blurred boundaries between forms of NSE and they should not be understood as watertight legal categories. As such, some work arrangements may very well sit at the intersection of two or more different forms of non-standard work, as is certainly the case with on-call arrangements, which present many features in common with casual work<sup>50</sup> and marginal part time.<sup>51</sup>

Despite being regulated as a specific form of employment in a vast number of jurisdictions, a common legal definition of casual work or employment is lacking. Nonetheless, some patterns can still be identified: a common element is the temporary, intermittent or casual nature of the work; for instance, under the Cambodian Labour Law casual workers are engaged to “perform an unstable job”, to “perform a specific work that shall normally be completed within a short period of time”, and to “perform a work temporarily, intermittently and seasonally”. In other cases, the requirement of temporality is coupled with a maximum duration; for instance, in Colombia. Sometimes, as in Botswana, the law merely sets out a maximum duration.

Another recurrent element in definitions of casual work is the need for the related working activity to be detached from the ordinary or permanent business activity of the employer. In the Dominican Republic, for instance, the law refers to the possibility of hiring *trabajadores móviles o ocasionales* “in light of the nature of the operation or to respond to accidental circumstances”.

In some African jurisdictions, casual employees or workers are expressly defined as persons hired or paid on a daily or hourly basis. The Employment Act of Kenya, for example, classifies as a “casual employee” an individual whose terms of engagement provide for their payment at the end of each day and who are not engaged for a longer period than 24 hours at a time. In Fiji, casual workers are individuals whose terms of engagement provide for their payment at the end of each day and who are “not re-engaged within the 24-hour period immediately following the payment”.

In other cases, laws merely refer to casual work without expressly providing a definition: here, the relevant elements would likely be determined by secondary legislation, the courts or national practice. Table 1.1 summarizes some examples of casual work definitions.

**Table 1.1. Examples of types of casual work definition**

Type of definitions	Countries
Casual work ( <i>travail occasionnel</i> in French, <i>trabajo ocasional</i> in Spanish) only mentioned without general legislative definition	Angola, Costa Rica, Haiti
Temporary, intermittent, casual nature of the work	Bangladesh, Belize, Cambodia, Tunisia, Bolivarian Republic of Venezuela (hereinafter “Venezuela”)
Maximum fixed duration	Botswana, Papua New Guinea, Zimbabwe
Specific works or tasks extraneous to the ordinary or permanent activity of the employer	Dominican Republic
Casual workers statutorily defined as daily or hourly engaged or paid workers	Benin, Fiji, Kenya, Swaziland, Uganda

Source: De Stefano, 2016a.

More often, however, definitions of casual work are based on a combination of the criteria described above. A fairly common definition combines the provision of a maximum duration with the need for the working activity to be extraneous from the permanent or ordinary business activity of the employer; this is the case in Middle Eastern countries (e.g. Egypt, Libya, Oman, Saudi Arabia and Yemen), but it is also present in Latin America, for instance in Colombia and Ecuador.<sup>52</sup> In other countries, the criteria outlined above could be combined with additional ones: in Liberia, for instance, “casual labour” is defined as “all unskilled labour employed for a period of less than a working day”.

### Casual work and other related concepts

Some jurisdictions do not expressly refer to “casual work” but regulate daily or hourly labour (e.g. Gabon, Lebanon and Saint Lucia) in ways that are often very similar to the regulation of casual work in other jurisdictions. The treatment of part-time work in China deserves a specific mention in this context. The Labour Contract Law defines part-time employment as “*a form of labor in which the remuneration is mainly calculated on hourly basis, the average working hours of a worker per day shall not exceed 4 hours, and the aggregate working hours per week for the same employer shall not exceed 24 hours*”. Part-time contracts do not need to be entered into in writing and can be terminated “at any time”; moreover, part-time workers are not entitled to severance pay. This, together with their engagement under an hourly remuneration, leads some commentators to classify these workers as “casual workers”.<sup>53</sup>

Some legislation includes casual work within the broader concept of fixed-term work. The Labour Code of Djibouti, for instance, provides that occasional workers (*travailleurs à titre occasionnel*) fall under the scope of fixed-term contracts’ regulation. Similar provisions for daily and hourly work contracts exist in the Central African Republic, Niger and Togo. In other countries, the need to carry out work of a casual nature is an



expressly codified reason to enter into a fixed-term contract: this is the case in Cabo Verde and El Salvador, as well as in Ethiopia, where the law allows the conclusion of contracts for a definite period or for piecework, notably in the case of “*irregular work*” and “*occasional work* that does not form part of the permanent activity of the employer but which is done intermittently”.

### Casual work in developed economies

As reflected above, definitions and the regulation of casual, intermittent and daily work are more commonly found in developing countries. Forms of casual work, however, are also present in industrialized economies. As many of these forms are characterized by unstable contracts and instances where workers are informally “called in” to work, they overlap with “on-call work”, discussed later in this section.

The essential features of casual employment have spread across many common law countries. In New Zealand, the attributes of casual employment were described clearly in a landmark legal ruling, in which the court observed: “at common law, the essence of casual employment is that an employment relationship exists only during periods of work or engagement to work and the parties have no obligations to each other in between such periods”. For the court, the fact that the parties described their relationship as casual did not determine the nature of the arrangement.<sup>54</sup> Indeed, “where the conduct of the parties gives rise to legitimate expectations that further work will be provided and accepted, there will be a corresponding mutual obligation on the parties to satisfy those expectations”.<sup>55</sup>

In Australia, 24 per cent of employees are employed as casual workers. Nonetheless, no precise general definition of “casual employee” exists.<sup>56</sup> The Federal Court of Australia confirmed in 2011 that the term “casual employee” embraces “an employee who works only on demand by the employer” and that “the essence of casualness is the absence of a firm advance commitment as to the duration of the employee’s employment or the days (or hours) the employee will work”.<sup>57</sup> Under the federal Fair Work Act 2009 (as amended), casual workers are excluded from a series of entitlements such as annual leave and paid personal/carer’s leave and notice of termination and redundancy pay. They are, however, entitled to the so-called casual loading, namely a higher hourly pay rate than their full-time or part-time counterparts. Casual loading is viewed as compensation for the instability of the job and lack of access to some entitlements; its effects, however, should not be overestimated as it is reported that many casual workers do not actually receive premium payments and are also normally excluded from bonuses available to other employees.<sup>58</sup> Casual employment is a legal concept also present in the United Kingdom;<sup>59</sup> some casual arrangements in this country take the form of so-called zero-hours contracts that will be discussed below in section 1.4.2, dealing with on-call work.<sup>60</sup>

Several jurisdictions have adopted “simplified” work arrangements that do not give full access to employment protection. Romania, for example, introduced in 2011 a regulation of day labour for the performance of “unskilled working activities of an occasional nature”, defined as those carried out “incidentally, sporadically or accidentally”.<sup>61</sup> Day labourers cannot be employed “to undertake activities for the benefit of a third party” nor for more than 90 days per year. In Slovakia, these kinds of arrangements are regulated

under three different schemes of “agreements of work performed outside the employment relationship”,<sup>62</sup> while Hungary regulates so-called “simplified employment”, an arrangement that can be set up for carrying out seasonal work in agriculture and tourism or casual work in other sectors.<sup>63</sup> This “simplified employment” scheme replaced the previous system of the “casual employee’s booklet” (*Alkalmi Munkavállalói Könyv, AMK*) which was introduced to combat informality by affording significant flexibility, but eventually led to abuses and under-reporting of working activities.

In order to combat informality, some European countries have adopted “voucher-based” work, a highly flexible work arrangement. With voucher-based work, an employer “acquires a voucher from a third party (generally a governmental authority) to be used as a payment for a service from a worker, rather than cash”. Often “the services provided are specific tasks or fixed-term assignments and consequently are related to casual [...] work”.<sup>64</sup> National regulation of voucher-based work also differs significantly with regard to the sectors in which their use is allowed. Countries that have adopted these schemes include Austria, Belgium, France, Greece and Italy. In Italy regulation has been significantly liberalized in recent years, leading to a boom in their use; their effectiveness in combating informality has, however, been called into question.<sup>65</sup>

In some instances, casualization has been spurred by IT systems that facilitate expanding or decreasing the size of the workforce with ease and speed. These phenomena overlap with other forms of NSE, in particular with disguised employment relationships and dependent self-employment, and will be analysed in section 1.4.4, which addresses work in the “gig economy”.

### 1.4.2. Part-time work and on-call work

#### “Traditional” and marginal part-time work

The term “part-time worker” is defined by the ILO Part-Time Work Convention, 1994 (No. 175), as an employed person whose normal hours of work (calculated weekly or on average over a given period of employment) are less than those of comparable full-time workers.<sup>66</sup> A similar definition is contained in the EU Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-Time Work concluded by UNICE, CEEP and the ETUC, but here it limits to one year the reference period over which the hours of work may be calculated on average to determine whether a worker is employed on a part-time basis. The distinction between part-time work and other non-standard forms of employment may thus be blurred, for instance when workers are engaged in full-time seasonal work or intermittent work. Their daily and weekly working hours may be “normal”, but when calculated over a period of one year they could be considered as part-time workers.

Convention No. 175 specifies that workers affected by partial unemployment, defined as a collective and temporary reduction in normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers. Part-time work should also be distinguished from cases where the working hours of certain categories of full-time workers are reduced, for instance by reason of their age, the hazardous substances to which they are exposed, or the night shifts they perform.



The definition of part-time work in Convention No. 175 remains very broad and does not contain any indication of the actual number of working hours below which workers are considered to work part time. National legislation in various countries has adopted a variety of approaches to this question. One also needs to take into account the fact that the number of hours of work that is considered to be normal for full-time employees sometimes depends on the occupation or activity concerned.

Some countries use a legal definition of part-time work that is similar to that in Convention No. 175. Others have set a maximum number of working hours (expressed in absolute terms or as a percentage of normal full-time hours) for part-time workers. A small minority of States have established a minimum number of hours for part-time workers. Table 1.2 provides examples of the criteria used in national laws to define part-time work.

Specific forms of part-time work include job-sharing (a voluntary arrangement whereby two persons take joint responsibility for one full-time job and divide the working hours between them in agreement with the employer),<sup>67</sup> progressive retirement (whereby hours of work of workers close to retirement age are incrementally reduced) and part-time parental leave (when parents of young children continue to work with a reduced work schedule).

In Japan, part-time work has a particular meaning. Labour legislation defines part-time workers as workers whose scheduled working hours per week are shorter than those of regular employees in the same workplace. Nonetheless, in practice, the term “part-time worker” is sometimes used as a generic term to designate non-regular employees, some of whom actually work full time (the so-called “pseudo-part-timers” or “full-time part-timers”).<sup>68</sup>

Other criteria may be used for the definition of part time for statistical purposes. For example, the OECD defines part-time employment as workers (whether employees or self-employed) who usually work less than 30 hours per week in their main job.<sup>69</sup> This means that the situation of workers who have several part-time jobs and whose total number of hours reaches the threshold for full-time work is not taken into consideration.

The fact that the various legal and statistical definitions of part-time work do not necessarily coincide creates a grey zone, so that, for instance, part-time workers whose hours of work are above the 30-hour threshold may be covered under the national legislation for part-time work, but would not appear in statistics on part-time work. Conversely, in times of economic crisis, workers may temporarily work less than 30 hours per week following the introduction of a “work-sharing” scheme, so that working hours are reduced collectively in order to spread a reduced volume of work over the same (or similar) number of workers in order to avoid lay-offs.<sup>70</sup> From a legal point of view, these workers are not part-time workers, but rather full-time workers affected by partial unemployment, as stated by ILO Convention No. 175. However, they are captured in statistics on part-time employment.

In contrast with regular part-time employment, “marginal part-time employment” is characterized by very short hours of work – usually less than 15 or 20 hours per week.<sup>71</sup> In Germany, in the context of significant labour market reforms introduced in the early 2000s, a new employment contract for so-called “mini-jobs” was introduced, whereby

**Table 1.2. Examples of legal criteria for the definition of part-time work**

Criteria used	Countries
Working time agreed by the parties is less than normal/statutory working hours	Algeria, Austria, Belgium, Bulgaria, Cabo Verde, Croatia, Cyprus, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Republic of Korea, Latvia, Luxembourg, FYR of Macedonia, Madagascar, Malta, Mauritius, Niger, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Syrian Arab Republic, Turkey (normal weekly hours are “considerably shorter” than those of comparable full-time employees), Viet Nam
Maximum number of working hours	Brazil (25 hours per week), Brunei Darussalam (30 hours per week), China (4 hours per day and 24 hours per week), Dominica (1760 hours per year), Ecuador (6 hours per day or 30 hours per week), Seychelles (25 hours or 3 days per week), Singapore (35 hours per week)
Maximum percentage of full-time hours of work	Angola (2/3 of normal working hours for full-time employees in the establishment), Argentina (2/3 of ordinary hours of work*), Chile (2/3 of normal working hours), Mali (80% of statutory or conventional hours of work), Malaysia (70% of normal hours of work of a full-time employee), Mozambique (75% of normal full-time working hours; this percentage may be modified by collective agreement), Saudi Arabia (50% of usual daily working hours at the firm), Senegal (80% of statutory or conventional hours of work), Tunisia (70% of normal working hours in the enterprise)
Minimum number of working hours	Algeria (minimum 50% of statutory working hours), Denmark (collective agreements can set a minimum of 15 hours per week), France (in principle, minimum 24 hours per week**), San Marino (for social security purposes, part-time work cannot be lower than 4 hours per day, 18 hours per week, 78 hours per month and 50% of contractual hours)

\* If the employee works beyond this limit, s/he shall be remunerated as if s/he works full time. \*\* The 24 hours' minimum is not included in the definition of part-time work but has been introduced as a protective measure for these workers.

Source: Authors' compilation.

workers were exempt from social security contributions if their earnings were less than 400 euros per month. The threshold was later increased to 450 euros and workers with mini-jobs are now partially covered by the pension system. In most cases, these jobs fall within the scope of marginal part-time employment.

Other non-standard forms of employment such as casual work and on-call work may also involve very short hours. In the United Kingdom, for instance, zero-hours workers had an average working week of 21.3 hours in the period extending from October to December 2015.<sup>72</sup> While marginal part-time employment may be a personal choice for a number of workers, it is often associated with time-related underemployment.<sup>73</sup>

### On-call work

Working-time arrangements involving highly variable and unpredictable hours of work have grown in importance, particularly in industrialized countries, as a way of adapting

staffing to changing business needs. Such arrangements, commonly referred to as “on-call work”,<sup>74</sup> are characterized by short advance notice of schedules, large fluctuations in working hours and little or no input into the timing of work.<sup>75</sup> They are also commonly referred to as “casual employment” in some industrialized countries.

On-call work can pose problems for the income security and the work–life balance of workers if they can be called upon at the employer’s discretion and are not guaranteed a minimum number of hours or payment. Additional issues arise when they are called and report for work, but their shift is cancelled at the last minute. Moreover, even if the employer does not guarantee a minimum number of hours, workers may be expected to answer the calls at very short notice and may be afraid that they will not be offered any more work if they turn down an offer for a particular shift, even if their agreement formally excludes such an obligation.<sup>76</sup>

In the United Kingdom, for instance, zero-hours contracts have generated considerable media attention. They have been described as arrangements in which “people agree to be available for work as and when required, but have no guaranteed hours or times of work ...provid[ing] employers with a pool of people who are ‘on-call’ and can be used when the need arises”.<sup>77</sup> The interest of employers in using such contracts should be understood within the context of the legal doctrine of “mutuality of obligation” (see box 1.1). Some contracts have also included an exclusivity clause that prevented zero-hours workers from working for another employer, even during periods when the primary employer had no work to offer. Such clauses have been deemed abusive and have become unenforceable since May 2015. Zero-hours contracts and similar arrangements are also widely used in other countries, including Canada, Ireland and, until recently, New Zealand.

In the United States, some major retail stores and food service businesses use just-in-time scheduling software to determine “optimum staffing” in their stores based on weather forecasts, sales patterns and other data. When sales are slower than foreseen, managers can send employees home before the end of a scheduled shift or even cancel shifts at the last minute to reduce costs.<sup>78</sup> Employees are sometimes required to call their manager one to two hours before their shift, or to wait for a call from their manager, to find out whether they must report to work. This indicates highly variable work hours and schedules, sometimes without any guaranteed number of hours.

As will be explained in Chapter 6, a number of recent legislative initiatives and collective bargaining agreements attempt to address the decent work deficits often associated with these types of contracts.

In developing countries, although labour laws mainly include provisions on casual work and do not specifically address on-call work, these two forms of employment overlap to a certain extent. In Latin America, the concept of “hourly work” (*trabajo por hora*) is very close in meaning to the term “on-call work”. In Guatemala, “hourly work” was the subject of a bill tabled in the Parliament in 2013. The Guatemalan Economic and Social Council intends to discuss the question of part-time work as a way of creating additional jobs. Conversely, in 2008 Ecuador prohibited the use of hourly work.

**Box 1.1. The UK doctrine of “Mutuality of Obligation” and zero-hours contracts**

In the United Kingdom, beyond the traditional distinction between employees and the self-employed, there exists a third category – that of workers – which includes both employees and persons who perform work or services under a contract for another party to that contract whose status is not that of a client or a customer. Workers who are not employees benefit from certain labour rights, such as the national minimum wage or the limitation of working hours, but on the other hand they are not entitled to a minimum notice period in case of termination of employment or to protection against unfair dismissal. Among the criteria used by the courts to determine whether or not a contract is one of employment, the mutuality of obligations between the parties has raised most concern for zero-hours workers since it may be argued that there is no commitment by the employer to provide work and often no commitment by the worker to accept any work proposal. However, the tribunal is not restricted to considering only the written terms of the contract and can also examine the reality of the agreement. If, in practice, a zero-hours worker is working on a regular basis and the individual regularly accepts offers of work, the tribunal may consider that the parties are bound by an “umbrella” or “global” employment agreement. In other cases, these workers may be considered as employees for the – sometimes short – periods during which they are actually at work.<sup>79</sup>

Nonetheless, in order to overrule a sham non-mutuality or “zero-hours” clause, workers would still need to go to court as the circumstances of any specific case will be pivotal in the establishment of their employment status. In reality, a vast number of workers may be stuck in a disguised employment relationship or in work arrangements that prevent them from accessing important statutory rights.<sup>80</sup>

**1.4.3. Contractual arrangements involving multiple parties****Temporary agency work**

In temporary agency work (TAW), workers are hired by an entity – the temporary work or employment agency – and then hired out or assigned to perform their work at (and under the supervision of) a user firm. TAW is characterized by a multiple parties or “triangular” relationship between the worker, the employment agency and a user firm. In some areas TAW is referred to by the term “labour dispatch” (particularly in Asian countries such as China, Republic of Korea or Japan) or “labour brokerage” (e.g. South Africa) and “labour hire” (e.g. Namibia).

In most countries, an employment contract or relationship exists between the agency and the worker, whereas a different agreement binds the agency and the user firm. The user firm pays fees to the agency, and the agency pays the wages and social contributions of the worker. No direct employment relationship generally exists between the temporary agency worker and the user firm. Nonetheless, some legal obligations of the user firm towards the temporary agency worker may arise in certain jurisdictions, especially with respect to occupational health and safety or in case there is joint and several liability or subsidiary liability between the agency and the user firm.

TAW is different from other forms of a “triangular” relationship as agencies normally hire workers that are then assigned to the user firm so that the latter can directly manage their working activities as if they were its own employees. However, this difference is not always so clear in practice and in several jurisdictions, particularly in common law countries, a very blurred distinction exists between “outsourcing” and TAW, also because no particular licensing system or regulation exists to govern them.

Labour providers have been an important historical feature of labour markets, and are especially common in agriculture and the building trades. Sometimes referred to as *padrones* or “gangmasters”, these individuals or groups would recruit and organize the work of casual labourers, typically charging a fee to workers, and have been frequently associated with nefarious and exploitative practices. For this reason, private, fee-charging recruiters were banned in many countries during much of the twentieth century. Indeed, the principle of free placement services for workers and employers was established as an objective for employment services in the Unemployment Convention, 1919 (No. 2), and later became the subject of its own standard, the Fee-Charging Employment Agencies Convention, 1933 (No. 34), which aimed at improving the organization of the labour market and abolishing fee-charging agencies, with some exceptions. This Convention was revised in 1949, giving States the choice of either prohibiting such agencies or regulating their activities, with most ratifying countries choosing the first alternative (Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)). Convention No. 96 followed on the heels of the Employment Service Convention, 1948 (No. 88), which called on member States to maintain and ensure the maintenance of a free public employment service.<sup>81</sup>

Notwithstanding this international standard, private, fee-charging employment agencies continued to exist in many parts of the world. The contemporary private employment agency industry emerged in North America and parts of Europe in the 1950s and 1960s. At the beginning the industry pursued an aggressive publicity campaign aimed at convincing employers of the benefits of a more flexible workforce, with ads depicting attractive, middle-class women eager to earn “extra” money as typists and secretaries.<sup>82</sup> These ads were overwhelmingly focused on pink-collar occupations, though the industry also made significant inroads into blue-collar activities. Nonetheless, the publicity campaigns were important for legitimizing the industry and disassociating it from the disreputable *padrones* and labour brokers of the past.

The growth of temporary employment agencies led Sweden in 1965 to seek clarification from the ILO as to whether “ambulatory typing agencies” fell within the scope of Convention No. 96. In his response, the Director-General indicated that they did since they carried out “indirect employment operations” for profit, but that because public employment services were not always able to meet the demands of part-time and casual workers, exceptions for these categories could be warranted.<sup>83</sup> Moreover, several member States had begun passing national laws legitimizing their services. In addition, as funding for public employment services dwindled in many developed countries in the 1970s, new opportunities were created for temporary employment agencies. By the 1970s and 1980s, the temporary employment agency industry had become a small but important feature of labour markets, leading the industry and some member States to call for a reappraisal of earlier ILO Conventions. In the late 1990s, the International Labour Conference adopted two new international labour standards, the Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation (No. 188), which sought to allow the operation of private employment agencies whilst ensuring the protection of workers using their services (see Appendix to Chapter 6).

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work provides for regional regulation of TAW. The backbone

of the Directive is the principle of equal treatment, provided by article 5, under which, during an assignment to a user firm, “the basic working and employment conditions” of temporary agency workers must be at least those that would apply if they had been recruited directly by the user firm to do the same job. Directive 2008/104/EC, however, allows some exceptions to this principle.<sup>84</sup>

Chapter 6 will describe national regulation of TAW, including limits to its use and the application of principles of non-discrimination to agency workers.

### **Subcontracting**

Besides TAW, another very significant contractual arrangement involving multiple parties is subcontracting. As stated above, subcontracting principally differs from TAW in that subcontractors in general do not merely hire out workers, but execute work that provides goods or a service, although this difference may be blurred depending on the relevant jurisdiction. In addition, subcontractors generally manage their own workforce, even if their personnel work at the principal employer’s premises (figure 1.6).

### ***Relevant international labour standards***

Several international labour standards, particularly in the field of occupational health and safety, take subcontracting into account. For instance, in setting OSH standards in the relevant sectors, the Safety and Health in Construction Convention, 1988 (No. 167), and the Safety and Health in Mines Convention, 1995 (No. 176), provide that the term “employer” includes, “as the context requires”, the “principal contractor, contractor or subcontractor”. Convention No. 167 also provides that “whenever two or more employers undertake activities simultaneously at one construction site”, the “principal contractor, or other person or body with actual control over or primary responsibility for overall construction site activities, shall be responsible for co-ordinating the prescribed safety and health measures” and, compatibly with national laws and regulations, “for ensuring compliance with such measures”, or shall nominate a competent substitute. In more general terms, the Occupational Safety and Health Convention, 1981 (No. 155), provides that “whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying the requirements of this Convention”.

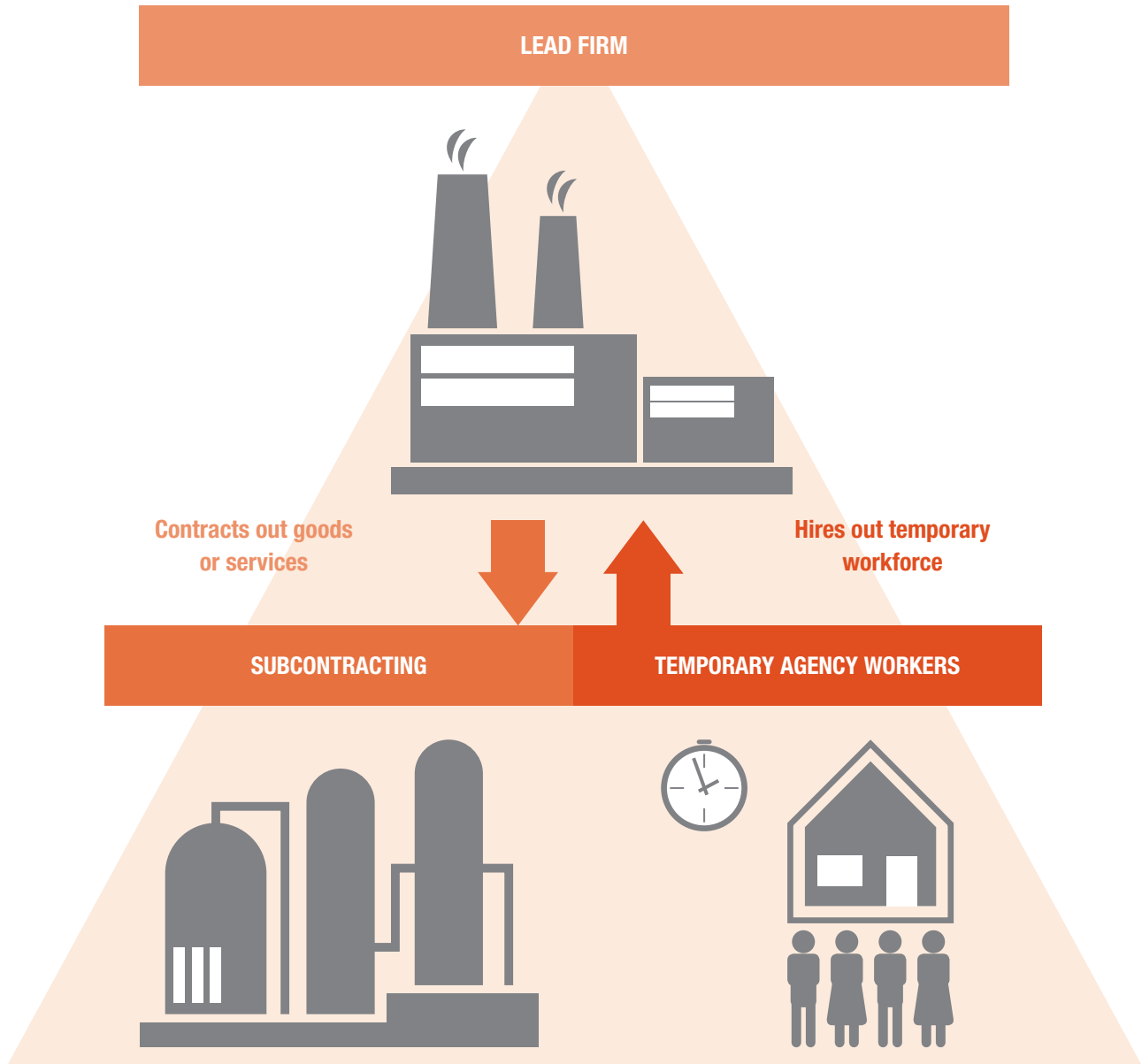
Also relevant for subcontracting is the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), which requires the inclusion in public procurement contracts of clauses to ensure that the workers engaged for the execution of the contract benefit from a minimum level of wages and other working conditions. The Convention expressly provides that it applies to work carried out by subcontractors or assignees of contracts and that appropriate measures must be taken by the competent national authorities to ensure such application.

### ***Regional regulation***

At the EU level, the OSH “Framework Directive”, 89/391/EEC of 12 June 1989, provides that where several undertakings share a workplace, employers must cooperate in implementing the relevant occupational safety and health provisions. Also relevant is the so-called “Posting of Workers Directive”, 96/71/EC of 16 December 1996, which



Figure 1.6. Multi-party employment relationships



Source: Authors' illustration.

ensures a minimum level of protection with regard to basic terms and conditions of employment to workers who are temporarily “posted” on the territory of another EU Member State to provide services, including in the cases of subcontracting or hiring out by a temporary employment firm or placement agency.<sup>85</sup>

Some Model Harmonisation Acts of the CARICOM explicitly address subcontracting. For instance, the Model Labour Law on Occupational Safety and Health and the Working Environment specifies that the definition of employer includes “an operator, principal contractor, contractor or sub-contractor”. Other Model Labour Laws mention

“contract workers”, defined by the Model Labour Law on Termination of Employment as persons working “for another person pursuant to a contract between the employer of the first-mentioned person and that other person”.<sup>86</sup>

### *National regulation*

Several jurisdictions make a distinction between temporary agency work and subcontracting. In these countries, in general, only authorized entities can act as private employment agencies and are allowed to hire out labour. Subcontractors, who are not subject to the legal requirements of private employment agencies, must then offer a work or service which is distinct from merely employing workers and making them available to a principal. If this is not the case, and the subcontractor does not, as a matter of fact, exercise control and direction over its workers but merely acts as an intermediary or labour broker, these workers may be reclassified as employed by the principal as a way of preventing abuses and the shedding of labour obligation and responsibilities. In continental Europe, for instance, “the prohibition of separation between the formal employer, who bears the employment risks and liabilities, and the employer who effectively owns the firm and exercises control and direction over the working activities, derives from the traditional hostility toward any form of labor intermediation (*merchandeur, meister, caporale*)”<sup>87</sup> and is reflected, for instance, in the laws of Spain, France, Italy and Germany. In Italy, for example, when the subcontractor does not own a genuine business organization, its workers can claim to be reclassified as employees of the principal. Depending on the relevant sector, a genuine business organization may result from the mere exercise of managerial prerogatives over employees or from the fact that the subcontractor actually bears entrepreneurial risks.<sup>88</sup>

Jurisdictions outside Europe tend to distinguish between subcontracting and temporary agency work. The Labour Code of the Republic of Congo, for instance, regulates agency work and subcontracting separately, defining subcontracting as the agreement under which an entrepreneur agrees with another entrepreneur the total or partial execution of certain works or the provisions of services in consideration of a fixed price. The subcontractor directly hires its personnel and, if it becomes insolvent, the principal can be liable vis-à-vis workers regarding all or some of their entitlements. In some French-speaking African countries, subcontracting is also referred to as “*tâcheronnat*”: this is the case, for instance, in the Republic of Guinea, where the Labour Code also provides that this contract must be stipulated in writing.<sup>89</sup> Another example is Cameroon, where the *tâcheron* is expressly defined as a *sous-entrepreneur*. Also in these countries, if the *tâcheron* becomes insolvent, workers can claim all or part of their entitlements from the principal.

Many countries in Latin America define and regulate subcontracting. In Colombia, for instance, the Labour Code distinguishes genuine subcontractors from mere intermediaries. The former undertake to execute works or provide services at their own risk and maintain their own technical and directional autonomy and freedom, in consideration for a fixed price, bearing all the entrepreneurial risks. In Chile too, the Labour Code distinguishes between genuine subcontractors, who autonomously execute works or provide services, and intermediaries, also stipulating that if a subcontractor merely hires out labour, the relevant workers will be considered employees of the principal. In the Plurinational State of Bolivia (hereinafter “Bolivia”), the law

explicitly prohibits and sanctions subcontracting practices that are aimed at circumventing employment regulation.

Subcontracting and outsourcing are also specifically regulated in some countries in Asia, e.g. through India's Contract Labour Law Act of 1970, as well as other legislation regulating contract labour at the sectoral level.<sup>90</sup> For instance, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 confers "employee status on workers in the beedi industry by adopting a definition of an employee that includes a person employed directly or through any agency, whether for wages or not, who is given raw materials by an employer or a contractor for making into beedi or cigars (or both) at home".<sup>91</sup>

A common type of labour protection found in the regulation of subcontracting is to provide for a form of joint or subsidiary liability of the principal vis-à-vis the workers of the subcontractor. This issue will be discussed in Chapter 6 of the report.

### Other contractual arrangements involving multiple parties

Contractual arrangements involving multiple parties may extend beyond the cases of TAW and subcontracting. The fragmentation or the "fissurization" of workplaces and business organizations may also involve other contractual arrangements such as franchising, with important implications for labour protection and working conditions.<sup>92</sup> In the United States, for instance, litigation brought against a major fast-food company will determine whether this company, as a franchisor, should be held the joint employer of the employees of its franchisees, as argued by these employees and the General Counsel of the National Labor Relations Board.<sup>93</sup> In Brazil, a 2014 judgment of the Tribunal Superior do Trabalho decided that a franchisor was not liable for the obligations of the franchisee vis-à-vis its employees.<sup>94</sup>

Contractual arrangements involving multiple parties can extend over many countries as part of global supply chains.<sup>95</sup> In June 2016, the International Labour Conference (ILC) held a discussion on decent work in global supply chains.<sup>96</sup> The Conclusions adopted by the ILC recognized that "global supply chains are complex, diverse and fragmented":

[t]hey have contributed to economic growth, job creation, poverty reduction and entrepreneurship and can contribute to a transition from the informal to the formal economy ...[a]t the same time, failures at all levels within global supply chains have contributed to decent work deficits for working conditions such as in the areas of occupational safety and health, wages, working time, and which impact on the employment relationship and the protections it can offer. Such failures have also contributed to the undermining of labour rights, particularly freedom of association and collective bargaining. Informality, non-standard forms of employment and the use of intermediaries are common.

The Conclusions called on governments to, among other things, set out clearly "the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, and the fundamental principles and rights at work for all workers, including migrant workers, homeworkers, workers in non-standard forms of employment and workers in EPZs" and to implement "measures

to improve working conditions for all workers, including in global supply chains, in the areas of wages, working time and occupational safety and health, and ensure that non-standard forms of employment meet the legitimate needs of workers and employers and are not used to undermine labour rights and decent work. Such measures should go hand in hand with increasing productivity.”

#### **1.4.4. Disguised employment relationships and dependent self-employment**

In the vast majority of legal systems across the world, a “binary divide” between employment and self-employment exists, with “employment” serving as the basis for labour regulation.<sup>97</sup> While a “grey area” between these two legal categories has always existed, in the last decades, changes in business organizations, technological developments and new business practices have rendered the distinction between employed and self-employed workers more blurred in practice and have contributed to an increase in the number of workers within this grey area, which includes:

- (a) “disguised employment relationships”, namely, according to the Employment Relationship Recommendation, 2006 (No. 198), the situation occurring “when an employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee” (box 1.2);
- (b) “dependent self-employment”, namely, working relationships where workers perform services for a business under a contract different from a contract of employment but depend on one or a small number of clients for their income and receive direct guidelines regarding how the work is to be done. Dependent self-employed workers are typically not covered by the provisions of labour or social security laws. Some countries, however, have adopted specific provisions to extend some protection to them and therefore they are sometimes considered to fall into a sort of “intermediate category” between employment and self-employment.

Dependent self-employment, as stated above, is a type of self-employment where the worker performs services for a business under a contract different from a contract of employment but depends on one or a small number of clients for their income and receives direct guidelines regarding how the work is to be done. In some countries, the fact of being economically dependent on another entity might have a bearing on whether an employment relationship exists (examples will be provided in Chapter 6). Nonetheless, the chief legal test for determining whether this relationship exists normally centres on the concept of legal and contractual subordination, i.e. the fact of being subject to the employer’s power to direct and control the working activity.<sup>98</sup> This notion of the employment relationship may lead to the exclusion from the scope of labour regulation of many workers who are dependent on one or a small number of clients, but are not considered to be legally subordinate to them and are therefore regarded as self-employed. To tackle this issue, several countries have provided these dependent self-employed workers with some limited labour protection.

At the regional level, CARICOM Model Harmonisation Act Regarding Registration, Status and Recognition of Trade Unions and Employers’ Organisations extends its provisions to “dependent contractors”, namely those persons, “whether or not em-

**Box 1.2. Disguising the true nature of an employment contract**

The following case, which appeared before the South African Labour Court in 2011, provides a good example of a disguised employment relationship involving a labour broker. Mr Dyokwe started working at a factory in Cape Town in 2000 owned by a South African-based multinational paper manufacturer. In 2003, the manager told him to go to an office “to sign a form”. The office turned out to be the premises of a labour broker. He was told he would have to sign a contract with the labour broker to keep his job. Unable to read, he nonetheless signed the form and returned to the factory where he continued in the same job under the same supervisor. However, his hourly rate was cut by 20 per cent. He worked for another five and a half years, but in January 2009 he was told that his name was on a list of employees whose services had been terminated. He went to the labour broker, but was told that he was too old to be placed in another job.

Mr Dyokwe sought compensation for unfair dismissal from the multinational paper company, which responded that it was not his employer. The Labour Court found that Mr Dyokwe was still employed by the paper company, and that the labour broker had never become his employer. According to Benjamin (2013), this is a correct reading of the law, as a temporary employment service (labour broker) must “provide or procure” employees to work for their clients. This did not happen in the present case because the paper company had referred him to the labour broker. The case was subsequently settled. The court order expressly referred to Convention No. 181 and to Recommendation No. 198 of the ILO, considering them applicable when the nature of the actual employer is concealed by temporary work settings (*Dyokwe v De Kock NO & Others* (C 418/11)).

Source: Benjamin, 2013.

ployed under a contract of employment”, performing remunerated work or services for another person on such terms and conditions that they are in relation to that person “in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor”. A similar approach or definition has been adopted by other CARICOM Model Laws.<sup>99</sup>

In the EU, in 2014, the Court of Justice of the European Union issued a judgment that is relevant in determining the access of “false self-employed” workers to the right to collective bargaining.<sup>100</sup> Furthermore, at the national level, various European countries have extended some labour protection to dependent self-employed workers, though the level of protection and even the definition of dependent self-employment vary among countries, with some jurisdictions focusing on economic dependency (e.g. Austria, Germany, Spain) and others focusing on the worker’s coordination with the principal’s business organization (e.g. Italy).

In Germany, *arbeitnehmerähnliche Personen* (employee-like persons) are covered by some legal protections normally afforded to employees, such as access to labour courts, annual leave, protection against discrimination, and collective bargaining. On the other hand, they are excluded from protection against unfair dismissal, even if the Civil Code’s provisions regulating termination of service are applicable to them. Moreover, the definition of “employee-like persons” varies slightly among different statutes, albeit the chief criterion of classification is economic dependence.<sup>101</sup> Also, in Austria, some labour law protection applies to an employee-like person, whose definition rests on their economic

dependence, on the basis of explicit statutory provisions (e.g. access to labour courts, anti-discrimination protection) or the courts' decisions (OSH regulation). Provisions on dismissal protection, paid holidays and sickness benefits are not applicable to them.<sup>102</sup>

In Spain, a dependent self-employed worker is defined according to economic dependency criteria such as carrying out economic or professional activity directly and predominantly for a principal and dependence on the principal for at least 75 per cent of their income deriving from their economic or professional service. Additional requirements include, inter alia, not employing any wage worker, having their own productive infrastructure and materials independently of the principal's and carrying out working activity using autonomous organizational criteria, save for the principal's technical indications.<sup>103</sup> Dependent self-employed workers are afforded some legal protection such as minimum paid annual leave, entitlements in case of unjustified termination, the right to suspend work for family or health reasons, and collective bargaining.

The Labour Code of Portugal sets out specific rules for *contratos equiparados*, that is, situations equivalent to employment contracts, and provides that “the legal rules regarding personality rights, equality and non-discrimination, labour safety and health, shall apply to situations in which professional activity is performed by a person for another in the absence of legal subordination, but in circumstances where the provider should be considered economically dependent on the activity's beneficiary”.<sup>104</sup>

In the United Kingdom, the notion of “worker” as a category, including, but not limited to, employees, was introduced in the mid-1990s in order to extend the scope of some labour protections to individuals performing personally any work or service irrespective of the existence of an employment relationship between the parties, excluding work or services carried out in a professional or independent business capacity. Workers are covered, inter alia, by minimum wage legislation and working-time regulation. They are however excluded from several statutory protections such as regulation against unfair dismissal and redundancy.

In Italy, *lavoratori parasubordinati* (para-subordinate workers) are self-employed workers who collaborate with a principal under a continuous, coordinated and predominantly personal relationship, even if not of subordinate character. Since the mid-1970s, they were progressively afforded some legal protections, including access to labour courts, limited social security rights, OSH regulation coverage, some limited maternity and sickness protection, collective bargaining and minimum compensation rights and some restrictions on early termination of contracts. In particular during the last decade, Italian lawmakers introduced several provisions aimed at combating sham para-subordinate work aimed at disguising employment relationships. However, as para-subordinate workers form a subcategory of self-employed workers, they are not covered by the vast bulk of employment regulations, including individual and collective dismissal legislation, maximum working hours and paid holidays regulations.<sup>105</sup> In order to tackle this issue, and also as an attempt to reduce uncertainties and litigation in this area of law, as from 2016 lawmakers extended the scope of employment regulation to those para-subordinate work relationships consisting of personally and continuously performed activities, organized by the principal also with reference to the time and place of work. Some exceptions apply to this rule, including those set out by national collective bargaining agreements. Other para-subordinate work relationships will, however, still be excluded



by the vast majority of employment regulations.<sup>106</sup> A large debate regarding the possibility of institutionalizing para-subordinate work has also taken place in Brazil and Uruguay.<sup>107</sup>

In Israel, the scope of labour legislation has been enlarged to cover some self-employed workers, freelancers and independent contractors, providing them with the legal entitlements of employees. Moreover, case law has recognized the status of “quasi-employee” to afford partial protection to some categories of workers, irrespective of the existence of an employment relationship. Thus it has been observed, “the extent to which a quasi-employee will be protected is to be decided according to the specific case and the particular aim of each labour Act when its application is being considered”.<sup>108</sup>

In Canada, Part I of the Canada Labour Code, regulating collective bargaining within the federal jurisdiction, has been extended to apply to any person “who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person”. Besides employees, therefore, this provision covers so-called “dependent contractors” as well.<sup>109</sup> Also, some individual provinces recognize the category of dependent contractors and extend labour protections to them.<sup>110</sup>

Proposals to introduce an intermediate category of workers between employees and independent contractors have been advanced in the United States particularly to tackle forms of work in the gig economy.<sup>111</sup>

### Work in the gig economy

The “gig economy” (also called the “on-demand economy”) is a term that has gained widespread use in the media to designate work that is mediated through online web platforms.<sup>112</sup> Forms of work in the gig economy are very heterogeneous, though the main ones are crowdwork and “work-on-demand via app”. These two forms of work have some points in common, as they do with other forms of NSE, especially with casual work and ambiguous and disguised employment relationships.<sup>113</sup> They also raise important questions concerning labour protection, as workers in the gig economy are almost invariably classified as independent contractors and thus do not have access to the rights of workers in a recognized employment relationship. The result is that businesses and customers are, in most instances, not bearing costs such as social security contributions, sickness and maternity pay and statutory minimum wages. Moreover, workers in many cases risk being excluded from fundamental principles and rights at work such as freedom of association and collective bargaining or protection against discrimination, since many jurisdictions restrict these fundamental rights to employees.<sup>114</sup>

Another common element is that the performance of workers is constantly monitored through reviews and ratings given by clients and customers. This may help in keeping the business organization lean, sustaining customer satisfaction and improving competitiveness. However, it also has significant implications for people’s ability to work or earn in the future, since workers can be excluded from the online platforms or prevented from gaining access to better-paying jobs on the basis of these ratings.<sup>115</sup> In some cases, review systems might also expose them to discrimination.<sup>116</sup>

### *Crowdwork*

Crowdwork is work that is executed through online platforms that connect organizations, businesses and individuals through the internet, potentially on a global basis. The nature of the tasks performed on crowdwork platforms varies considerably. Some may be “microtasks”, which are quick to do and do not require many instructions but which still require some sort of human judgement (e.g. tagging photos, transcribing audio files, valuing emotions or the appropriateness of a site or text, or completing surveys).<sup>117</sup> In other cases, bigger jobs can be outsourced to the online “crowds”, such as the creation of a logo, the development of a site or the initial project of a marketing campaign.<sup>118</sup>

Crowdworking sites, which are self-regulated, employ different methods of organizing work.<sup>119</sup> Some of them may launch competitions with several people working simultaneously on the same task so that the client can select and pay only for the best product. Others may operate on a first come, first served basis. In some cases, no relationship exists between the client and the worker: the worker executes the task and is paid by the platform, which then provides the result to the client. In other cases, the platform acts more as a facilitator of the relationship between clients and workers.<sup>120</sup> Some platforms set minimum compensation for certain tasks, while others let the compensation be set by the requester.<sup>121</sup>

The multifaceted features of crowdwork have provoked wide-ranging legal questions.<sup>122</sup> The legal and policy debates are mainly focused on the possibility and need to offer crowdworkers some social protection and to protect them from discrimination and potential abusive or opportunistic behaviour on the part of online platforms and clients.<sup>123</sup> The issue of misclassification of employment status has also been raised. In 2015, a collective action against a crowdwork platform that allegedly misclassified workers and failed to pay them the minimum wage was settled in the United States.<sup>124</sup>

### *“Work-on-demand via app” and “transport network companies”*

In “work on-demand via app”, jobs in the spheres of traditional working activities such as transport, cleaning and running errands, as well as forms of clerical work, are offered and assigned via mobile apps. The businesses running these apps normally intervene in setting minimum quality standards of service and in the selection and management of the workforce. The difference from crowdwork is that the working activity is selected and agreed online, but is then executed locally.<sup>125</sup>

Work-on-demand apps are not homogeneous: the most relevant distinction can be drawn between apps that match demand and supply of different activities such as running errands and carrying out home repairs and others that offer more specialized services such as driving, or even some forms of clerical work such as legal services or business consultancy.<sup>126</sup> Some apps can also differentiate services of the same nature, for instance by offering these services at premium or cheaper prices, or by gaining access to different pools of workers (e.g. professional vs non-professional workers).<sup>127</sup>

Litigation in cases of misclassification of employment status against the businesses running work-on-demand via app has flourished in recent years. A significant part of this legal action concerns “transport network companies”, also called “ride-sharing” or “e-hailing” companies, that allow ordering a car ride or other forms of transportation

via IT devices.<sup>128</sup> Two major cases on misclassification came before the US District Court, Northern District of California in 2015 and 2016.<sup>129</sup> Disputes are also pending in other states of the United States and other jurisdictions,<sup>130</sup> including a case before the Court of Justice of the European Union that will determine whether these businesses should be considered merely technological intermediaries or transport service providers. In the latter case they would be subject to the national regulations of transport services of each individual EU Member State.<sup>131</sup>

The ILO Tripartite Sectoral Meeting on Safety and Health in the Road Transport Sector, held in Geneva on 12–16 October 2015, adopted the “Resolution on transport network companies – ‘Transporting tomorrow’”. The Resolution highlighted “the need for a level playing field which ensures that all transport network companies are covered by the same legal and regulatory framework as established for transport companies, in order to avoid a negative impact on job security, working conditions and road safety and to avoid an informalization of the formal economy” and “the importance of decisions taken by competent authorities or judiciary in relation to self-proclaimed ‘ride-sharing’ for-reward transport platforms, to be fully implemented and enforced”. It invited “governments, social partners and the International Labour Office (Office), within their respective mandates, to elaborate, promote and implement rules and regulations that promote occupational safety and health and innovation while at the same time ensuring a level playing field for all in line with the ILO’s Decent Work Agenda and within the context of the ILO Future of Work debate”.<sup>132</sup>

## 1.5. SUMMARY

Non-standard employment brings together several contractual arrangements that deviate from the standard employment relationship. The standard employment relationship, while not a legal concept, is nonetheless associated with a conception of work – open ended, full time, and part of a dependent, bilateral relationship with an employer – that is at the basis of most labour and social security law.

Different concepts are used to analyse jobs in the labour market, many of which overlap. Non-standard employment can be either formal or informal, with informality understood as economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. And just like standard employment, NSE can also be associated with precarious or insecure work. Precariousness and non-standard employment, however, are not strictly synonymous. Nonetheless, it is important to understand the insecurities that can affect workers – whether standard or non-standard – and to devise policies to address these insecurities with the goal of promoting decent work for all. These insecurities concern employment, earnings, working hours, occupational safety and health, social security coverage, training, and access to the fundamental principles and rights at work, including the right to representation at the workplace.

From a regulatory standpoint, the legal definitions of the different forms of non-standard employment are strongly interrelated, with some forms of NSE sitting at the intersection of two or more of these forms. The legal definitions are guided by international,

regional and national legal instruments, though there are nonetheless important differences across countries. Legal definitions are the cornerstone of labour regulation and, as such, clear and comprehensive definitions are crucial for both understanding and responding to regulatory gaps and loopholes that may have negative implications for non-standard workers. These issues will become more apparent throughout the report; they are addressed in Chapter 6 which proposes possible legislative responses, as well as other policy responses, to promote decent work among workers in non-standard employment.

## NOTES

- 1 ILO, 2015a.
- 2 OECD, 1997.
- 3 The Committee of Experts on the Application of Conventions and Recommendations (CEACR) understands that “the term ‘private employment agency’ refers to any natural or legal person, independent of public authorities, which provides the labour market services listed in the Convention,” and that overall, that definition encompasses “any recruiter or direct service supplier outside the realm of public employment services” (ILO, 2010a, p. 73).
- 4 ILO, 2003a, p. 25.
- 5 Deakin and Wilkinson, 2005.
- 6 *Ibid.*, p. 1.
- 7 *Ibid.*
- 8 *Ibid.*, p. 15.
- 9 Deakin, 2016, p. 6.
- 10 Supiot, 1999, cited in Deakin and Wilkinson, 2005, p. 14.
- 11 Marsden, 1999, p. 4, cited in Deakin and Wilkinson, 2005, p. 6.
- 12 Deakin and Wilkinson, 2005, p. 16.
- 13 *Ibid.*, p.15.
- 14 Supiot, 1994; Simitis, 2000.
- 15 Corazza and Razzolini, 2014, p. 4.
- 16 D’Antona, 2002.
- 17 Countouris, 2011, p. 51.
- 18 Corazza and Razzolini, 2014; Prassl, 2015.
- 19 De Stefano, 2009; Perulli, 2011.
- 20 Collins, 1990. More recently, see Weil, 2014; Prassl, 2015. See also the policy responses to these developments outlined in Chapter 6.
- 21 Countouris, 2011, p. 51.
- 22 Perulli, 2011.
- 23 Oi, 1962.
- 24 When the employment relationship is ambiguous or disguised, the exercise of the right to freedom of association and collective bargaining may be impeded.
- 25 Rubery, 2015, p. 11.
- 26 See the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- 27 Vosko, 2010.
- 28 Sirianni and Negrey, 2000.
- 29 Vosko, 2011, p. 61.
- 30 “Guidelines concerning a statistical definition of informal employment, endorsed by the Seventeenth International Conference of Labour Statisticians (November–December 2003)”, in ILO, 2003b.
- 31 Teklè, 2010.
- 32 Goal 8.5 of the Social Development Goals aims, by 2030, to “achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value”.
- 33 See, for example, OECD, 2015a.
- 34 Advisory Council on Unemployment Compensation in the United States, 1996; European Parliament, 2013.
- 35 For these reasons as well, disguised employment and dependent self-employment were considered as part of non-standard forms of employment in the Conclusions emanating from the February 2015 Meeting of Experts on Non-Standard Forms of Employment. See ILO, 2015a.
- 36 Castells and Portes, 1989; See also Srivastava, 2016, for a more recent discussion of this process occurring in India.
- 37 ILO, 2013a.
- 38 This definition is from Rodgers, 1989.
- 39 Kalleberg and Hewison, 2013.
- 40 Fudge and McCann, 2015; Vosko, 2010.
- 41 Kountouris, 2013; Paret, 2016.
- 42 Kalleberg and Hewison, 2013, p. 274.
- 43 ILO, 2004a.
- 44 The provision of a “minimum living wage” is recognized in the ILO’s Declaration of Philadelphia, 1944, and reiterated in the 2008 Declaration on Social Justice for a Fair Globalization.
- 45 These rights are reflected in the 1998 Declaration on Fundamental Principles and Rights at Work, which committed all member States of the Organization to respect, promote and realize these rights, whether or not they have ratified the relevant Conventions.
- 46 De Stefano, 2016a.
- 47 Adams, Freedland and Prassl, 2015; Humblet, forthcoming.
- 48 Initial vocational training relationships and apprenticeship schemes, as well as employment contracts and relationships which have been concluded within the framework of a specific public or publicly supported training, integration and vocational retraining programme may be excluded from the scope of the Agreement.
- 49 For a comparative overview of national regulation of casual work in developing and industrialized countries, see De Stefano, 2016a.
- 50 Labour Research Department, 2014; Eurofound, 2015.
- 51 Messenger and Wallot, 2015.
- 52 See section 6.1.
- 53 Cooney, Biddulph and Zhu, 2013.
- 54 This is also an example of the possible applications of the “primacy of fact” principle that will be discussed in Chapter 6.
- 55 *Jinkinson v. Oceana Gold (NZ) Ltd* [2009] 9 NZELC 93, 341.
- 56 Campbell, 2004.
- 57 *Williams v. MacMahon Mining Services Pty Ltd* [2010] FCA 1321.
- 58 Messenger and Wallot, 2015; Campbell and De Stefano, 2016; Campbell, 2004.
- 59 Collins, 2000; Davies, 2007.
- 60 Adams, Freedland and Prassl, 2015; Adams and Deakin, 2014b.
- 61 Under Law 52/2011, the daily working activity cannot exceed 12 hours and, even if a lower number

- of hours is agreed between the parties, no less than eight working hours per day can be paid by the “employer”. Day labour is only allowed in some sectors (e.g. agriculture, waste, entertainment, sport, the organization of exhibitions and fairs). In 2014, the law was amended to increase the protection of day labourers and counter some abuses in their utilization, by tightening up the OSH obligation of “employers” and providing for the payment of the minimum hourly wage.
- 62 The Slovak Labour Code regulates “work performance agreements”, “agreements on work activities” and “agreements on temporary work for students”. Working hours cannot exceed 12 hours per day (eight hours for adolescents). A reform in force since 2013 has improved their protection, including on the regulation of working time and the application of the minimum wage.
- 63 Regulation is provided in Act LXXV of 2010 and the Labour Code. In the case of casual work, simplified employment is limited to five consecutive days, 15 days per month and 90 days per year. An employer cannot employ more than a certain ratio of casual workers, relative to the number of full-time employees employed on average in the previous six months. The simplified employment contract does not need to be made in writing and working hours do not need to be allocated in advance; moreover, some protections in case of maternity do not apply to these workers. Workers in simplified employment are only entitled to a portion of the minimum wage (85 or 87 per cent, depending on their qualifications). In practice, they are excluded from annual leave since periods of work cannot exceed five consecutive days and separate periods are not counted aggregately (see Gyulavári and Gábor, 2014). Social security protection is limited and, in this respect, the CEACR expressed its concern and asked the Government “to reconsider the situation with a view to limiting the categories of seasonal or occasional workers who may be excluded by law from pension insurance coverage” (*Hungary – CEACR, direct request, C.17, published in 2014*).
- 64 Eurofound, 2015, p. 82.
- 65 Zilli, forthcoming.
- 66 The term “comparable full-time worker” refers to a full-time worker who: (i) has the same type of employment relationship; (ii) is engaged in the same or similar type of work or occupation; and (iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity, as the part-time worker concerned. The European Directive on Part-Time Work contains a similar provision with the specification that, in the comparison, due regard must be given to other considerations which may include seniority and qualification/skills. Such a requirement is important for the application of the non-discrimination provisions.
- 67 ILO, 2004b.
- 68 Morozumi, 2009, p. 41.
- 69 OECD, 2016.
- 70 Messenger and Ghosheh, 2013.
- 71 Messenger and Wallot, 2015.
- 72 Office for National Statistics, 2016.
- 73 Messenger and Wallot, 2015.
- 74 “On-call work” is to be differentiated from “on-call hours”. In the latter case, workers need to be on standby outside of their regular hours of work and may be called at work in case of need. Such practices are frequent for medical practitioners in hospitals, for example.
- 75 Lambert, Fugiel and Henly, 2014.
- 76 Humblet, forthcoming.
- 77 ACAS, 2012.
- 78 For a description of an example of such practices, see *The New York Times*, 2014.
- 79 Pyper and Dar, 2015; Deakin and Morris, 2012.
- 80 Adams and Deakin, 2014b.
- 81 ILO, 2009.
- 82 Hatton, 2011.
- 83 Vosko, 2010; Valticos, 1973.
- 84 For instance, derogation can be made with regard to workers employed by agencies under a permanent contract, provided that they are paid between assignments or when the exception is established by collective agreements, on condition that the overall protection of workers is ensured. Other derogations, such as the provision of qualifying periods in order to be entitled to equal treatment, can be adopted but “an adequate level of protection” for workers must, however, be ensured.
- 85 In 2014, the so-called “Enforcement Directive”, 2014/67/EU, was approved to strengthen the practical application of the Posting of Workers Directive in some areas. In March 2016, the EU Commission also proposed a revision of the rules on the posting of workers within the EU.
- 86 See also the definition of “employer” under the Model Labour Law on Registration Status and Recognition of Trade Unions and Employers’ Organizations and the Model Labour Law on Equality of Opportunity and Treatment in Employment and Occupation.
- 87 Corazza and Razzolini, 2014.
- 88 Art. 29, *Decreto legislativo*, 10 September 2003, No. 276. See also art. 43 of the *Estatuto de los Trabajadores* in Spain.
- 89 Bamu, forthcoming.
- 90 Art. 2(c) of the Contract Labour Act defines a contractor as “a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a subcontractor”.
- 91 Landau, Mahy and Mitchell, 2015.
- 92 Weil, 2014.
- 93 *McDonald’s USA, LLC, a joint employer, et al.* (02-CA-093893).



- 94 Case No. TST-RR-1170-78.2011.5.03.0077.
- 95 See, for instance, the contributions published in Rossi, Luinstra and Pickles, 2015, and in the *International Journal of Labour Research*, 2015, Vol. 7, Issue 1–2.
- 96 See the report prepared by the International Labour Office for this discussion: ILO, 2016a.
- 97 Ibid.
- 98 Ibid.
- 99 CARICOM, Model Harmonisation Act Regarding Equality of Opportunity and Treatment in Employment and Occupation; Model Law on Occupational Safety and Health and the Working Environment; Model Harmonisation Act regarding Termination of Employment.
- 100 *FNV Kunsten Informatie en Media*, C-413/2013. See Chapter 5.
- 101 Weiss and Schmidt, 2008; ILO and European Labour Law Network, 2013.
- 102 ILO and European Labour Law Network, 2013.
- 103 Torres, 2010.
- 104 ILO and European Labour Law Network, 2013.
- 105 Perulli, 2011.
- 106 Perulli, 2015.
- 107 Ameglio and Villasmil, 2011.
- 108 Ben-Israel and Bar-Mor, 2009.
- 109 Fudge, 2010. See also Arthurs, 1965.
- 110 Langille and Davidov, 1999; Fudge, Tucker and Vosko, 2003; Kennedy, 2005. See, for instance, Superior Court of Justice, Ontario, *Tetra Consulting v. Continental Bank et al.*, 2015 ONSC 4610 (CanLII).
- 111 Harris and Krueger, 2015; Surowiecki, 2015; for a critical analysis of these proposals, see De Stefano, 2016b; Rogers, 2016; Eisenbrey and Mishel, 2012.
- 112 See also, for further references, De Stefano, 2016c.
- 113 Ibid.; Finkin, 2016.
- 114 Aloisi, 2016; De Stefano, forthcoming.
- 115 Silberman and Irani, 2016.
- 116 Zatz, 2016.
- 117 Irani, 2015.
- 118 Leimeister and Durward, 2015; Kuek et al., 2015.
- 119 Eurofound, 2015.
- 120 Risak and Warter, 2015.
- 121 Eurofound, 2015.
- 122 Aloisi, 2016.
- 123 Berg, 2016; Cherry, 2011; Felstiner, 2011.
- 124 *Otey et al. v. Crowdflower, Inc. et al.* before the United States District Court, Northern District of California.
- 125 Prassl and Risak, 2016.
- 126 Aloisi, 2016.
- 127 Griswold, 2014.
- 128 Rogers, 2015.
- 129 *Cotter et al. v. Lyft Inc.; O'Connor et al. v. Uber Technologies, Inc., et al.*, both before the United States District Court, Northern District of California. In August 2016, this court rejected the settlement proposal in the *O'Connor et al. v. Uber Technologies, Inc., et al.* case.
- 130 Cherry, 2016.
- 131 Request for a preliminary ruling from the Juzgado Mercantil No. 3 de Barcelona (Spain), lodged on 7 August 2015 – *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.* (Case C-434/15).
- 132 ILO, 2015c.



*Construction worker, Dhaka, Bangladesh*

# CHAPTER 2

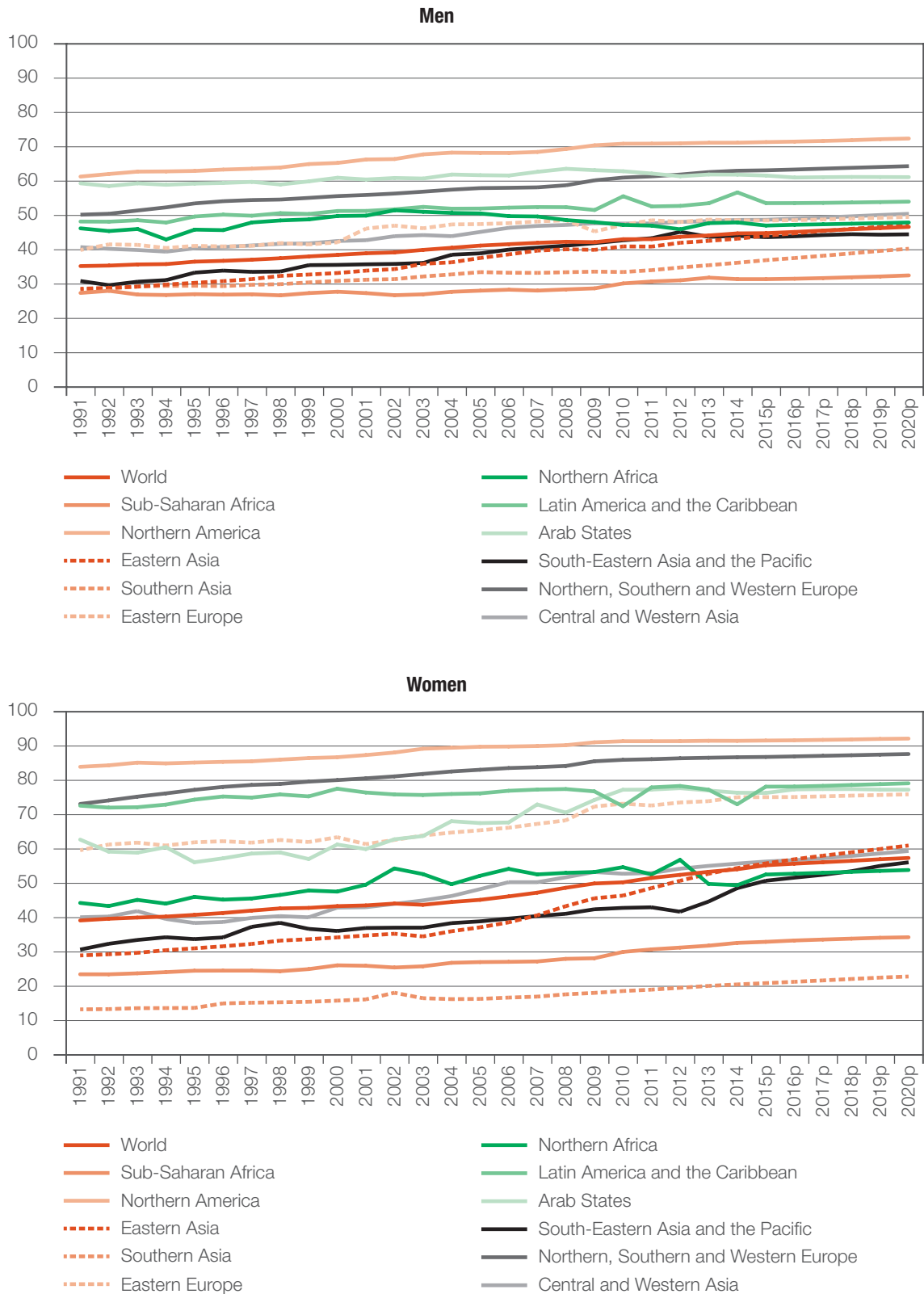
## Understanding trends in non-standard employment

In many parts of the world – and particularly in many industrialized countries – the standard employment relationship has been eroded. While it is unlikely that all workers will become temporary, part-time or dependent self-employed in the future, non-standard jobs have proliferated in sectors and occupations where they did not previously exist, and their overall importance in the labour markets of most countries of the world has increased over the past decades.

The reasons for this proliferation are multifaceted and vary substantially across countries. Yet several overarching and interrelated tendencies can be discerned that are linked to profound changes in the world of work observed over the past half-century. Continuing transformation of economic structures away from agriculture to manufacturing and then to services (and sometimes directly from agriculture to services), the development of new production activities, the proliferation of global supply chains and the internationalization of the world's production system, the evolving demographic structure of the labour force, the advent of new technologies – all intertwined with evolving cultural norms, with labour regulations that need to adapt to these changes, and with uneven business cycles – are among the key reasons for both this proliferation and its unevenness. Indeed, some of these forces have created fertile ground for development or else for a re-emergence of those forms of non-standard employment (NSE) that have always existed, such as temporary and part-time work, and have subsequently led to the development of alternative forms, such as contract work and temporary agency work (TAW).

The services sector has expanded in most parts of the world throughout the last three decades. Currently, employment in services accounts for nearly half of all employment in the world, and has risen by more than 10 percentage points since the beginning of the 1990s.<sup>1</sup> In 2013, services accounted for over half of total global employment growth.<sup>2</sup> In some parts of the world, such as South Asia, the economic growth of the past years has been mainly driven by the services sector. In all regions, the proportion of women working in services is higher than that of men, and in many instances is growing more rapidly (see figure 2.1). While a certain slowdown in structural transformation has been observed in many emerging economies, especially since the global economic recession, economic activities in private sector services, such as hospitality and catering, are still

Figure 2.1. Share of employment in the services sector, by sex and region, 1991–2020 (percentages)



Note: p – projections.  
Source: ILO Trends Econometric Models.



expected to be among the fastest growing in terms of job creation.<sup>3</sup> Public services in health care, education and administration are also anticipated to increase.<sup>4</sup>

In the services sector, demand peaks are arguably more frequent and less predictable than in manufacturing, and thus there is a greater need to ensure “organizational flexibility”.<sup>5</sup> Non-standard employment can help address such needs, and while there are other options available for accommodating organizational flexibility, in practice the reliance of the services sector on non-standard employment has meant that its use has steadily expanded. Some sub-sectors within services also have features that favour NSE. For example, the hospitality and tourism sector – one of the fastest-growing in services, which accounted for one-third of the global services trade in 2010 – is characterized by high fragmentation (around 20 per cent of the workforce is located within multinational enterprises), prevalence in chains and franchised enterprises, use of outsourcing, seasonality, and the need to provide services outside standard working hours. This creates a strong demand for temporary and part-time work, as well as providing fertile ground for the development of triangular employment and dependent self-employment.<sup>6</sup>

At the same time, manufacturing also came under pressure from globalization, with relentless international competition and pressure to reduce costs and address demand volatility. The fragmentation of production, coupled with outsourcing, led to an acceleration in the trade of intermediate goods and the proliferation of global supply chains. Numerous countries in Asia and Latin America created special legal and fiscal incentives to attract foreign investors as well as infrastructure to facilitate the setting-up of offshore enterprises. As a result, producers (suppliers) from developing countries were also able to access international markets, while buyers profited from the ability to compare, choose and switch between suppliers globally. Fierce competition between suppliers and ever-growing pressure from buyers to cut costs and ensure in-time production put further pressure on local suppliers to outsource and subcontract labour, and to re-engage workers for short periods of time by repeatedly hiring them on short-term contracts.<sup>7</sup> Thus labour contracting itself can be seen as a “logical extension of global outsourcing”.<sup>8</sup>

The development of services and of global supply chains is inseparable from technological developments. New information technologies, the expansion of telecommunications, higher quality and the lower costs of infrastructure, logistics and transportation, and the development of global finance have created enabling environments for real-time comparison, organization and the management of fragmented production scattered around the globe.<sup>9</sup> In their turn, these new technologies have also allowed for the creation of new jobs and of new forms of work, such as work on internet platforms, or work-on-demand via apps. They also further modified the way businesses manage their human resources, including in-sourced and outsourced staff. Some of the technological developments have also allowed businesses to manage their labour demand minute by minute, leading to increasing need for short-term, part-time and on-call work.

To accommodate these changes, but also to stimulate employment of the evolving labour force, many countries experimented with new sets of regulations governing fixed-term contracts (FTCs), TAW and working hours. In many parts of the world, some of the existing regulations were liberalized with the aim of creating new employment



Bangladesh migrant worker in a textile factory, Jordan's Al Hassan Industrial Zone

© ILO/Awad Tawel

opportunities, only to be tightened up several years later to curtail the growth of NSE. In other countries, new regulations were designed to fill the legislative gaps or to correct past regulatory inefficiencies. Depending on the institutional features and the timing of these reforms, the changes had various consequences for non-standard employment. Elsewhere, the declining strength of unions also helped shift bargaining power towards employers, boosting their ability to use NSE as part of their human resources strategies.<sup>10</sup>

Another relevant question is how NSE is affected by changes in macroeconomic conditions. The global economic recession that followed the 2008 financial crisis had multiple implications for changes in the incidence and the variety of NSE. In some instances, it mitigated and reversed the upward trends observed before the crisis. In others, it contributed to their development and facilitated the emergence of new forms and modes of work. In developing countries, workers laid off from formal wage employment not only took up non-standard work in formal sectors, but also moved back to informality, often to informal casual work.

Companies seeing a fall in demand for their products, coupled with restrictions on credit, have been choosing one of two broad strategies to reduce the costs of their workforce: they either reorganized work by rationalizing certain tasks – in some cases reducing working hours or “sharing jobs to save jobs” – or reduced the number of workers employed, with workers on temporary employment contracts or hired through tempor-



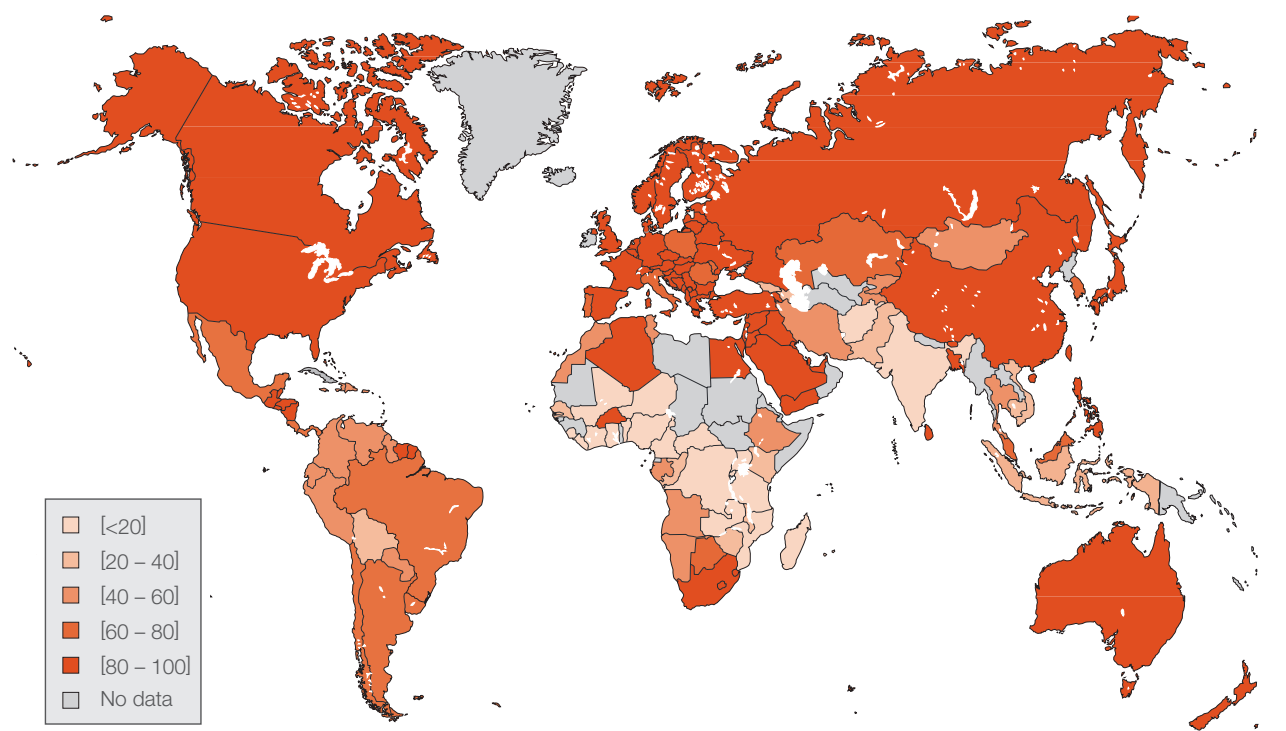
ary employment agencies the first to be dismissed.<sup>11</sup> The internal adjustment measures that focused on changing the organization and the duration of working time of the core workforce, for example by temporarily reducing working hours, have in some instances led to a growth of part-time work in the recession (though this statistical growth may not correspond to the legal status of such workers, as legally those workers may not be considered as part-timers). Alternatively, companies have dismissed workers, with those on non-standard contracts being let go first. When hiring resumes, firms have often reverted to temporary hiring – including on very short contracts – and to TAW, resulting in shifts in the overall labour market structure. Companies tended to adopt either one or a mix of strategies during recessions, depending on the country and institutional environment, on the industry type, on company size, and on past company and sector experiences. As a result, the types of NSE across the world, and their effects, have been highly uneven.

This chapter reviews the trends and incidence of the different types of NSE around the world. However, as the statistical definitions measuring the different types of NSE diverge across countries and regions of the world, often reflecting local practices (see the Appendix to this chapter for an explanation of statistical definitions and data availability), this is not a straightforward task. Because of these constraints, the chapter reviews data by *type* of non-standard work and, within each category and to the extent that the data allow, by *region*. Although data limitations, particularly with respect to employment arrangements involving multiple parties, disguised employment and dependent self-employment, hinder a comprehensive assessment of changes in the world of work across the globe, we can, nonetheless, glean some hints of broader changes in the use of NSE.

In addition to setting out the incidence and trends, this chapter also attempts to understand why NSE has grown in importance in each specific region, and particularly highlights the role of public policy. Laws and policies, as will be shown, often emerged in response to developments in NSE; in some instances they accelerated those developments, in others they created voids that were then filled by NSE.

But before entering into a discussion of trends in the different types of NSE, it is important to mention that the analysis is limited to workers who are (or should be classified as being) in an employment relationship. Thus, when comparing trends and incidence across countries, it is necessary first to understand the extent of wage employment. Figure 2.2 shows the percentage of the employed population that is engaged in wage employment. The situation today is the result of the growth of wage employment throughout the past century. Wage employment still remains limited in some regions, primarily in some countries of Africa and Asia, as well as some parts of Latin America. In these regions, sizeable portions of the working population work in subsistence agriculture or petty trade, where no employment relationship exists. In many developing countries, when wage employment is present, it is often casual – with contracts that are either verbal or tacit – and of an intermittent nature. While there is nothing new about casual work (records of its existence date back to Ancient Greece),<sup>12</sup> its continued relevance in developing countries and its resurgence in industrialized countries, including in the context of work in the “gig economy”, make it central to this report on non-standard employment.

Figure 2.2. Percentage of employed workers who are wage employees, around 2013



Source: ILOSTAT.

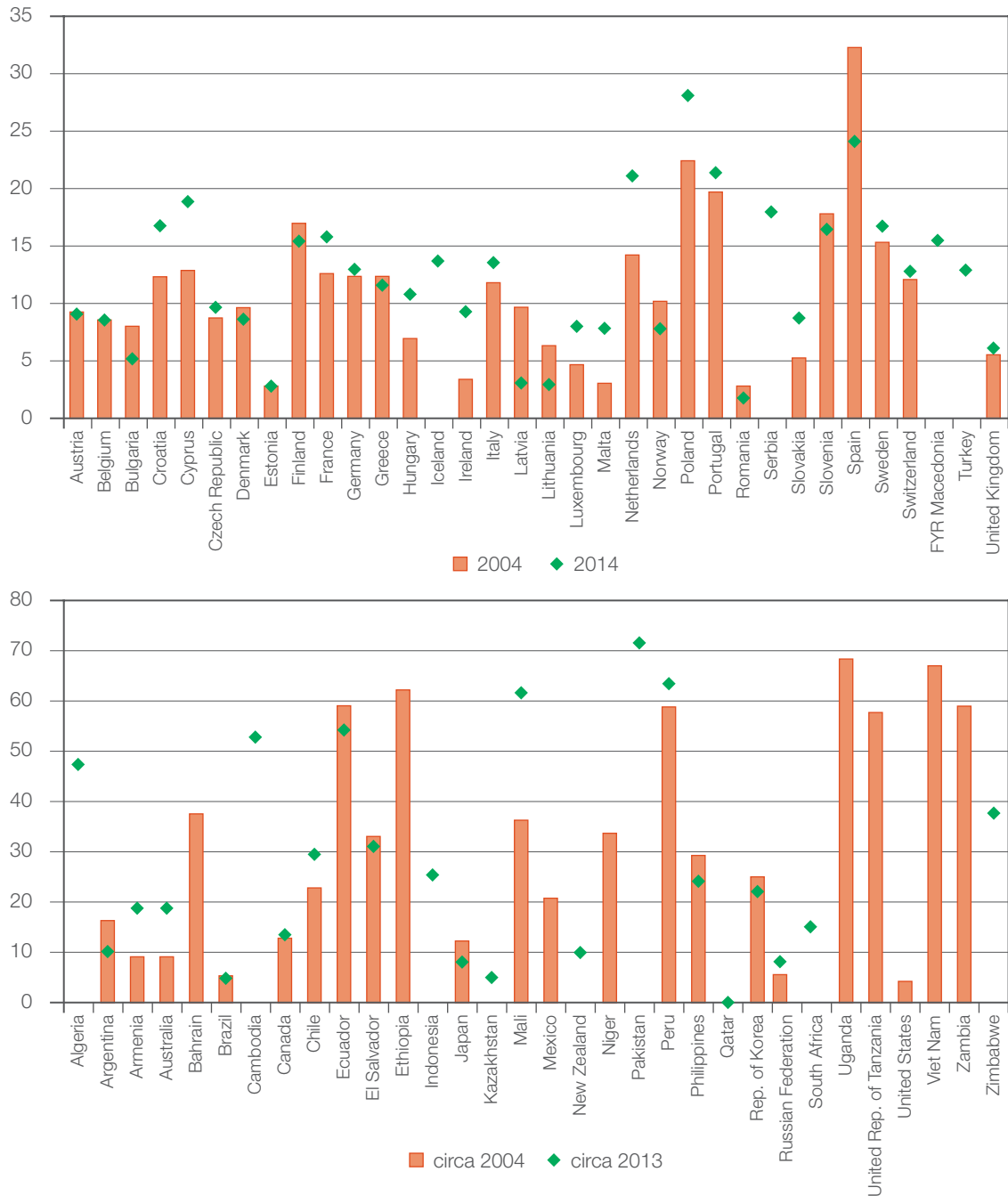
## 2.1. TEMPORARY EMPLOYMENT

Figure 2.3 provides a global snapshot of temporary employment. It shows the share and the dynamics of temporary workers, as a percentage of all wage employees, and suggests that the variation across and within regions is significant. In Europe (upper panel) in 2014, the incidence of temporary employment ranged from under 5 per cent in Romania and the Baltic States to 23 per cent in Spain and over 25 per cent in Poland. In other parts of the world (lower panel), temporary employment around 2013 was as low as 0.1 per cent in Qatar, reaching over 65 per cent in Viet Nam. In terms of dynamics, figure 2.3 shows that the incidence of temporary employment exhibited both upward and downward trends throughout the world, though most of the downward trend reversal took place after, and as a result of, the global economic recession.

### Europe

In European countries, temporary employment has been growing for the past three decades, though in some countries it witnessed a reverse trend following the recent economic crisis. According to Eurostat data, the share of temporary workers<sup>13</sup> in the European Union increased on average from around 9 per cent in 1987 to 14.5 per cent in 2006. Thereafter, the recession hit those workers in particular and resulted in a fall in

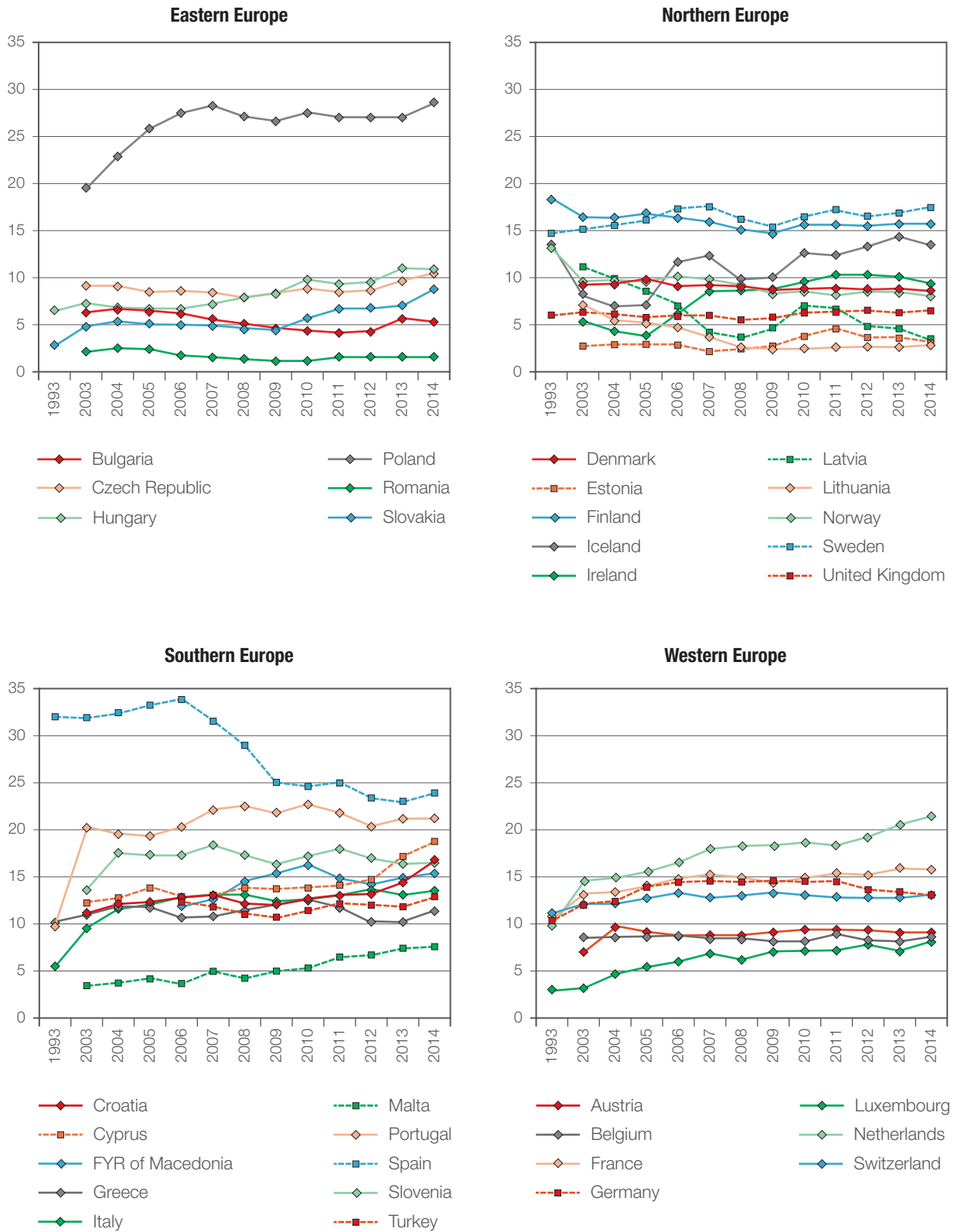
Figure 2.3. Temporary workers as a percentage of wage employees, selected countries



Note: Upper panel: European countries; lower panel: rest of the world. To the extent possible, data include only direct-hire temporary employees. Data for European countries from Eurostat include directly hired employees but also workers engaged by an employment agency with limited duration. Peru: temporary workers as a percentage of workers with written contracts. For more details, see Statistical Appendix at the end of this chapter.

Source: European countries: 2004, 2013 (Eurostat); Austria: 2004, 2012 (Eurostat); FYR of Macedonia, Turkey: 2006, 2013 (Eurostat); Serbia: 2014, LFS 2014; Russian Federation: 2000, 2011 (OECD); Armenia: 2005 (National Statistical Service); Kazakhstan: 2013 (Ministry of National Economy, Committee on Statistics); Canada: 2000, 2011 (OECD); New Zealand: 2012 (Statistics NZ); Rep. of Korea: 2004, 2011 (OECD); Japan: 2001, 2013 (OECD); United States: 2001 (OECD); South Africa: LFS, 2014; Argentina: 2004, 2012 (EPH INEC); El Salvador: 2005, 2011 (DIGESTYC); Peru: 2005, 2012 (ENAH O INEI); Chile: 2003, 2012 (CASEN MDS); Brazil: 2004, 2011 (PME IBGE); Mexico: 2004 (OECD); Algeria: 2004, 2013 (Statistiques de la Population et de l'Emploi ONS); Ethiopia: 2005 (LFS); Uganda: 2005 (UBOS); Qatar: 2012 (LFS); Zimbabwe: LFS (2011); Bahrain: 2004 (Min. of Labour Report); Zambia (2008): ILO DCWP; Viet Nam: LFS 2007 and 2011; Cambodia: LF-CLS 2012; Philippines: LFS 2003 and 2009; Pakistan: LFS 2005, 2009; Indonesia: LFS 2003 and 2012.

Figure 2.4. Workers with fixed-term contracts as a percentage of all employees, selected European countries, 1993–2014



Source: EU LFS, Eurostat.

**Box 2.1. The flip side of the Italian “honeymoon” reforms**

In Italy, temporary employment began growing in the early 1990s, rising from 5 per cent in 1990 to 14 per cent in 2007–08. Initially slow and “natural”, this growth was boosted by a series of legislative reforms “at the margin”. In 1997, a change in the legislation introduced TAW, and a 2001 reform extended the scope to fixed-term contracts. A further reform in 2003 introduced a variety of atypical contracts, including on-call work, and loosened the requirements for use of TAW. The reform tried to improve regulation of *para-subordinate* relationships by tying them to a specific project in order to highlight any instances of misclassification of employment relationships, as well as providing *para-subordinate* workers with some labour and social protection. These project-based contracts, however, were not exclusively temporary in nature, and also did not make allowance for protection in case of termination or maternity, or sick-leave compensation; they featured lower social security contributions and did not permit any entitlement to unemployment benefits. These features rendered project-based contracts particularly attractive to employers.

All three reforms were aimed at boosting overall employment, and youth employment in particular. As they primarily affected new entrants to the labour market, they were widely referred to as “reforms at the margin”. Between 1997 and 2008, they delivered on their promise of decreasing unemployment and increasing employment, especially among young people, women and migrants, but this employment creation disproportionately took the form of temporary employment, increasing its prevalence in all sectors of economic activity. Such an outcome is consistent with the so-called “honeymoon effect” of marginal reforms, a term coined by Boeri and Garibaldi (2007): employers take advantage of the flexible use of temporary contracts to hire during periods of growth, but do not renew them in recessions, a tactic that renders employment gains temporary and leads to massive swings in unemployment. Indeed, the recent economic recession revealed the downside of the “honeymoon”, with a dip in the proportion of temporary employees and rising unemployment.

These three reforms have also been considered “asymmetric” inasmuch as they concerned only part of the population entering the labour market, and also in the sense that they were mainly aimed at deregulating and promoting the use of temporary contracts, leaving the regulation of permanent contracts unaffected. Legislation introduced in 2014 was the first in the series of reforms aimed at redressing this lack of symmetry by substantially reducing costs of terminating permanent workers. Its long-term effects on temporary work are yet to be documented.

Source: Adapted from Garibaldi and Taddei, 2013; Boeri and Garibaldi, 2007, and internal legal analysis.

their numbers to 13.7 per cent in 2012, which recovered to 14 per cent in 2014.<sup>14</sup> While some of these changes also reflected the expansion of the EU and the inclusion into statistics of additional countries, there were few countries that did not experience any growth in temporary employment during this period (figure 2.4). The only region that enjoyed relative stability in temporary employment was Northern Europe, but even so, countries such as Ireland witnessed a nearly twofold increase between 2003 and 2014.

In other parts of Europe, significant increases over the past decade were recorded in Cyprus, Croatia, Italy (see box 2.1) and the Netherlands. In Spain, the growth in the mid-1980s was dramatic as the share of temporary workers grew from its 1987 level of 15.6 per cent to a peak of no less than 35 per cent in 1995 (see box 2.2). It declined after 2005, but still remains the highest in southern Europe. In France, the share of temporary employment increased from 5 per cent in 1990 to 11 per cent in the late 1990s,<sup>15</sup> and then grew to almost 16 per cent by 2014. Amongst workers entering the labour market in 2010

**Box 2.2. The rise and fall of temporary employment in Spain**

Spain has one of the highest rates of temporary employment in Europe and the world. Temporary employment emerged in 1984, when a relatively minor legal change was introduced to allow the use of temporary contracts for any type of job, including the performance of permanent tasks, in order to promote employment in a period of lacklustre growth. As a result, temporary employment grew dramatically, reaching 35 per cent a decade later and spreading to sectors that were not subject to seasonal fluctuations. In 1994, the first reform to combat this growth was enacted, restricting it in some instances. However, by then, firms had already become accustomed to using temporary contracts in their operations and as their first recourse to make adjustments in the business cycle. In subsequent years, the use of temporary contracts, including task-based or project-based contracts, intensified, as production processes were continuously adapted for the coexistence of high-rotating temporary jobs filled through temporary contracts, and of low-rotating jobs covered by permanent contracts. As a result, temporary contracts reinforced the already existing segmentation of jobs, by promoting a segmentation of workers along the “bad job – temporary contract” / “good job – permanent contract” divide. Despite attempts in 1997 and 2006 to address the large number of workers in temporary contracts, by offering financial incentives to firms to convert temporary contracts into permanent ones, about a third of employees were still on temporary contracts in 2008.

The latest economic crisis put an end to the speculative bubble associated with the construction sector, but it also had widespread ramifications throughout all sectors of the economy, including the public sector. The first response of employers was not to renew or offer new temporary contracts. As a result, between the end of 2007 and the end of 2009, the share of temporary employment fell from 31 per cent to 25 per cent.

Another contributing factor to the persistent use of temporary contracts was the difference in the regulation of fixed-term contracts and of open-ended contracts (i.e. the so-called difference in firing costs). Changes to the regulation of open-ended contracts were part of the 1994 reform, but also of the 2010 and 2012 reforms. The 2012 reform affected dismissal costs for open-ended contracts, with the aim of reducing the incentives to rotate workers in the same jobs solely to reduce firing costs. The scope of this reform, however, was limited in its capacity to alter attitudes to job reorganization at the company level. According to Bank of Spain statistics, in December 2013 and January 2014, temporary hiring was reported to be on the increase – up by 14.7 per cent in Q4 2013, accounting for the majority of new hires.

Source: Adapted from Garcia-Serrano and Malo, 2013; and Malo, 2012.

in France, 69 per cent were hired on FTCs.<sup>16</sup> Among Eastern European countries, Poland stands as a stark example of persistently growing temporary employment; since 2008, it has surpassed Spain in its use of temporary work, becoming the European champion of temporary employment.

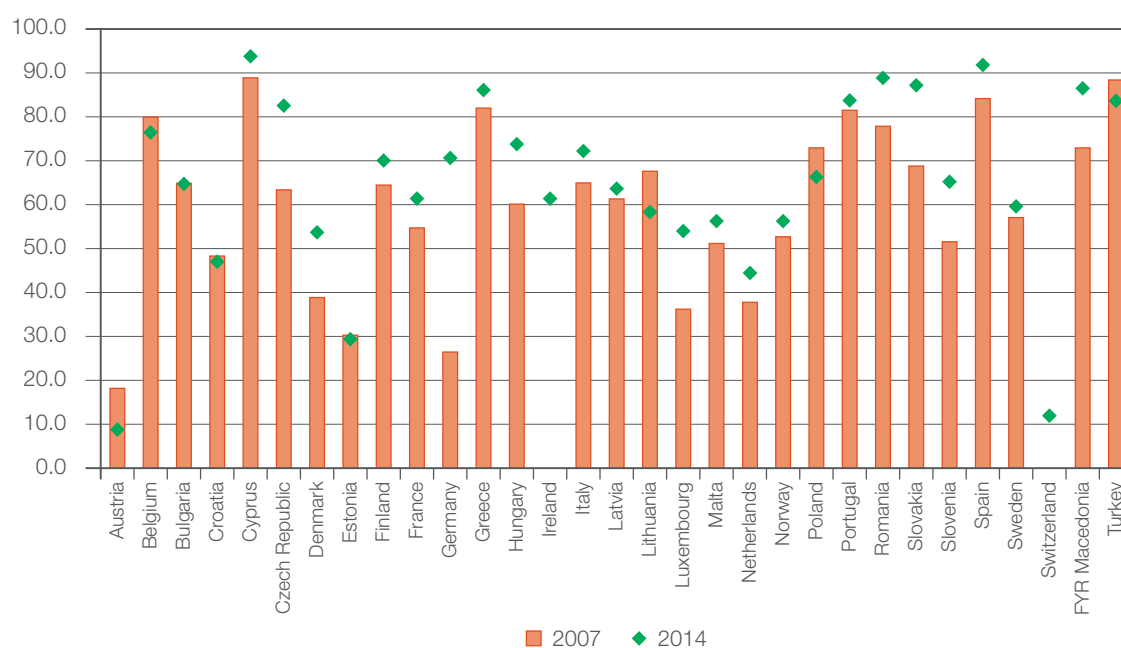
Many of these developments in Europe have been driven by policy reforms aimed at increasing labour market flexibility by facilitating the use of temporary employment. Fixed-term contracts were introduced through legislative changes in Spain, Italy, Germany and in several other countries in the 1980s and throughout the 2000s – initially as transitory measures – in the hope of counteracting the negative employment consequences of the slowdown in economic growth and of boosting employment. At first limited to young workers entering the labour market, FTCs have been extended to other categories of workers in some countries, such as Portugal and Spain. These “partial”



reforms, or reforms “at the margin”, which left employment protection for workers on permanent contracts essentially unaltered, led firms to make increasing use of workers on fixed-term contracts, resulting in an increased duality in most European labour markets over the last two decades.<sup>17</sup> In France, the rise in temporary employment can be explained by an accumulation of the stock of temporary workers: each year between 1993 and 2011, more individuals moved from unemployment into short-term jobs than from unemployment to long-term jobs, while transitions between short-term and long-term jobs stayed intact.<sup>18</sup> Over 2000–12, changes in total employment inflow in France were mainly driven by temporary jobs.<sup>19</sup> In Poland, figures reflect workers with FTCs, but also workers on commercial contracts. The latter became increasingly popular, with approximately 10 per cent of the working population on these contracts in 2012.<sup>20</sup> In 2013, the Polish National Labour Inspectorate found that around 19 per cent of service contracts should have been regular employment contracts.<sup>21</sup>

The recent economic crisis in Europe had a number of different effects on the proportion of temporary contracts, depending on the country. On the one hand, in the wake of instability and uncertainty, some companies adopted a “wait and see” strategy, whereby they started hiring workers on very short temporary contracts to replace permanent employees. Such practices were observed in France, Italy and Ireland, where temporary employment grew over the 2009–14 period. For example, between 2006 and 2012, the share of fixed-term contracts among new hires increased from 26.7 per cent to 48.4 per cent in Ireland. It also increased from 22.1 per cent to 75 per cent in the United Kingdom, and reached over 75 per cent in 2011–12 in Poland, Portugal, Slovenia and Spain.<sup>22</sup> On the other

**Figure 2.5.** Trends in involuntary temporary employment as a percentage of temporary employment, 2007 and 2014



Note: Answers to the labour force survey question: “Main reason for the temporary employment: could not find a permanent job”.

Source: ELFS; calculations by Schmid and Wagner, 2016.

**Table 2.1. Reasons for working on a fixed-term basis, European Union countries, 2014 (percentages)**

	Men	Women	Total
Person could not find a permanent job	61.6	63.2	62.3
Person undergoing school education or training	18.1	16.7	17.5
Person did not want a permanent job	11.1	11.9	11.5
Person held a probationary contract	9.1	8.2	8.7
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Eurostat (ELFS), calculations by Schmid and Wagner, 2016.

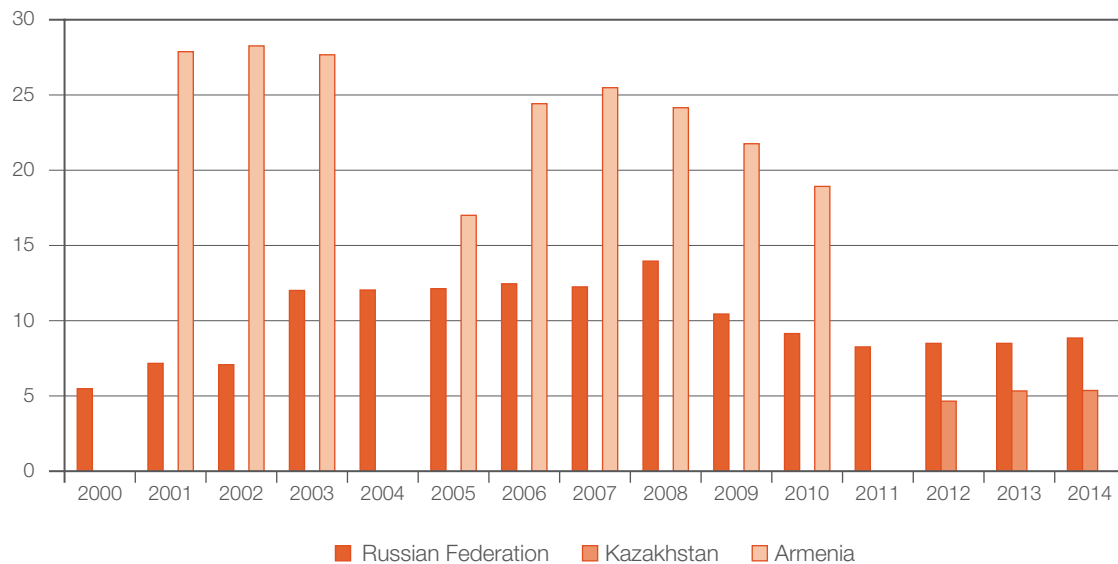
hand, when reduction of the workforce was inevitable, it often came at the expense of the periphery workers, by not renewing temporary contracts. Such a strategy was observed in Spain, where temporary employment dropped from 29.1 per cent in 2008 to 22.1 per cent in 2013. In the last quarter of 2008, 2.5 per cent of Spain's permanent workers lost their jobs, compared with 15 per cent of workers on FTCs. Important differences, however, were observed across occupations: while temporary employment dropped for high-skilled and medium-skilled occupational categories, it continued to grow for the lowest occupational categories.<sup>23</sup>

The reasons cited by workers for holding temporary jobs are diverse, and can include balancing work with other activities, notably education or training. Just under 10 per cent of those questioned were holding a probationary contract. However, across Europe, 62 per cent of workers reported in 2014 that they were on a temporary contract because they could not find a permanent job. In the majority of European countries, this figure was lower in the pre-crisis years (see figure 2.5). There were no striking gender differences in the reasons for holding FTCs, though there was a somewhat higher proportion of women in this type of employment relationship because they could not find a permanent job (table 2.1).

The variation in the incidence and growth of involuntary temporary employment is substantial.<sup>24</sup> Figure 2.5 shows that in Denmark, France, Sweden, Switzerland and the United Kingdom, roughly one-fifth of all workers on an FTC reported entering into this type of contract because they did not want a permanent job. The percentage of workers who reported holding a temporary job because they could not find a permanent one ranged from about 10 per cent in Austria and Switzerland to over 85 per cent in Cyprus, Romania and Spain in 2014.

### Commonwealth of Independent States (CIS)

In the former Soviet Republics, non-standard employment, such as temporary employment and employment through temporary work agencies (discussed in section 2.2), emerged as a new phenomenon in the 1990s. Examples of its evolution in the Russian Federation, Armenia and Kazakhstan are given in figure 2.6. The appearance of NSE can be attributed to three key factors. First, labour relationships, predominantly permanent under the

**Figure 2.6.** Temporary workers as a percentage of wage employees, selected CIS countries, 2000–14

Source: Russian Federation: OECD, based on LFS; Kazakhstan: Kazakhstan Committee of Statistics; Armenia: ILO, 2011; based on LFS, 2001–2006 and ILCS, 2007; series break in 2004–05, no data available for 2011–14..

planned economy, were partly liberalized with the beginning of market reforms, paving the way for a diversification of labour contracts. Second, with market liberalization, new employment opportunities sprang up outside state enterprises.<sup>25</sup> The emergence of small and medium-sized privately owned enterprises with a high demand for labour flexibility and cost reduction, as well as employment opportunities with individual employers (households), coupled with low labour law enforcement and gaps in legislation, facilitated the growth of NSE.<sup>26</sup> For example, while Armenia has gone a long way in reforming its labour law and adopted a Labour Code in 2004, implementation and its monitoring remain limited. Lastly, the establishment in the post-Soviet countries of foreign firms that were unfamiliar with the local labour force and unwilling to take the risk of hiring permanent workers – coupled with economic fluctuations and notably the 1998 Russian financial crisis – spurred the demand for temporary agency workers.

As a result, in the Russian Federation, temporary employment rose from around 2 per cent in 1992 to over 14 per cent in 2008, though it then declined to 8 per cent in 2011 in the aftermath of the global economic recession. NSE in general has continued to proliferate, with particular growth observed in casual employment, while fixed-term and project-based employment has remained relatively stable.<sup>27</sup> In addition, much of the temporary employment is informal (65 per cent of all informal employees were employed on a fixed-term, project-based, or casual basis in 2002, with the total falling to 59 per cent in 2007). Temporary workers have increasingly been working longer hours as compared to workers in standard jobs. In other words, the demand for these workers has increased both extensively (through their higher number) and intensively (through longer hours).

In Armenia, temporary, seasonal and casual employment reached its peak in 2002, with temporary employees representing 28 per cent of all employees; it decreased and stabilized around 20 per cent towards 2010.<sup>28</sup> A gap in the data on temporary and seasonal work in Armenia makes it difficult to draw conclusions about long-term change; however, the number of people in temporary jobs increased between 2005 and 2007, dipping after 2008 with the onset of the global financial crisis. In Ukraine, the labour force survey asked about the permanence of jobs rather than contracts: the responses showed that the proportion of fixed-term jobs stood at 5 per cent of total wage employment in 2013.<sup>29</sup>

### Latin America

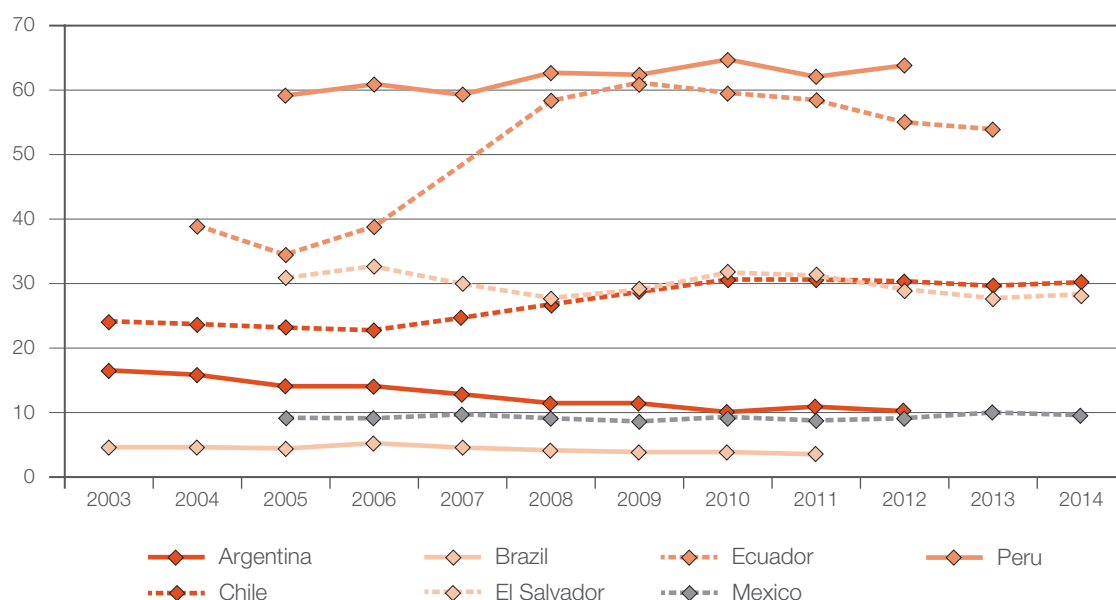
In Latin America, the evolution of temporary employment varies markedly across the region, partly as a result of different levels of economic development but also because of alternative paths taken by individual countries with respect to labour market reforms. As in Europe, a number of countries implemented reforms liberalizing the labour market to varying degrees during the 1990s, in particular the use of temporary forms of employment, including fixed-term contracts and TAW.<sup>30</sup>

Figure 2.7 shows the incidence and evolution of temporary employment in seven Latin American countries between 2003 and 2014. In Argentina, Brazil and Mexico, the use of temporary employment is limited. In contrast, in Chile and El Salvador, around 30 per cent of employees are on temporary contracts, despite differences in the economic structure of the two countries. Figures for Ecuador and Peru are the highest, though the data for Peru only reflect workers with a written employment contract.

Although Argentina currently has a relatively low incidence of temporary work, this was not the case in the 1990s when it became widespread, following the introduction of new forms of short-term contractual arrangements at the beginning of the decade. The new contractual forms had lowered social security contributions, thus providing an incentive for employers to hire workers on these contracts, especially during times of economic stagnation. As a result, temporary employment expanded throughout the 1990s. Following the economic crisis of 2002, however, the government re-regulated its labour market, reducing incentives for the use of temporary contracts. This led to a trend reversal in temporary employment, which dropped from 16.8 per cent of wage employment in 2003 to 9.8 per cent in 2012.<sup>31</sup>

Brazil, unlike Argentina, Chile, Ecuador or Peru, has not changed its labour legislation to facilitate the use of temporary contracts, and they are not used frequently in the country. Nonetheless, employers can easily dismiss workers on open-ended contracts, and the Brazilian labour market is characterized by high rates of job turnover, with many regular employment contracts terminated within one or two years, especially among the low skilled.<sup>32</sup>

In Mexico, temporary employment as a percentage of wage employment was between 8 and 9 per cent for most of the 2000s. It increased to almost 10 per cent in 2015, possibly due to the labour reform of late 2012, which introduced temporary contracts for probation, training, and seasonal purposes, but also likely due to the economy's recovery after the crisis. The data are limited to written temporary contracts and probably

**Figure 2.7.** Temporary workers as a percentage of wage employees, selected Latin American countries, 2003–14

Note: Data for Peru are based on written contracts only. Data for Argentina and Brazil are based on Q4 of each year. For Ecuador 2007–08, there is a break in the series.

Source: Argentina: EPH (Q4 of each year); Brazil: PME (IBGE) (Q4); Chile: CASEN; Peru: ENAHO; El Salvador: EHPM; Ecuador: ENEMDU; Mexico: INEGI.

underestimate the use of temporary employment. As a percentage of written contracts, temporary employment was 18 per cent in the first quarter of 2015.

Although higher when compared with Argentina, Brazil or Mexico, the use of temporary employment in El Salvador is more a reflection of the country's economic structure and income level than a measure of the regulatory policies that have encouraged the use of temporary contracts. In 2014, temporary employment accounted for 28 per cent of wage employment, just below the 2005 level, when 31 per cent of wage employees were on temporary contracts. Most temporary jobs were in agriculture (accounting for 38 per cent of temporary jobs; 73 per cent of workers in this sector were on temporary contracts) and construction (22 per cent of temporary jobs, with 76 per cent of workers in this sector on temporary contracts). Temporary contracts were also present in other sectors such as manufacturing (17 per cent of temporary jobs, with 10 per cent of workers on these contracts), as well as transport, financial services and public administration.

Temporary employment is relatively common in Chile, with rates matching those of El Salvador despite its higher level of economic development. There have been no significant changes in the laws governing temporary contracts since 1979, when the maximum length of such contracts was extended from six months to two years.<sup>33</sup> At present, the contracts can be of either one or two years' duration, depending on the type of occupation. Fixed-term contracts are widely used, including among workers with formal employment contracts. Indeed, administrative data from workers registered in the unemployment savings account system showed that 37.6 per cent of workers were on FTCs in 2010,<sup>34</sup> above the 30 per cent registered from household surveys. As in southern

European countries with high rates of temporary employment, workers on FTCs in Chile are the first to lose their jobs during an economic downturn; they absorbed almost the entire employment adjustment when the global financial crisis struck in 2009.<sup>35</sup>

Ecuador exhibited a very high level of temporary employment throughout the 2004–13 period, with a slight decrease in the final years. As in Peru, this was mainly due to the flexible labour policies instituted in the country, which, coupled with an unstable economic situation, led to greater use of temporary contracts. Nonetheless, the percentage of workers on temporary contracts declined in the latter half of the 2000s as workers benefited from the increased formalization of the labour market. At the start of the decade, the number of wage earners employed informally was high, and most informal workers were employed on a temporary basis. Because formal workers have a lower incidence of temporary jobs compared to informal workers, the growth in formal employment in the 2000s led to an overall drop in temporary employment.<sup>36</sup>

Peru's experience tends to mirror that of a number of European economies. During the 1990s, Peru experienced some of the most extensive reforms in the region, with the introduction of many new forms of temporary contracts and a sharp increase in their use.<sup>37</sup> By the mid-2000s, around 60 per cent of workers with a written employment contract had a temporary contract.<sup>38</sup> Unlike the situation in Ecuador, the increase in formalization experienced during the 2000s in Peru was largely in the form of temporary employment contracts, with workers shifting from no contract to a written, but fixed-term contract. Indeed, for every two written, open-ended employment contracts in Peru, there are three written, fixed-term contracts, and five oral contracts.<sup>39</sup>

Given the extent of informality in the labour markets of Latin America, it is important to analyse the incidence of temporary employment among formal and informal wage earners (figure 2.8). In Argentina, nearly a third of informal workers are temporary; in Chile, half of such workers are temporary. This means that the poor labour conditions, including the lack of social security protection that is associated with informality, are aggravated by the instability that arises from temporary employment arrangements. Temporary employment also extends to formal workers, however, affecting nearly 20 per cent of such workers in Chile, almost 30 per cent in Ecuador and about 60 per cent in Peru (not shown in figure). As a result, many countries in Latin America have faced a double segmentation problem: their labour markets have become segmented across the formality–informality divide, as well as across permanent–temporary contracts divide.

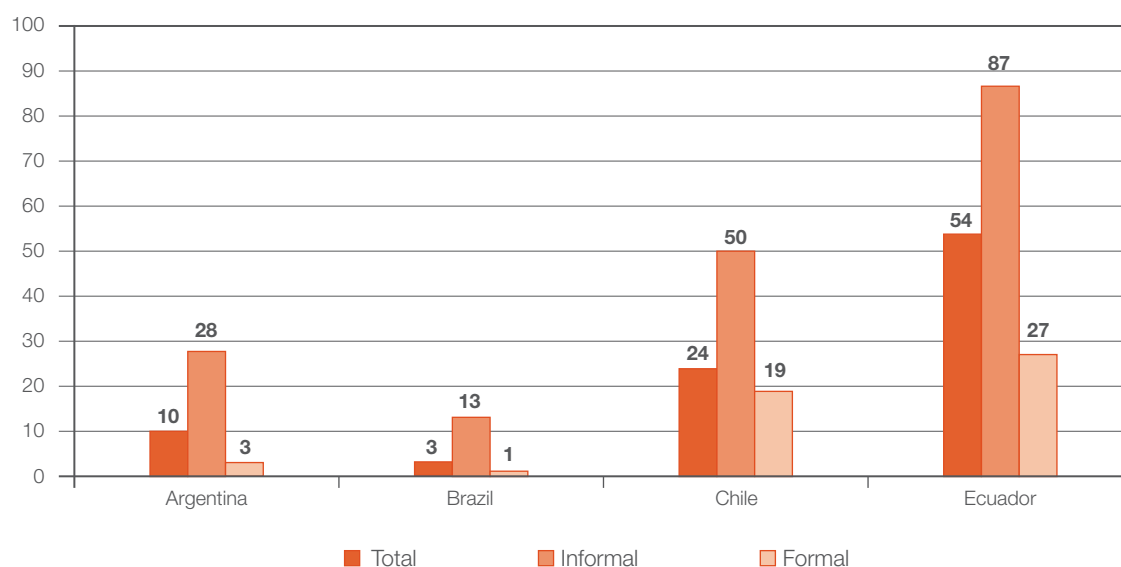
Conversely, in Colombia, where workers on FTCs account for one-fifth of wage employment, informality amongst workers on open-ended contracts is about 10 percentage points lower than it is among fixed-term workers. Nonetheless, among the workers who have a written contract, the proportion of those with an open-ended contract has been declining during the past decade. There is anecdotal evidence that when workers with an open-ended contract retire – or when they are fired – they are substituted by workers with a fixed-term contract.<sup>40</sup>

### Canada, the United States and Australia

In Canada, temporary employment has increased steadily over the past three decades. In 1989, it accounted for 7 per cent of wage employment; by 1997, the figure had reached



**Figure 2.8.** Temporary employment among formal and informal wage earners, selected Latin American countries, early 2010s (percentages)



Note: For Brazil and Chile, formality means that a worker has a signed labour contract, whereas in Argentina and Ecuador, formality indicates that the employer will make social security contributions on the worker's behalf.

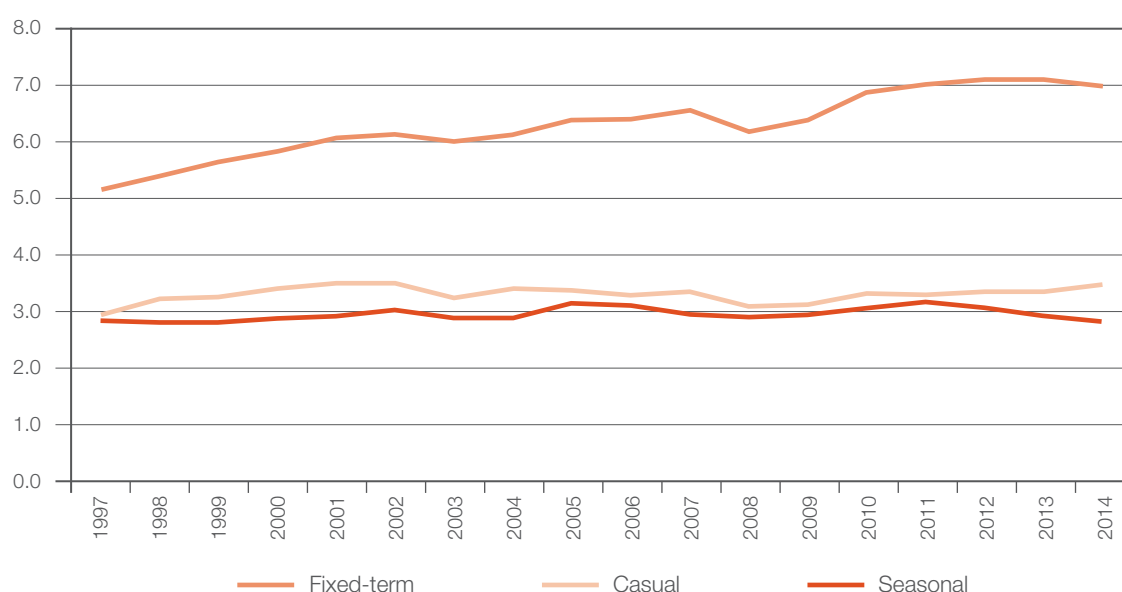
Source: Maurizio, 2016. Argentina: EPH (Q4 of each year); Brazil: PME (IBGE) (Q4); Chile: CASEN; Ecuador: ENEMDU.

11.3 per cent, rising to 13.4 per cent by 2014 (figure 2.9).<sup>41</sup> Most of the increase since the late 1990s has been in FTCs, which grew from 5.2 per cent in 1997 to 7 per cent in 2014, though there was also an increase in casual work, from 2.8 per cent in 1997 to 3.5 per cent in 2014. Seasonal work maintained its 2.8 per cent share throughout the period. Seasonal work is common in the construction sector, but also in manufacturing, agriculture, forestry, fishing and hospitality. Casual employment is most associated with retail trade and hospitality, but is also found in public services, such as health care and education, where over one-third of FTCs are found.<sup>42</sup>

In the United States, there are limited time series data on temporary employment, including temporary work, following the suspension in 2005 of the contingent worker supplement to the Current Population Survey. A 2015 study issued by the Government Accountability Office (GAO), which brings together a variety of public and private data sources, provides some estimates for “contingent” work, including temporary workers directly hired by the company and on-call or day labourers. In 2005, 2.1 per cent of employees were direct-hire temporary workers and 2.0 per cent were on-call workers and day labourers. For 2010, General Social Survey (GSS) data indicate that 3.5 per cent of employees were on-call workers, up from 2.5 per cent in 2005.<sup>43</sup> In general, levels of temporary employment in the United States are low, a characteristic that is usually attributable to the ease of dismissal. Nevertheless, while the country ranks low with respect to temporary contracts, many workers are in other forms of NSE, especially part-time employment and TAW, but also disguised self-employment.

In Australia, 4 per cent of employees were on FTCs in 2014, with no pronounced trend since 2000.<sup>44</sup> Of these, 11 per cent were not guaranteed a minimum number of hours each week.<sup>45</sup> While the proportion of fixed-term employees is low in international comparisons, temporary employment in Australia must also take into account the large numbers of casual employees (box 2.3).

**Figure 2.9.** Temporary employment as a percentage of wage employment in Canada, 1997–2014



Source: Statistics Canada, 2015.

### Box 2.3. Casual employment in Australia

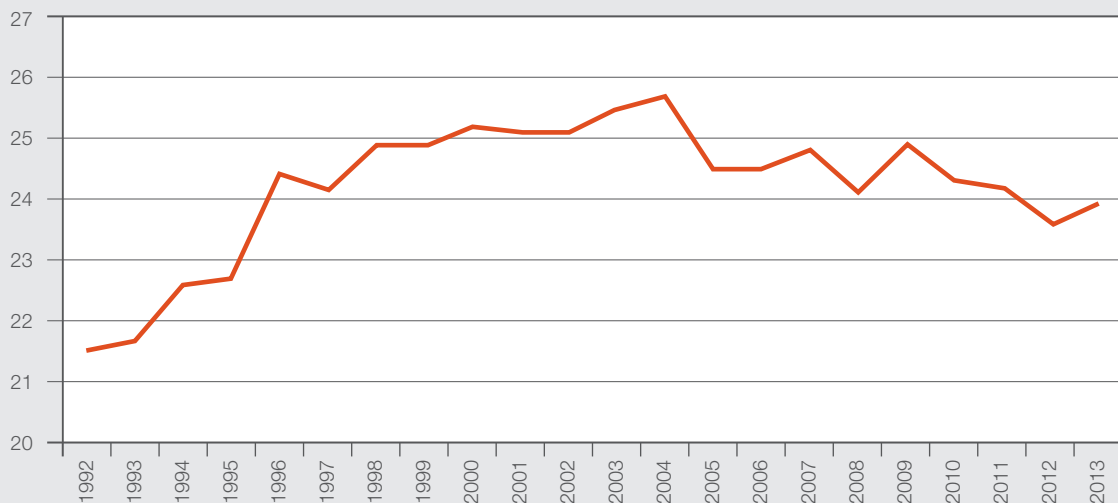
In Australia, casual work forms a very specific category of employment. While it does not have a formal definition in the sense that it has a meaning set down in law or specified in awards and agreements, it has generally been regarded as employment in which there is an absence of entitlement to paid annual leave or sick leave. At the same time, labour regulations specify that the hourly pay for casual workers should be boosted by a “casual loading” (generally 25 per cent), partly as compensation for these missing entitlements. Amongst casual workers, there is a divide between those who experience irregular hours and short-term job tenure and those who are on a regular roster and can confidently expect their employment to continue well into the future (so-called “permanent” casuals). Another major divide is between casuals employed according to the letter of labour regulation and persons who are designated as “casual” but whose employment is cash-in-hand and outside the taxation and social protection system (who could be called “informal” casuals).

The proportion of casuals in the workforce increased rapidly in the 1980s and 1990s (figure 2.10), as employers in low-wage industries took up the varied advantages of casual work (e.g. cheaper labour costs, administrative convenience, ease of dismissal, ability to match labour time to fluctuations in workload, and increased control). The best explanation of the growth of casual employment is to be found in the way that employers – in their labour market practices – have

Box 2.3. continued

taken up the opportunities provided by a relatively unchanging labour regulation system.<sup>46</sup> For much of the twentieth century, labour regulation in Australia was characterized by minimal statutory regulation and heavy reliance on industry and occupational “awards” set down by independent tribunals. The system formed a complex patchwork which focused on standard employment in particular industries, in which detailed regulation of wages and hours was backed up by strong enforcement from trade unions, and was not much concerned with other forms of employment or other industries.<sup>47</sup> The system has changed over the past 25 years, with an overall trend of labour market deregulation aimed at strongholds of standard employment, counterbalanced both by increased opportunities for “enterprise bargaining” and by improvements in the statutory floor of minimum conditions (most recently, the introduction of a statutory paid maternity leave scheme).<sup>48</sup> But the overall result is still a complex and layered regulatory system<sup>49</sup> which fails to provide a solid foundation of minimum standards for workers, but instead leaves numerous gaps as a result of exceptions, exclusions, narrow coverage and poor enforcement.<sup>50</sup> Much NSE in Australia, especially those forms seen as most insecure, such as casual employment and “sham contracting”, fall into such gaps in the labour regulation system.<sup>51</sup> Also important was the increased workforce participation of full-time students and women with childcare responsibilities, who were seeking part-time employment and often found that the only part-time jobs available were casual part-time jobs.

**Figure 2.10. Casual employees in Australia as a percentage of all employees, 1992–2013**



Source: Labour Force Survey, Australian Bureau of Statistics (ABS).

Since 2000 the number of casual employees has increased in line with workforce growth, but the proportion has remained largely stable, at around 24 per cent. The highest concentration of casual workers is in low-wage sectors such as accommodation and food services, retail trade, agriculture, forestry and fishing, but they are now increasingly found throughout most industry sectors.<sup>52</sup> Most casual employees are on part-time schedules, but there is a rising number (29.6 per cent) that work full time.<sup>53</sup>

Source: Courtesy of Iain Cambell.

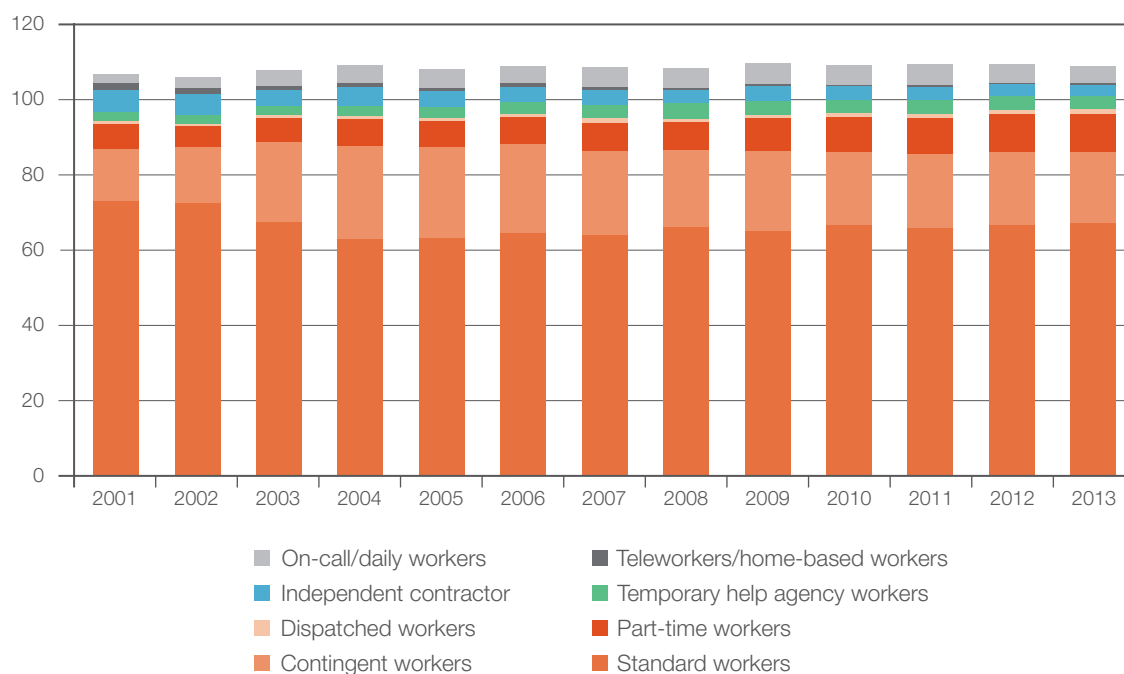
## Asia

In Asia, the proportion of NSE in general is high relative to many other parts of the world. While its emergence was noted three decades ago, it was the financial crisis of 1997–98 that forced a turning point in labour market developments in the region. In response to this crisis – and in some countries as a result of conditions attached to loans from international financial institutions – many countries throughout Asia increased the flexibility of their labour markets, while at the same time undertaking economic restructuring, which included mergers, downsizing of business enterprises and the adoption of alternative employment practices.<sup>54</sup>

In Japan, recourse to temporary employment and other forms of NSE began even earlier than in other Asian countries, as firms sought to offset rising personnel costs for senior employees, following the collapse of the asset bubble in the 1980s. These efforts were aided by the deregulation of the labour market which began in the mid-1990s and continued into the 2000s.<sup>55</sup> Thus, as early as the 1980s and 1990s, the proportion of NSE began to grow substantially, increasing from 15.3 per cent in 1984 to 26 per cent by 2000, much of it fuelled by a rise in temporary workers. By 2015, 37 per cent of employees were “non-regular”,<sup>56</sup> with women being disproportionately represented in this employment form. In Japan, “non-regular” work includes “part-time”, temporary (*arubaito*), temporary agency and contract work. Labour market statistics in Japan are based on employers’ classifications, thus the category of “part-time” is a reflection of how they are classified by their employer, rather than the number of hours they work. Part-time workers are also excluded from job security, seniority payments and other benefits. One-third of workers classified as part-time, work the same number of hours as full-time workers.<sup>57</sup> It is a category that has continued to expand, increasing from 20 per cent in 2002 to 25 per cent in 2015. In addition, there are also the temporary *arubaito*, who are part-time student workers; they account for roughly 8 per cent of employees.

The Republic of Korea saw a dramatic increase in the number of non-standard workers, and of temporary workers in particular, during the 2000s.<sup>58</sup> In 2002, there were about 4.6 million workers in NSE, but by 2013 this figure had reached around 6 million, an increase of nearly 30 per cent. However, over the same period, the total number of employees rose by a similar proportion, from about 14.1 million to 18.2 million, which means that, in relative terms, the share of NSE remained virtually unchanged. Nonetheless, by 2013, non-standard work made up over one-third of total wage employment in the country. Contingent workers (workers with a prescribed contract period) are the largest component of NSE, accounting for 19 per cent (figure 2.11). In addition, self-employment still provides employment for a significant proportion of the labour force in the Republic of Korea. While it dropped notably, from 37 per cent of employment in 2000 to 28 per cent in 2011, much of the new entry into dependent employment has been in the form of fixed-term contracts.<sup>59</sup>

In China, the economic reforms of the 1980s that were designed to open up the economy and facilitate the transition from a planned economic system to a market economic system led to sweeping changes in the labour markets. Over 1980–2007, widespread policy changes were enacted, including to labour laws and the urban housing system. These changes dramatically increased labour mobility, but also led to the replacement of lifetime employment – commonly referred to as the “iron rice bowl” – with other,

**Figure 2.11. Trends in composition of paid employment in the Republic of Korea, 2001–13 (percentages)**

Note: Sub-categories of NSE are not mutually exclusive, so their sum may be greater than 100 per cent. *Daily (on-call) workers*: workers who work without a contract. *Independent contract workers*: workers who work dependently, but are not hired. *Dispatched workers*: those who work at the third party's premises, but are supervised and directed by their employer as they perform specific tasks under the contract. *Temporary help agency workers*: those who are supervised and directed by the third party. *Contingent workers*: those with a prescribed contract period. *Home-based workers*: those who work in their own house, but the nature of work is the same as that of workers in a factory. *Part-time workers*: those with shorter working hours than other workers performing the same task.

Source: National Statistical Office, Economically Active Population Survey and its Supplementary Survey, August each year.

more flexible and diverse forms of work.<sup>60</sup> In 2008, the government responded to these changes with the introduction of the Labour Contract Law in an effort to encourage the use of permanent labour contracts and improve the quality of non-standard jobs.

Between the mid-1990s and the early 2000s, China, India and Viet Nam opened up to international markets, while the Philippines, Thailand and Indonesia began to face declining foreign direct investment (FDI) and limits to their export growth strategy.<sup>61</sup> Since then, growth has been concentrated in the services sector, with employment in manufacturing stagnant and even declining.<sup>62</sup> These shifts in the sectoral composition of employment, coupled with privatization, the proliferation of global supply chains and reforms that liberalized the labour markets, explain the continued spread of non-standard employment in the region, particularly of temporary work and TAW. In addition, in countries like China, Viet Nam, Bangladesh and the Philippines, the structural transformation was largely fed by a continuing massive inflow of rural migrants to the urban sector, from farm and non-farm activities.<sup>63</sup> Most of these migrants moved into temporary and temporary agency jobs.

As a result, temporary work accounts for an important proportion of wage employment in many Asian countries, ranging from 24 per cent of wage employment in the





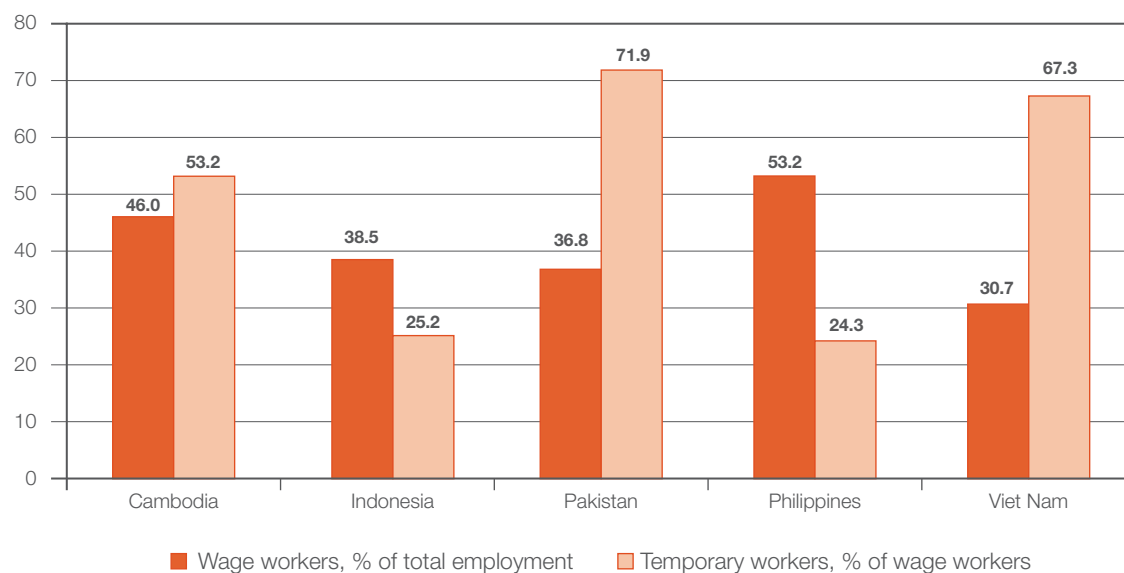
Casual workers, Nepal

© ILO

Philippines to 67 per cent in Viet Nam (figure 2.12).<sup>64</sup> In Indonesia, while one in four employees is temporary, it is also estimated that in 2010, 65 per cent of all employed workers in formal enterprises were non-standard in one way or another.<sup>65</sup> In China, 16.7 per cent of all employees were casual or temporary workers in 2002.<sup>66</sup> Around 2012, overall NSE in China was estimated to account for at least a third of all formal sector employment, which itself accounted for two-thirds of the overall workforce.<sup>67</sup> In Malaysia, over 70 per cent of employed persons in 2012 were non-standard workers, though this number also includes informal workers.<sup>68</sup> As in Latin America, in many Asian countries informality remains widespread.

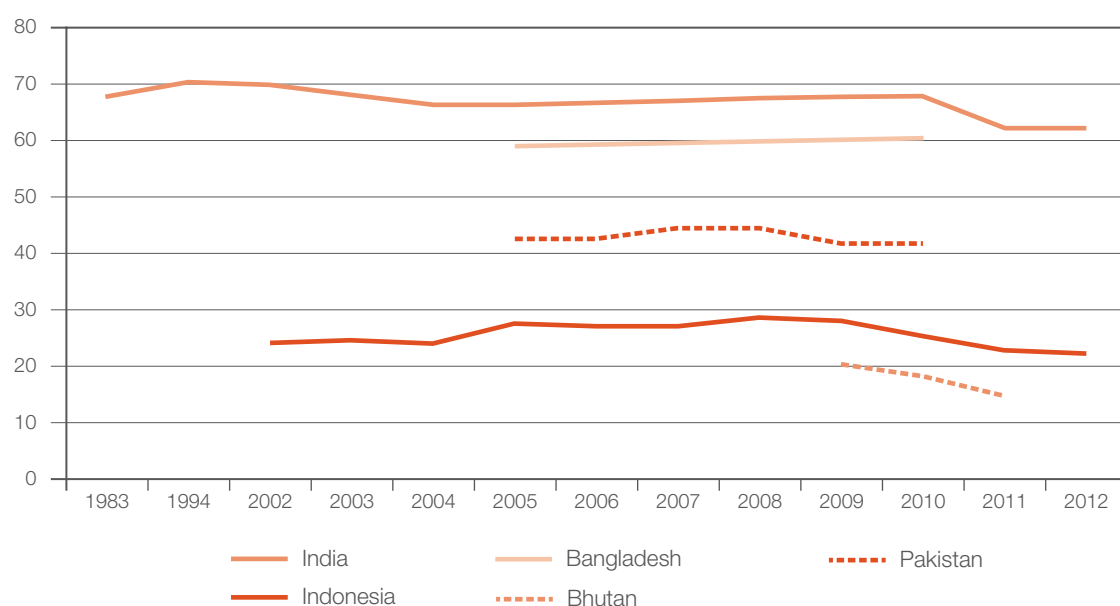
Looking specifically at the case of casual workers, the latest data show that they constitute 42 per cent of wage employment in Pakistan, and nearly two-thirds in Bangladesh and India (figure 2.13).<sup>69</sup> In Indonesia, as in most developing countries, casual employment is informal as the workers do not generally have written contracts, nor do they receive the protections granted through labour law. Between 1997 and 2005, informality grew primarily because of the growth in numbers of casual workers, most of whom were employed in small and medium-sized enterprises.<sup>70</sup> The proportion of casual workers in Indonesia continued to rise, reaching 28 per cent in 2009, though it fell to 22 per cent in 2012 as a result of the economic crisis. In India, the current number of casual workers is a result of an upward trend that started in the 1970s, absorbing shifts away from self-employment, but leaving the share of permanent employment virtually unchanged and still very low in rural areas.<sup>71</sup> The proportion of casual workers in India



**Figure 2.12.** Temporary workers as a percentage of wage employees, selected Asian countries

Note: For Indonesia, temporary employment only includes casual jobs. For Viet Nam, LFS, 2007 is used instead of the latest available data in 2011 because the surveyed data in 2011 revealed a significant number of missing values relating to the variables studied.

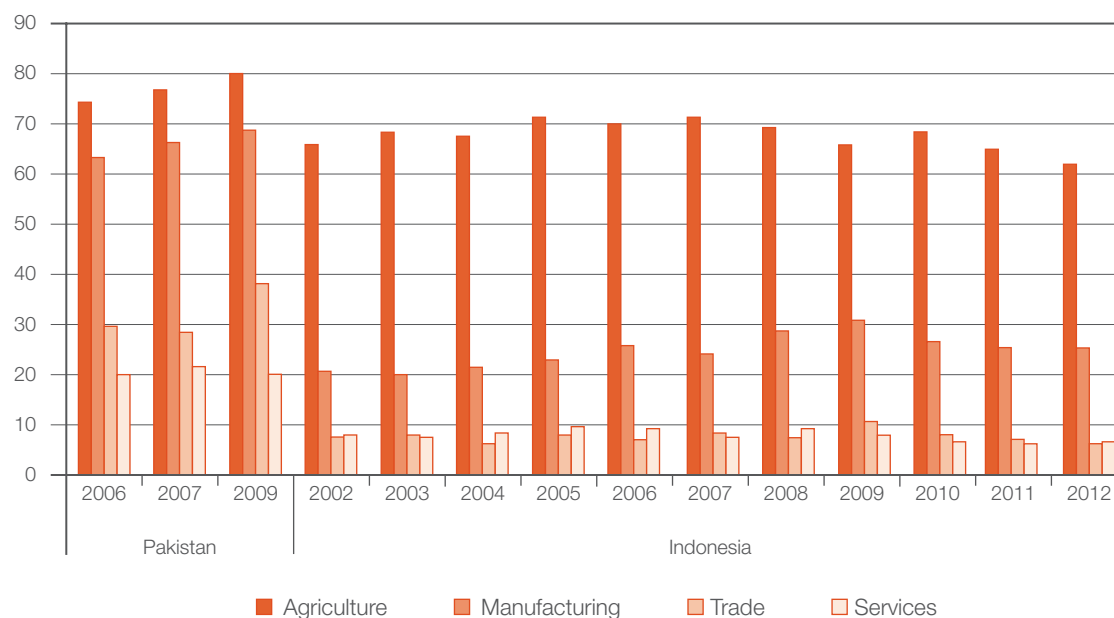
Source: Viet Nam: LFS, 2007; Cambodia: Labour Force and Child Labour Survey, 2012; the Philippines: LFS, 2009; Pakistan: LFS, 2008–09; Indonesia: SAKERNAS, 2012. Calculations by Nguyen, Nguyen-Huu and Le, 2016.

**Figure 2.13.** Casual workers as a percentage of wage employees, selected Asian countries, 1983–2012

Note: Bangladesh data include casual and day labourers.

Source: Indonesia: SAKERNAS, 2002–12 (calculations by Nguyen, Nguyen-Huu and Lee, 2016); Bangladesh: BBS, Labour Force Survey, 2005–06, 2010; Bhutan: LFS, 2009, 2010, 2011, results from Statistical Yearbooks of Bhutan; India: India Labour and Employment Report, IHD, 2014; Pakistan: LFS, 2005–06, 2006–07, 2008–09.

**Figure 2.14.** Incidence and trends of casual employment as a percentage of overall wage employment in Pakistan and Indonesia, by industry, 2002–12



Source: Pakistan: LFS 2005-06, 2006-07, 2008-09; Indonesia: LFS 2002-12.

is particularly high in construction (84.5 per cent in 2011–12), where it has grown significantly since the 1980s,<sup>72</sup> as well as among disadvantaged socio-religious groups, including those formally designated as “Scheduled Castes”, “Scheduled Tribes” and “Other Backward Classes”.<sup>73</sup>

In Indonesia and Pakistan, casual employment is most commonly found in agriculture, though its incidence has increased in other sectors over the past decade, reaching 25 per cent of manufacturing employment in Indonesia in 2012 and nearly 70 per cent of manufacturing in Pakistan in 2009 (figure 2.14). Most of these workers are employed in elementary occupations, though in Indonesia casual work is also common among skilled agricultural and fishery workers.

Besides casual employment, FTCs are also relatively widespread in Asia: they constitute 5 per cent of wage employment in Pakistan (2009), 16 per cent in Cambodia (2012) and 25 per cent in Viet Nam (2007).<sup>74</sup>

### Africa

In Africa, the structure of employment continues to stand in sharp contrast to that in much of the rest of the world. Africa remains characterized by limited wage employment, high informality and a large agricultural sector. One of the “promises” of economic development was that there would be a transition from self-employment to wage employment, under more favourable working conditions and providing a higher standard of living. However, employment patterns raise the concern that economic growth

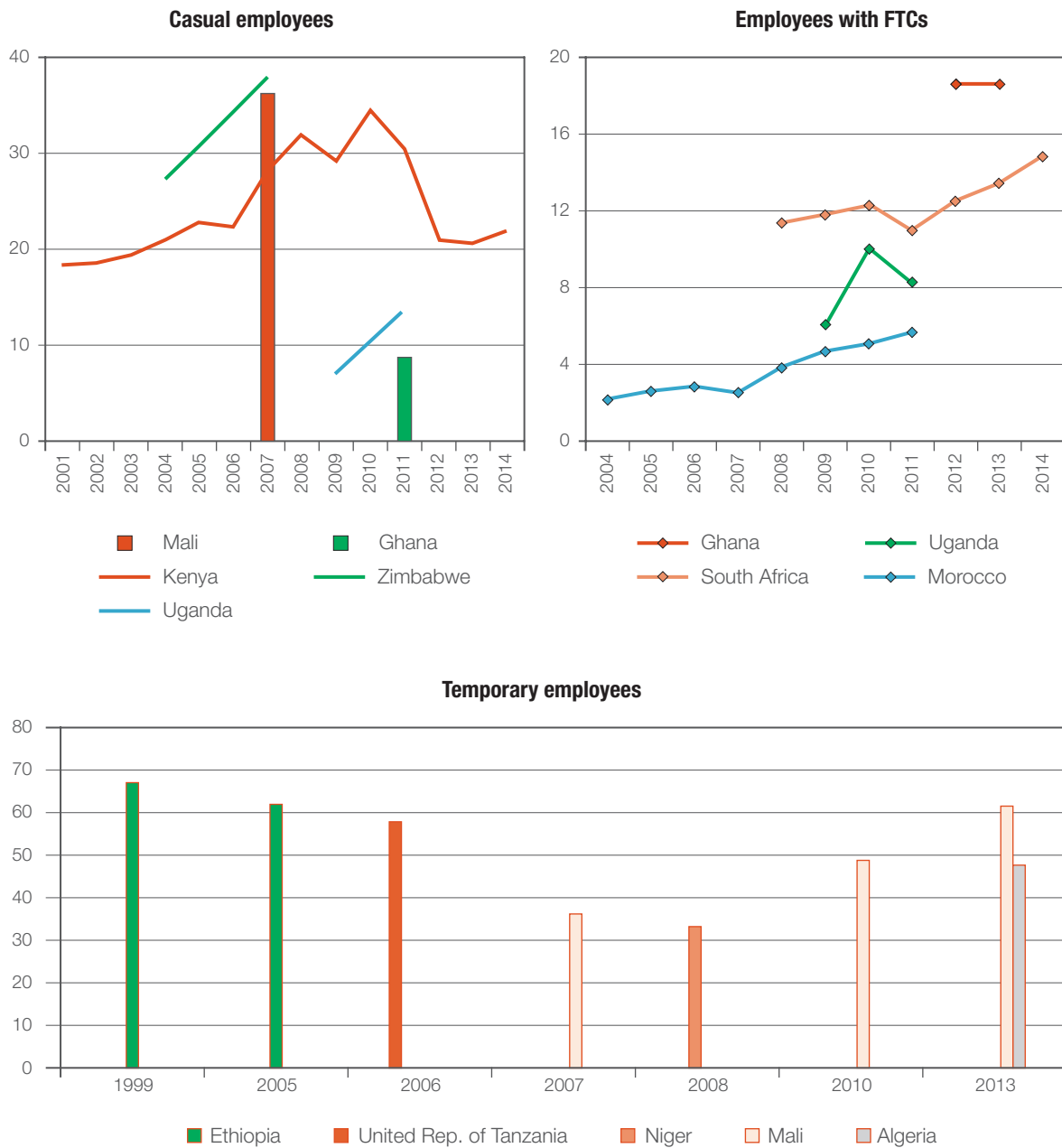
in Africa might not be sufficient to reduce the incidence of insecure work. Instead of moving out of self-employment to more stable and “good” wage jobs, many workers have shifted to casual employment that is typically informal and provides very limited protection and labour market prospects. The recent economic crisis appears to have intensified employers’ requirements for more flexible employment, which has expanded to the potential detriment of workers.

Figure 2.15 shows available evidence on temporary work in selected African countries, grouped by type of temporary work. In some countries, only data on casual work are available, reflecting the importance of this type of work. Casual work accounts for over 35 per cent of all wage employment in Mali and Zimbabwe. In Ghana, while the overall incidence of casual employment is relatively low, it accounts for 34.2 per cent of all wage employees in agriculture, in contrast to 15.5 per cent of employees in production and 4.8 per cent in services.<sup>75</sup> In Uganda, the overall share of casual employment stood at 13.7 per cent in 2011. It represented 38.7 per cent of all wage employees in agriculture, 9 per cent of production jobs and 2.6 per cent of service jobs.<sup>76</sup> While these numbers seem relatively low, in Uganda the proportion of self-employment also remains high (62.2 per cent), and informal employment, according to various estimates, ranges between 70 and 93 per cent.<sup>77</sup> In Kenya, casual employment increased nearly twofold over the period 2001–11 to more than 30 per cent, while regular wage employment witnessed a decline from 21 per cent to 13 per cent of total employment.<sup>78</sup> This happened in the context of a growing labour force, suggesting that the Kenyan economy has not generated enough standard salaried jobs to match this increase. The rise in casual employment is also largely attributed to a liberalization of the Kenyan labour market in 1994. After 2010, however, the growth of casual employment was more restricted.

Alongside an increasing casualization of wage employment there has been a rising incidence of FTCs, notably in South Africa and Morocco. Temporary employees in general represented over 60 per cent of wage employment in Ethiopia and Mali throughout the past decade. In all of the countries considered, temporary, and notably casual employment, is primarily found in rural areas, reflecting seasonal needs in agriculture, though in certain countries, such as Algeria, it reached nearly 45 per cent in urban areas (figure 2.16).

Since independence, French-speaking sub-Saharan Africa has witnessed a significant evolution in the direction of its economic policy with important implications for its labour markets. Prior to the crises of the 1980s, while labour markets were primarily agricultural, governments were the main source of wage employment. During this period, the key labour market policy of countries such as Cameroon, Chad and the Democratic Republic of the Congo consisted in training employees for public administration or public enterprises. The crises of the 1980s and 1990s brought an end to this model, as governments responded by limiting their engagement in productive activities and reducing their expenses, not least through measures aimed at restructuring labour markets. These measures included cutting salaries and public pensions, personnel reduction, the closure of public enterprises and privatizations that were usually accompanied by downsizing. In this context, between 1990 and 2000, Cameroon, Chad and the Democratic Republic of the Congo underwent significant reforms aimed at making the labour markets more flexible, and in particular

**Figure 2.15.** Incidence and trends of various forms of temporary employment as a percentage of all wage employment, selected African countries, 1999–2014

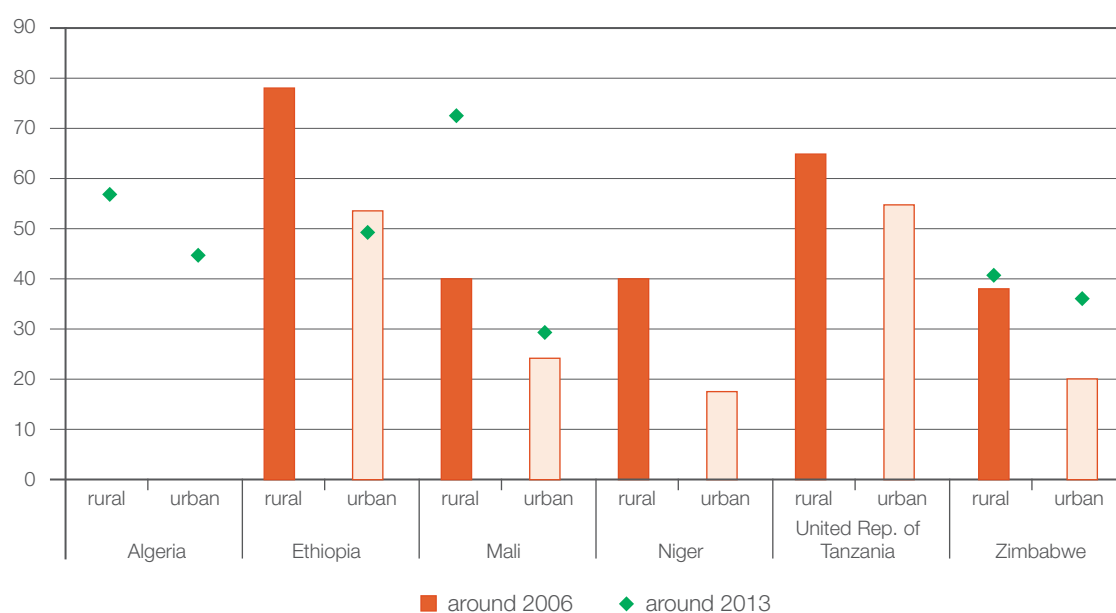


Note: Ethiopia: contract, casual, seasonal and temporary workers; United Rep. of Tanzania: casual and temporary workers; Niger: casual, seasonal and temporary workers; Mali: “unstable” jobs.

Source: **Casual:** Mali: EPAM, 2007; Uganda: LSMS, 2009/2010, LSMS, 2010/2011, LSMS, 2011/2012 (UBoS); Ghana: GLSS6, 2012/2013 (Ghana Statistical Service); Kenya: Republic of Kenya (various), computations by Wambugu and Kabubo-Mariara, 2012; Zimbabwe: LFS, 2004; 2007 (ZimStat). **FTCs:** Ghana: GLSS6, 2012/2013 (Ghana Statistical Service); Uganda: LSMS, 2009/2010, 2010/2011, 2011/2012 (UBoS); Morocco: Activité, emploi et chômage (Direction Technique chargée des Statistiques de la Population et de l'Emploi), 2015; South Africa: QLFS, 2008–2014 (Statistics South Africa); **Temporary:** United Rep. of Tanzania: ILFS, 2006 (DWCP); Niger: ENBC, 2007/2008 (Profil Pays du Travail Décent); Ethiopia: NLFS (CSA), 1999, 2005; Mali: EPAM, 2007, 2010 (DOEF); EMOP, 2013; Algeria: Activité, emploi et chômage (DTCSPE), 2015.

recognizing, organizing, and in some cases promoting non-standard employment.<sup>79</sup> Today, FTCs represent nearly 10 per cent of wage employment in Cameroon and Chad, and 5 per cent in the Democratic Republic of the Congo. These numbers, however, should also be considered alongside the proportion of employees without any written contract, which reaches over 65 per cent in Cameroon, and over 70 per cent in Chad and the Democratic Republic of the Congo. Yet even in the private formal sector, FTCs represent 43 per cent in Chad and the Democratic Republic of Congo and 63 per cent in Cameroon (table 2.2).

**Figure 2.16.** Temporary employment in selected African countries by rural and urban area, selected years



Note: Algeria: temporary work; Ethiopia: contract, casual, seasonal and temporary; Mali: “unstable jobs”; Niger: casual, seasonal and temporary; United Rep. of Tanzania: casual and temporary; Zimbabwe: casual.

Source: Algeria: *Activité, emploi et chômage*, 2015 (DTCSPE); Ethiopia: NLFS, 2005; UEUS, 2009; Mali: EPAM, 2007, 2010; EMPO, 2013 (DOEF); Niger: ENBC, 2007/2008 (*Profil Pays du Travail Décent*); United Rep. of Tanzania: ILFS 2000/01, 2006 (National Bureau of Statistics); Zimbabwe: LFS, 2004; LFS, 2011.

**Table 2.2.** Distribution of some non-standard employment by private informal and private formal sector, Cameroon, Democratic Republic of the Congo and Chad

	Cameroon		Democratic Republic of the Congo		Chad	
	Private formal	Private informal	Private formal	Private informal	Private formal	Private informal
FTCs	62.9	37.1	43.1	56.9	43.7	56.3
Non-written contracts	6.9	93.1	12.8	87.2	8.9	91.1
Part-time work	16.3	83.7	25.3	74.7	18.6	81.4

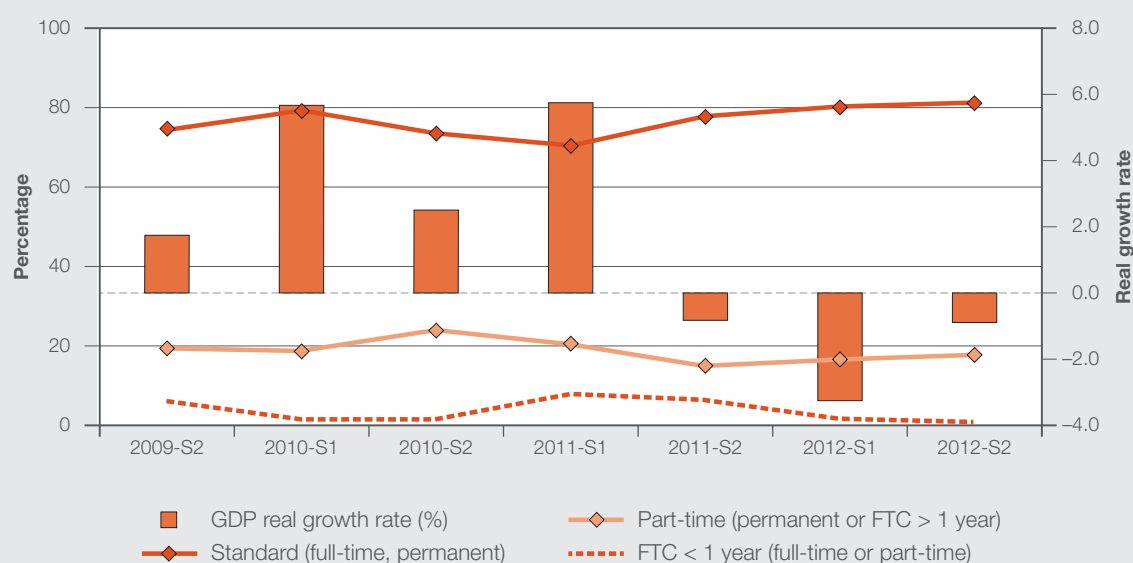
Source: Fomba Kamga, Mboutchouang and Nkoumou, 2016, based on Cameroon: EESI2, 2010; DRC: Enquête 1-2-3, 2005; Chad: ECOSIT3, 2011.

### Box 2.4. Use of non-standard employment in response to economic fluctuations: Uganda

The Ugandan economy experienced marked economic fluctuations over 2009–12. Overall real growth in the country was low in the second semester of 2009. The economy then experienced a sharp bounce-back in 2010, with a 14 per cent growth rate in nominal GDP in the first semester. However, GDP fell heavily in the second semester of 2011 and the first semester of 2012. In the second semester of 2012, GDP improved but remained negative.

Interestingly, unemployment and paid employment in Uganda were relatively unaffected by these economic fluctuations. Instead, there were shifts between types of employment. Over this period, standard employment hovered around 72 per cent, without much change. In contrast, part-time employment jumped from 18.6 per cent to 23.0 per cent during the growth phase, but subsequently plunged to 14.8 per cent in the second half of 2011, which coincided with the sharp drop in GDP growth. The share of fixed-term contracts with a duration of less than one year started growing shortly before the recession, but then fell rapidly in the last semester of 2011 and the first of 2012. Short-term contracts therefore seem to have been used by employers to cope with the severe macroeconomic shock, with employers hiring when economic conditions were favourable, but not renewing contracts when economic conditions worsened. There were also adjustments in fixed-term contracts of over a year, but with less pro-cyclicality (figure 2.17).

Figure 2.17. Adjustment of contractual forms of employment in response to economic shocks, Uganda, 2009–12

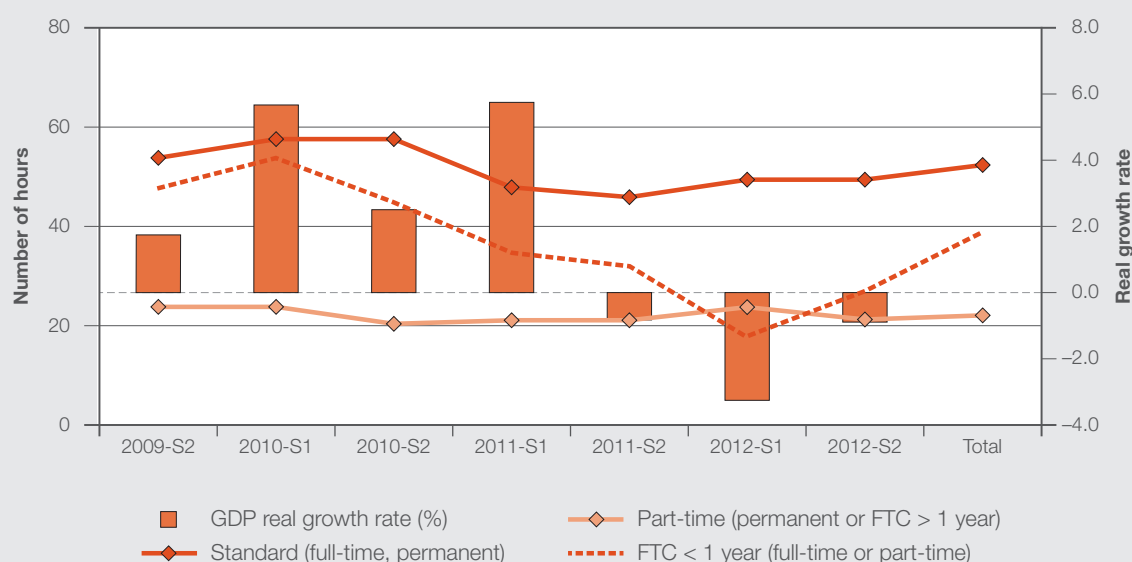


Source: Adapted from Dumas and Houdré, 2016.

However, the effect on working hours was very pro-cyclical: workers with very short contracts worked about 54 hours per week in the first half of 2010, but only 18 hours per week during the two dramatic recession semesters. Work hours in standard jobs, whether full- or part-time, were much less sensitive to business cycles (figure 2.18). This suggests that, in a crisis, employers adjust both the numbers of workers employed on FTCs and the hours that they work.



Box 2.4. continued

**Figure 2.18.** Adjustment of working hours in response to economic shocks, Uganda

Source: Adapted from Dumas and Houdré, 2016.

As in other countries, NSE has been used by employers in Uganda as an adjustment mechanism in times of economic crisis. GDP fluctuations in Uganda, for example, have coincided with marked fluctuations in permanent part-time and short-term contracts.<sup>80</sup> As elsewhere, employers hired in good times and did not extend contracts in bad times. Workers with very short contracts worked considerably fewer hours during the recession, compared to stable times, while there was little or no variation in working hours of workers with permanent contracts (see box 2.4).

## 2.2. PART-TIME EMPLOYMENT AND ON-CALL WORK

### 2.2.1. Part-time work

Part-time work is of growing importance in many countries. Often, it is a means for otherwise excluded groups to participate or remain in paid work, especially for workers (usually women) with family responsibilities, students and older workers. In northern Europe, part-time work has been explicitly encouraged by government policies to promote the access of women to the labour market, and to allow workers with family responsibilities to balance care responsibilities with paid work.<sup>81</sup> Part-time employment is also sometimes used by companies to retain older, skilled workers, who may otherwise retire, as well as to attract and retain workers for specific schedules or difficult jobs.<sup>82</sup>

As explained in Chapter 1, from a legal perspective part-time work can be defined as any work arrangement that is shorter in duration than full-time work (ILO Part-Time Work Convention, 1994 (No.175)). Since national legislation varies in defining the full-time working week, for comparative statistical purposes “part time” is commonly defined as a specified number of hours, with the threshold for part-time workers usually set at around 30–35 hours per week.

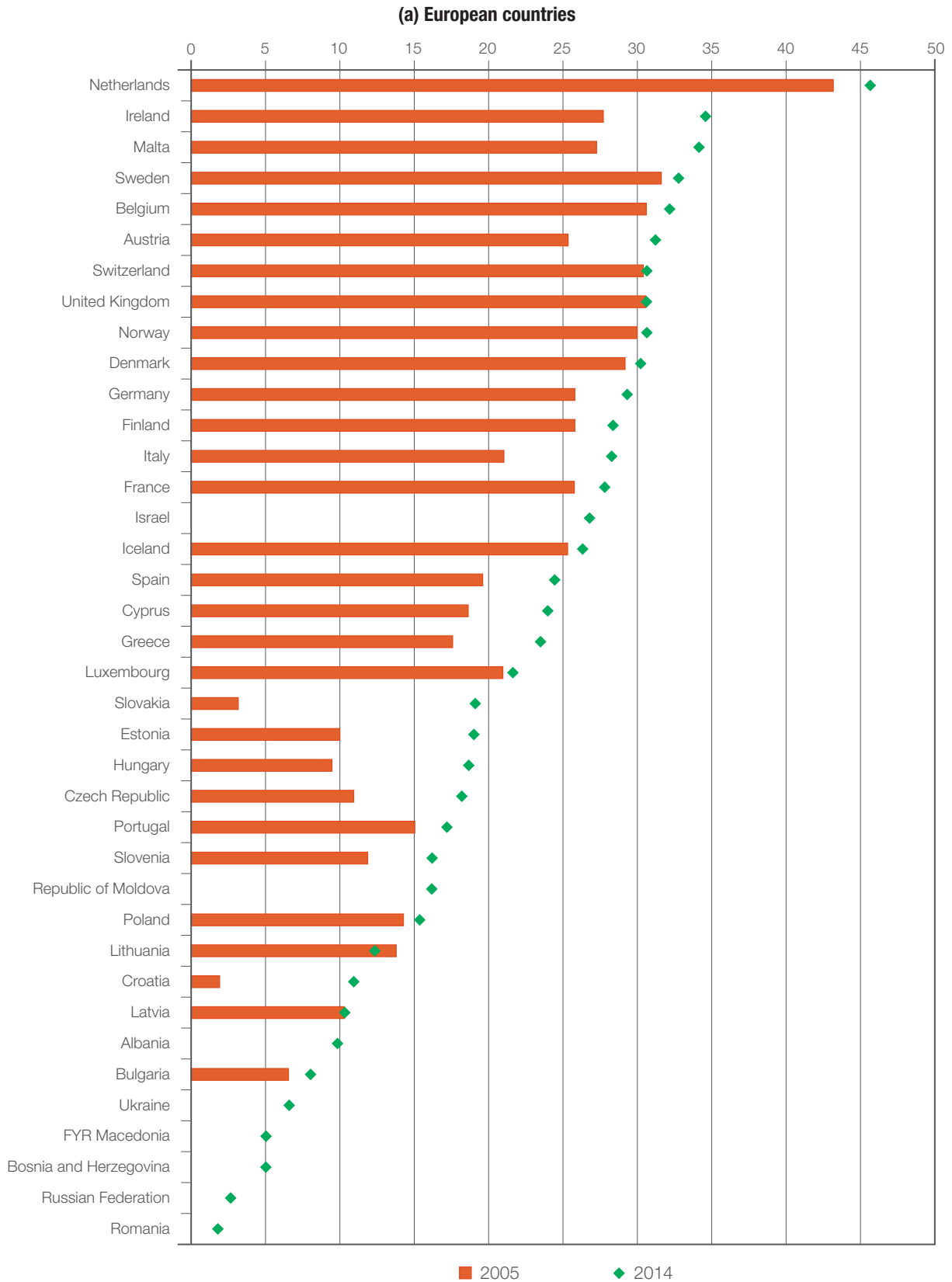
Figure 2.19 shows the incidence and recent trends in the group of employees who worked less than 35 hours a week, based on household survey data. In Europe (figure 2.19(a)), nearly one out of every five employees worked part time in 2014. Part-time employment is least prevalent in countries in eastern and southern Europe, but it is a prominent feature of employment in northern Europe, Ireland, the United Kingdom, Malta, Austria and Switzerland. In the Netherlands – sometimes called the world’s first “part-time economy”<sup>83</sup> – part-time employment was over 45 per cent of total wage employment in 2014. Nearly two-thirds of women in the Netherlands were employed part time (64.6 per cent) in 2014, but the incidence of part-time employment was also high among men (28.2 per cent).

In Europe, part-time employment is also more often associated with temporary work: 25 per cent of workers on an FTC and 37 per cent of temporary agency workers worked part time in EU-27 countries in 2007;<sup>84</sup> in contrast, only 14 per cent of workers on indefinite-term contracts did so. As regards sectoral distribution, part-time employment is most prevalent in the education, health and social services, other services, and in the retail and wholesale sectors.<sup>85</sup> In terms of occupations, there are significant numbers of part-time workers in elementary occupations, service and sales, professionals and clerical support; part-time work is considerably less common among skilled workers, machine operators or senior managers.

Available data on trends in part-time wage employment in non-European countries (figure 2.19(b)) showed both upward and downward trends between 2009 and 2014. In 2014, part-time employment was as low as 0.1 per cent in Tunisia, and as high as 50 per cent in Zimbabwe, where time-related underemployment is endemic. The average rate of part-time employment for all countries with available data was 16 per cent. In Indonesia, part-time employment has been expanding since 2006, from 16.1 per cent to 22.7 per cent in 2014.<sup>86</sup> In general, developing countries feature lower rates of part-time wage employment than developed countries; part-time hours among the self-employed, however, can be high.

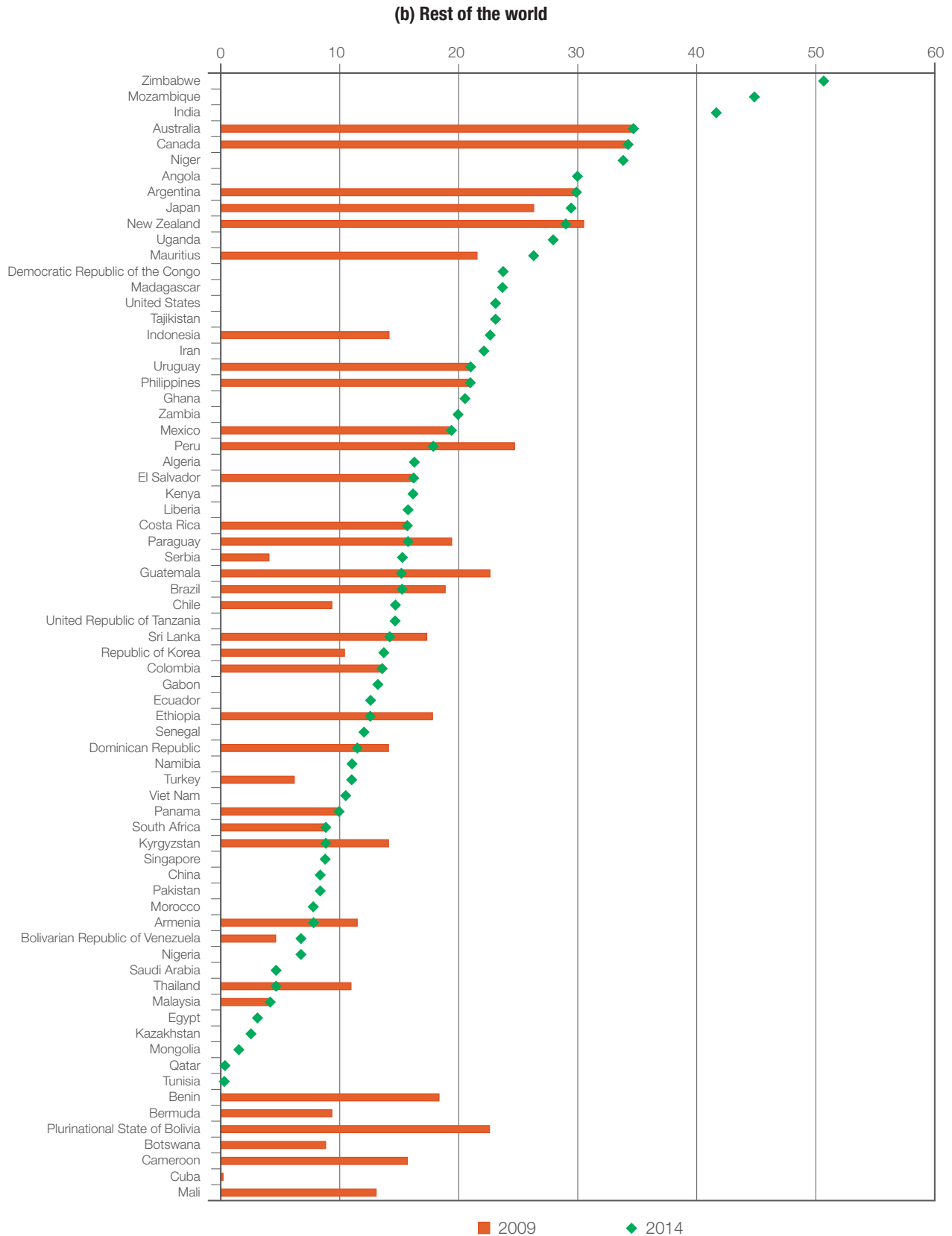
In certain countries, such as Japan, there are some caveats to this statistic, as “part time” is sometimes defined as short-term contracted employees rather than as employees working less than a certain number of hours per week.<sup>87</sup> In Australia, the overlap of part-time with casual employment is particularly marked. Though the proportion is declining, most part-time wage workers are classified as casual rather than permanent part-time employees. In cross-national comparison, Australia ranks near the top of all OECD countries for the high incidence of part-time weekly hours amongst both employed women (48.5 per cent) and employed men (18.2 per cent).<sup>88</sup> Out of all employed persons, 32.1 per cent had a part-time job as their main job in August 2014, a steady increase from 26.9 per cent in August 2000.<sup>89</sup> In the Republic of Korea, the rising trend of the past decade is associated with women’s entry into the labour market.<sup>90</sup>

Figure 2.19. Workers with less than 35 hours per week as a percentage of all employees



Source: ILOSTAT.

Figure 2.19. (cont'd) Workers with less than 35 hours per week as a percentage of all employees



Source: ILOSTAT and IBGE for Brazil.

In Latin America, in formal employment relationships, part-time employment is associated with higher-skilled and better-paid work. In Brazil, part-time employment declined marginally, reaching 16 per cent in 2014. In contrast, in Chile, part-time employment grew over the past decade and, as in Brazil, tends to be concentrated in the higher wage distribution quintiles.<sup>91</sup>

The reasons for working part time are diverse. In Europe, about a fifth (21.2 per cent) of all part-timers in 2014 looked after children or incapacitated adults, while 12.2 per cent had “other personal reasons” – these percentages being significantly higher for women than for men. About 10 per cent of all part-timers combined work with education or training, with this incidence being significantly higher among men. However, just under one-third worked part time because they could not find a full-time permanent job, suggesting that for many, working part time is an involuntary choice (table 2.3). The incidence of involuntary part time, as a share of all part-time employment, ranged from 7.9 per cent in Switzerland to 71.2 per cent in Greece (figure 2.20). More than half of all part-time work is involuntary in Bulgaria, Cyprus, Italy, Romania and Spain. Over the past decade, the majority of European countries saw an increase in the incidence of involuntary part-time work (with a twofold increase observed in Spain and Slovakia). A decrease was witnessed in Belgium, Bulgaria, the Baltic States and Romania, although, with the exception of Belgium and Estonia, these countries have rates of involuntary part-time work of over 40 per cent.

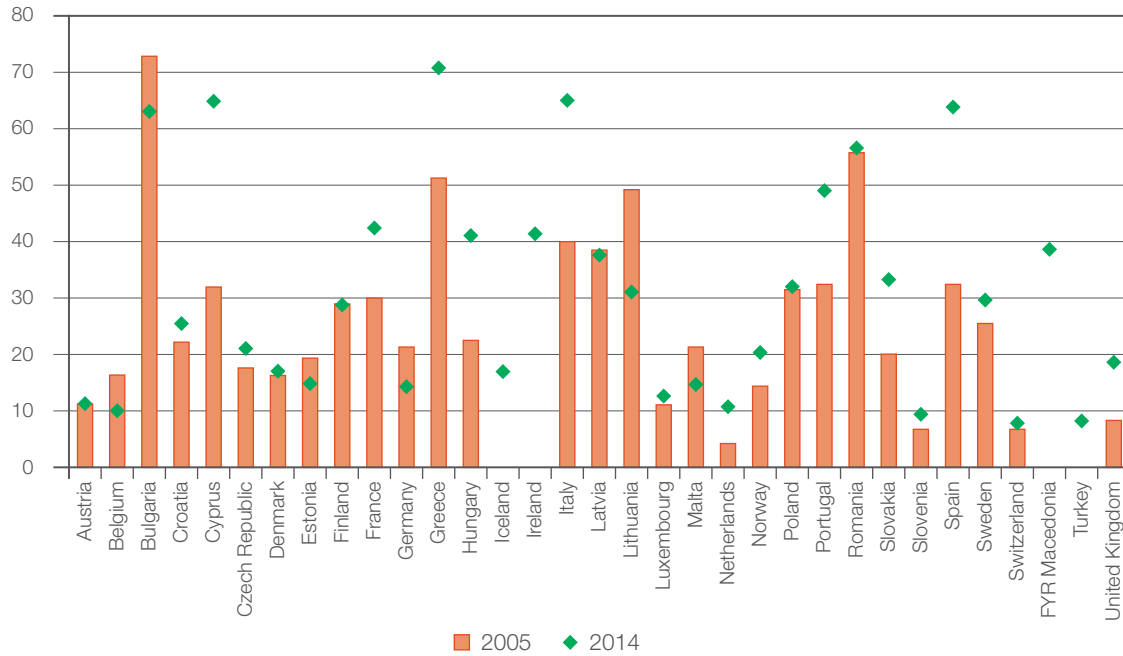
In contrast to developments in Europe, Latin American countries saw an overall reduction in underemployment between 2003 and 2013 (figure 2.21) as a result of the overall improvement in the labour market.<sup>92</sup> In 2012–13, involuntary part-timers made up over half of all part-time workers in Chile and Ecuador, approximately 25 per cent in Argentina and Peru, and only 7 per cent in Brazil. The increase in the employment rate during the second half of the 2000s and early 2010s has been accompanied by notable reductions in involuntary part-time positions (where in almost all countries incidence was reduced by half, except for Chile where data were only available for the latter years), probably due to transformations of these jobs into full-time ones. At the same time, levels of involuntary part-time work were substantially higher among informal part-timers as compared to formal part-time workers, and most prevalent among women and in the domestic service sector.<sup>93</sup>

**Table 2.3. Reasons for working part time in EU-28, 2014 (percentages)**

	Men	Women	Total
Person could not find a full-time permanent job	40.2	26.3	29.6
Looking after children or incapacitated adults	4.2	27.1	21.2
Other personal reasons	7.3	15.1	12.2
Person in education or training	19.1	7.5	10.3
Own illness or disability	6.4	3.4	4.1
Other reasons	22.8	20.6	22.6

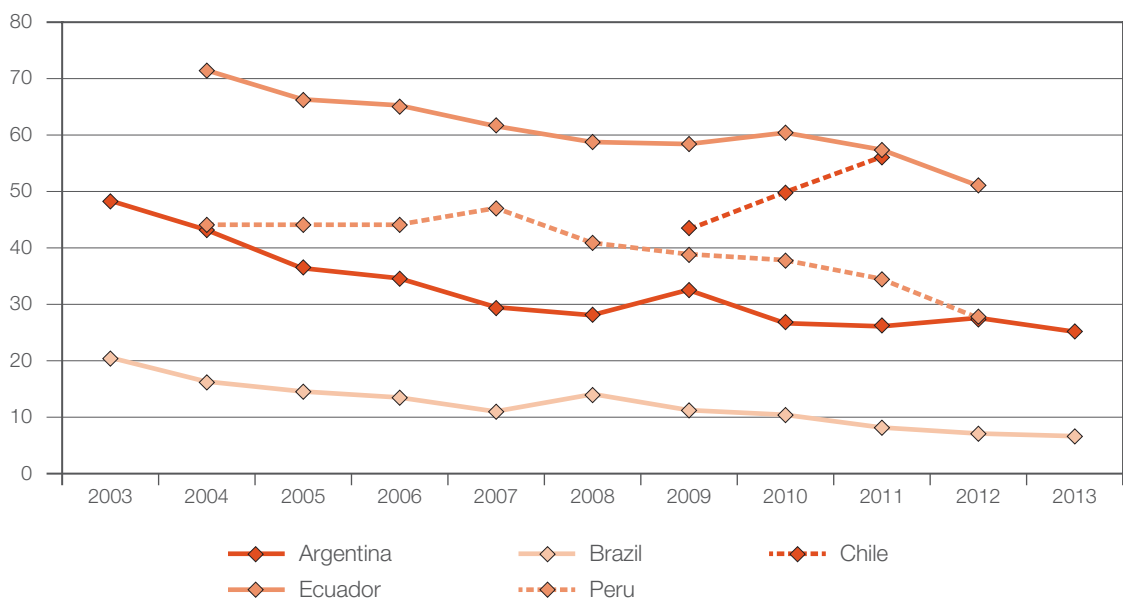
Source: Eurostat (ELFS), calculations by Schmid and Wagner, 2016.

**Figure 2.20.** Trends in involuntary part-time work as a percentage of total part-time work, selected European countries, 2005 and 2014



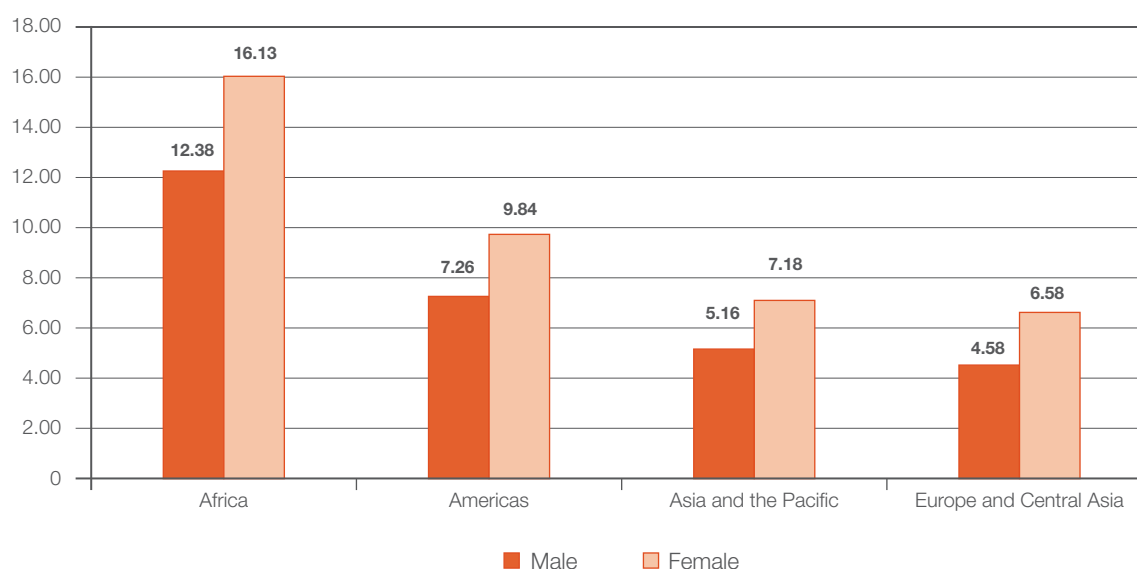
Source: Eurostat.

**Figure 2.21.** Trends in involuntary part-time work as a percentage of total part-time work, selected Latin American countries, 2003–13



Source: Argentina: EPH (INEC) for Q4 of each year; Brazil: PME (IBGE) for Q4; Chile: INE; Ecuador: ENEMDU; Peru: ENAHO. Calculations taken from Maurizio, 2016.



**Figure 2.22.** Incidence of time-related underemployment as a percentage of all persons in employment, 2010

Note: Data coverage: 87 countries. Definitions of regions correspond to the ILO Regions. Data for Arab States are unavailable.

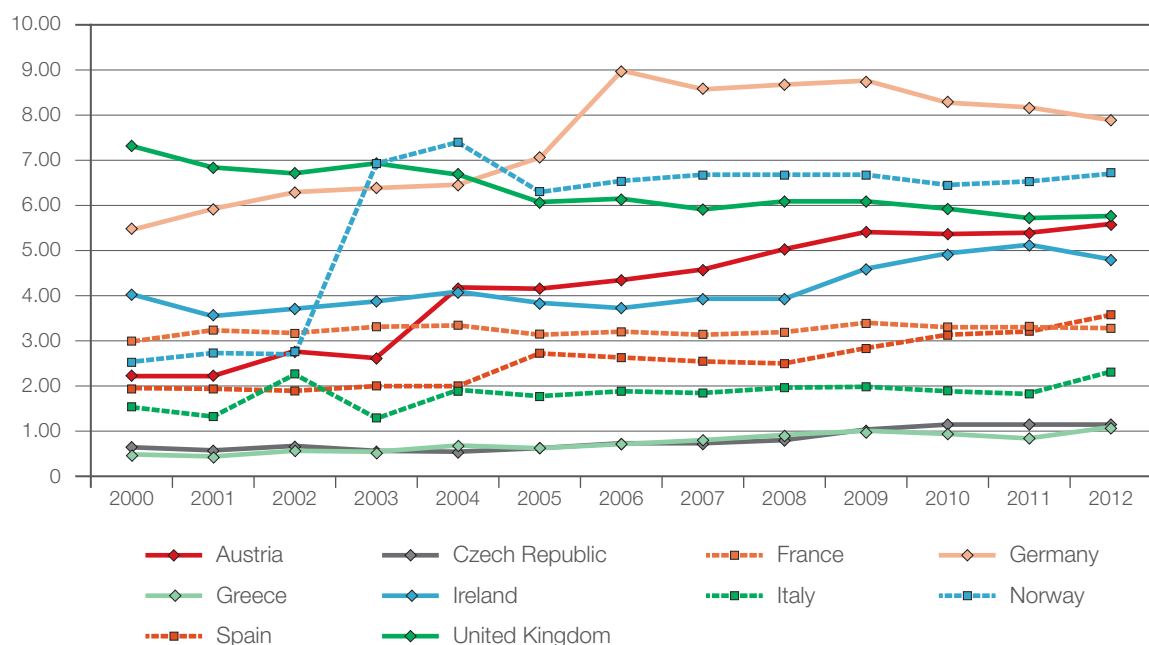
Source: ILOSTAT.

In the United States, the rate of involuntary part-time work was 22 per cent in November 2015,<sup>94</sup> as workers struggled to find full-time work in the face of weak demand. In Viet Nam, working hours were the principal variable of adjustment during the global economic recession, with the incidence of part-time work increasing from 12.2 per cent in 2007 to 26.7 per cent in 2009. These changes were also accompanied by a rise in multi-activity, from 18.2 per cent in 2007 to 25.4 per cent in 2009.<sup>95</sup> In Uganda, 26 per cent of part-timers stated that they would like to work more hours.<sup>96</sup>

More globally, the acceptability of working shorter hours can also be analysed through data on underemployment, defined as when people are willing and available to work additional hours, but have worked fewer hours than a given working-time threshold (number of hours decided on a national basis). Figure 2.22 shows that the time-related underemployment rate, as a share of the total number of people in employment, ranges from around 5 per cent in Europe and Central Asia to around 15 per cent in Africa. It is considerably higher among women than men in all regions, despite the fact that part-time employment is often considered to be the option preferred by women due to their greater care responsibilities. As will be shown in Chapter 5, the extent to which part-time work is voluntary has strong implications for its quality.

Part-time work is one of the traditional forms of NSE. However, over the past decades it has not only grown in importance but has also witnessed a diversification of its forms, some of which overlap: “substantial part-time” (21–34 hours per week); “short part-time” (20 hours or less); “marginal” part-time (fewer than 15 hours per week); or arrangements

**Figure 2.23.** Growth of marginal part-time employment – percentage of employees working fewer than 15 hours per week in ten European countries, 2000–12



Source: Messenger and Wallot, 2015.

with no established minimum hours at all, such as “on-call” work, including zero-hours contracts. In developing countries, very short working hours exist as well, and are mainly associated with casual employment.

Marginal part-time employment is prominent in Australia. Slightly less than half (47 per cent) of all part-time workers there usually worked fewer than 20 hours per week, with 17.8 per cent working fewer than ten hours.<sup>97</sup> In Mexico, 2.1 per cent of employees work fewer than 15 hours per week and 6.7 per cent have no fixed schedule.<sup>98</sup> In Europe, the proportion of workers working part time, whether “short part-time” or “substantial part-time” has gradually increased from 17 per cent in EC-12 in 1991 to 25 per cent in EU-27 in 2010 (27 per cent in EC-12). Across the EU as a whole, 19 per cent of women and 7 per cent of men work “short part-time”. Only 3 per cent of men aged 35–49 are on “short part-time” hours compared with 18 per cent of women in that age group.<sup>99</sup>

“Marginal” part-time employment, involving very short hours, can be an attractive option for those who want to devote limited time to paid work. Nevertheless, in many instances it is associated with a high level of variability and a lack of predictability in working hours and schedules and can take the form of on-call work (see section on “on-call work”, below).<sup>100</sup> In Denmark, Germany, the Netherlands and the United Kingdom, more than 40 per cent of establishments employ at least some of their workforce for fewer than 15 hours per week.<sup>101</sup> Figure 2.23 shows the increase of marginal part-time employment in Austria, Ireland and several other countries over the 2000s. In Spain, the numbers of such workers increased substantially in the

aftermath of the global financial crisis. In Germany and the United States, the incidence of marginal part-time employment peaked during the crisis and is currently declining and in sight of pre-crisis levels.<sup>102</sup>

Another issue related to part-time work is work-sharing. Work-sharing is a collective reduction of working time in order to spread a reduced volume of work over the same, or a similar, number of workers to avoid lay-offs.<sup>103</sup> Because workers in work-sharing programmes work reduced hours, they are typically included in statistics on part-time work. Thus, part of the recent trend of reduced working hours in Europe is related to crisis adjustment measures. Some companies, particularly in Germany, but also in Bulgaria, the Czech Republic, Estonia, the Russian Federation and Indonesia, prioritized internal flexibility through policies of work-sharing (also called “short-time work” or “partial unemployment”) or other flexible working-time arrangements, increasing the overall incidence of reduced hours in some of these countries (see box 2.5 for details and other examples). In Germany, work-sharing arrangements had already been part of collective agreements prior to the crisis, so that both workers and employers had experience of dealing with such measures when the crisis arrived. Temporary reductions in working hours thus proved to be a useful tool in preserving jobs in periods of economic crisis in order to avoid lay-offs.<sup>104</sup> In countries such as Italy or Spain, the preceding two decades of reforms that encouraged the use of temporary labour led to profound long-term changes in firms’ behaviour, in that they adapted their organizational model to such flexible arrangements prior to the crisis.<sup>105</sup> In the wake of the crisis, non-renewal of temporary contracts, rather than reducing hours, became the chosen strategy.

### 2.2.2. On-call work

The category of on-call work overlaps with other forms of NSE as it is casual work of an intermittent nature, but because of the variability and unpredictability of work, hours are generally part time.

In the United States, it is estimated that some 10 per cent of the workforce has irregular work schedules, with the lowest-income workers most affected.<sup>106</sup> On-call work is a common feature in the country’s service sector and particularly its retail industry, which is marked by extended shop opening hours and fluctuating customer flows throughout the day and week. Indeed, some major retail stores and food service businesses in the United States use just-in-time scheduling software to determine “optimum staffing” in their stores, based on weather forecasts, sales patterns and other data. When sales are slower than foreseen, managers can send employees home before the end of a scheduled shift or even cancel shifts at the last minute to reduce costs.<sup>107</sup> Employees are sometimes required to call their manager one to two hours before their shift, or to await a call from their manager, to find out whether they need to report to work. The result is highly variable working hours and schedules, often without any guaranteed number of hours.

Comparable data on on-call workers are available for European countries for 2004, a year in which European Labour Force Survey contained a special set of survey questions dedicated

**Box 2.5. Temporary reduction of working hours as an anti-crisis measure****Bulgaria**

An anti-crisis package agreement was adopted in 2010 and featured, among other measures, the introduction of flexible working hours, part-time work for a period not exceeding three months, and unpaid leave for economic reasons. This resulted in substantial growth of reduced hours and part-time work. Some of it was subsidized by the State by “equal to one-half of the minimum salary per month”.<sup>108</sup> Spillover effects were also observed in that companies that did not qualify for state subsidies also reduced working time and put numerous employees on paid or unpaid leave.

**Czech Republic**

In 2009, two large automotive companies introduced a four-day working week for all regular employees. The lost day was compensated at 75 per cent of the usual salary.

**Germany**

In 2010, the social partners in the metal industry launched a time-limited “Future in Work” agreement (*Zukunft in Arbeit*, ZiA). The agreement was designed for companies that had already experimented with and exhausted work-sharing. It allowed prolonging time-sharing schemes for six months and allowed further reduction of working hours provided a partial compensation was paid. Depending on the region, weekly working time could be reduced to 29 hours (eastern Germany), or 26 to 28 hours (western Germany). “A reduction to 28 hours is enforceable through an arbitration committee; a reduction to 26 hours is to be settled through a works agreement. Any reduction below 31 hours is to be compensated. In the case of 28 weekly working hours, 29.5 hours are to be paid; in the case of 26 hours, it is a wage-equivalent of two extra hours.”<sup>109</sup>

**Estonia**

Several medium-sized companies, such as Estiko Plastar, shifted employees to part-time work, without cutting wages accordingly, though installing other measures, such as abandoning the usual paid Christmas holiday, or institutionalizing work at weekends in order to meet fluctuations in demand.<sup>110</sup>

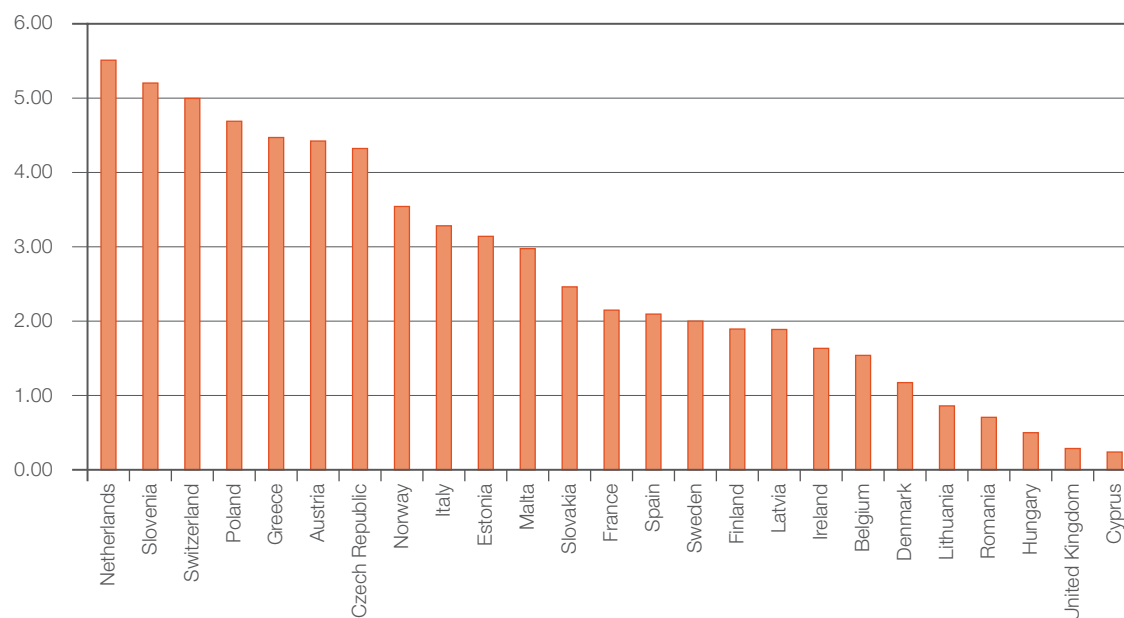
**Russian Federation**

The Labour Code of the Russian Federation allows for an involuntary working-time reduction for a period not exceeding six months. During the crisis, numerous enterprises thus adopted this measure, resulting in about 20 per cent of the country’s workforce reducing their hours or taking involuntary leave.<sup>111</sup> Most of the workers had no other choice but to accept this situation, as there was a general lack of alternatives.

**Indonesia**

Tambunan (2011) analyses crisis-adjustment strategies adopted by SMEs in the Indonesian furniture industry through a random study of 39 SMEs. Employers were asked about the labour adjustment measures adopted since 2008. Reduction of working time was adopted by 38 per cent of firms, with all or most of such adjustments entailing cuts in wages. Women, temporary and unskilled production workers were the first affected by these measures. As this industry in Indonesia is male-dominated, and women tended to perform periphery unskilled tasks, in times of lower demand they were often terminated and their work was given to male skilled staff who performed those periphery tasks in addition to their main tasks.

Source: Adapted from Kummerling and Lehdorff, 2014.

**Figure 2.24.** On-call workers as a percentage of all employees, Europe, 2004

Source: Eurostat (ELFS).

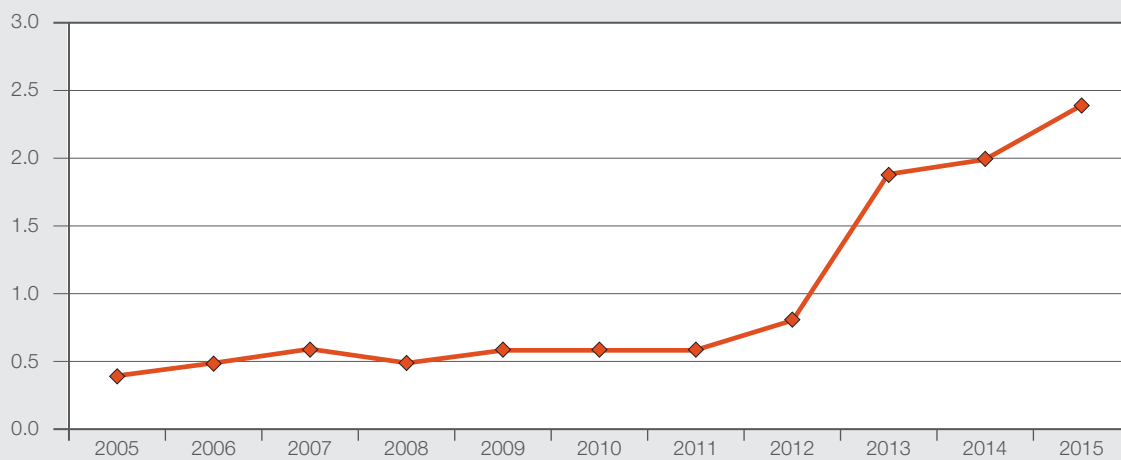
to this issue. The data revealed that about 2.5 per cent of employees in Europe worked “on-call”, with the highest incidence recorded in the Netherlands and Slovenia, and the lowest in the United Kingdom and Cyprus (figure 2.24). Another source of data is the 5th European Working Conditions Survey of 2010. Though the data across the two surveys are not comparable, the latter survey found that on-call work was undertaken mostly in transport, construction, public administration and defence, health and agriculture.<sup>112</sup> Recently, on-call work gained attention in the United Kingdom with the expansion of zero-hours contracts. The very rapid growth of these contracts in the United Kingdom, however, has also been the result of a growing awareness and understanding among workers of the existence of these contracts (see box 2.6).<sup>113</sup> In the Republic of Korea, the proportion of on-call workers more than doubled between 2001 and 2011, albeit from initially low numbers, and witnessed a moderate decline thereafter (figure 2.26).

### Box 2.6. Zero-hours contracts in the United Kingdom

A zero-hours contract is one in which the worker is not guaranteed hours of work, but may be required to make themselves available for work with an employer. Under such contracts, employers are not required to offer workers any fixed number of working hours at all per day, week or month. In the United Kingdom, almost 40 per cent of zero-hours workers work less than 16 hours per week, though between October and December 2015, workers on such contracts had an average working week of 21.3 hours.<sup>114</sup> Figure 2.25 shows the evolution of zero-hours contracts with a marked upward trend, reaching 800,000 workers or 2.5 per cent of all employees by the fourth quarter of 2015, according to the UK Office for National Statistics (ONS). Nevertheless, some observers contend that this share may even be as high

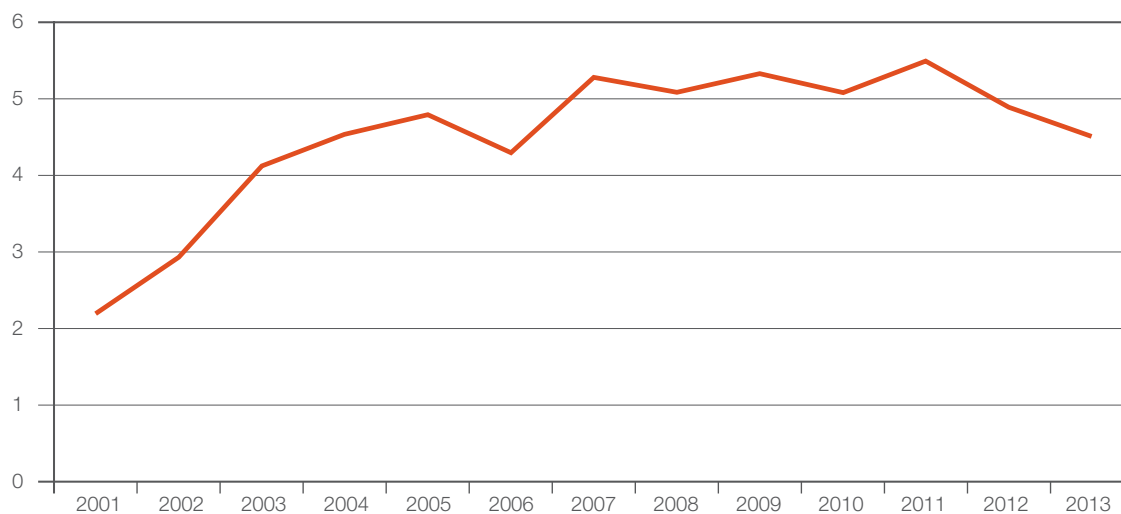
as 4 per cent. Part of the uncertainty regarding the actual figures is the result of the large number of people on zero-hours contracts who failed to correctly identify themselves as having that kind of contract when asked in a labour force survey. In fact, the attention given to zero-hours contracts in the media has made many workers realize that they were on these contracts. This increased awareness, coupled with clarifications brought to the statistical definitions, has subsequently led to a substantial rise in the reporting of zero-hours arrangements, but it has also made it difficult to gauge the real trend in zero-hours contracts.

**Figure 2.25.** Percentage of workers on a zero-hours contract in the United Kingdom, 2005–15



Source: ONS (LFS), adapted from Messenger and Wallot, 2015.

**Figure 2.26.** Evolution of on-call employment in the Republic of Korea, 2001–13 (percentages)



Source: KOSIS, National Statistical Office, Economically Active Population Survey: Supplementary Survey, August each year.



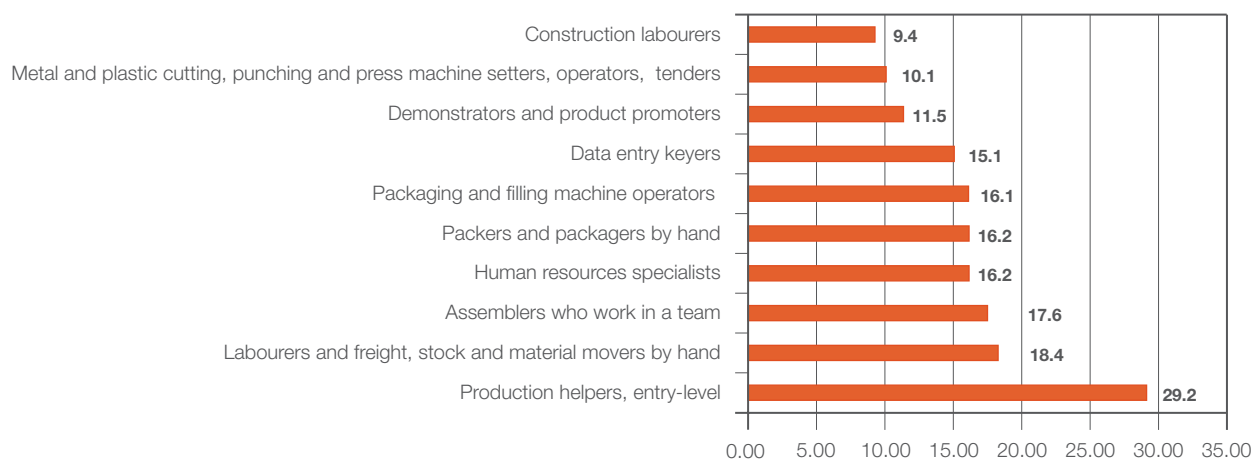
### 2.3. TEMPORARY AGENCY WORK AND OTHER CONTRACTUAL RELATIONSHIPS INVOLVING MULTIPLE PARTIES

Employment relationships involving multiple parties are usually mediated by a private employment agency or other form of labour provider (“labour broker” or “subcontractor”) who makes the worker available to a third party, under the supervision of the user firm or organization.

The World Employment Confederation (formerly, CIETT) provides data on employment from its affiliate members; these self-reported figures are commonly cited in studies of the temporary agency sector. According to the World Employment Confederation, in 2013, 40 million workers participated in temporary agency work (TAW), amounting to 12 million full-time work days (or full-time equivalent). The largest markets for temporary work were the United States (11 million workers), China (10.8 million), Europe (8.7 million) and Japan (2.5 million).<sup>115</sup> These figures, however, only give a partial picture of the incidence of multi-party employment relationships in the world, as they are limited to temporary agency workers working for companies that are members of the Confederation.

Temporary agency work and other forms of mediated, multi-party employment relationships grew rapidly in the final decades of the twentieth century across many countries of the world. In the United States, temporary agency workers doubled as a percentage of the total US workforce from 1990 to 2000, accounting for 10 per cent of all employment growth in the 1990s.<sup>116</sup> According to data from the 2005 Current Population Survey (CPS) Contingent Worker Supplement, 0.9 per cent of the workforce were employed as agency temps, 2.1 per cent were direct-hire temps,<sup>117</sup> 0.6 per cent were employees of a contracting company and 1.7 per cent were on-call workers and day labourers (called to work on an as-needed basis and picked up by employers to work for the day).<sup>118</sup> The CPS discontinued the contingent worker supplement, but, according to the General Social Survey, 0.9 per cent of the workforce were employed as temporary agency workers in 2006, rising to 1.3 per cent in 2010.<sup>119</sup>

Besides the substantial quantitative growth, the temporary employment agency industry also grew “qualitatively”, with respect to the range of occupations it entered and the functions it performed. As the economic geographers Nik Theodore and Jamie Peck explain, the industry shifted from being a “stopgap-staffing provider, supplying short-term cover for eventualities such as maternity leaves and seasonal spikes in demand, to a more systematic and continuous function, mediating between companies’ personnel offices and their preferred labour supplies across an increasingly broad array of industries and occupations”.<sup>120</sup> And this shift gave a more prominent role to the industry in facilitating labour force adjustments to macroeconomic conditions. Indeed, during the 2001 recession in the United States, temporary agency workers accounted for an astounding 26 per cent of net job losses, even though they made up just 2.5 per cent of the workforce. During the 2008–09 recession, temporary agency workers accounted for 10.6 per cent of net job losses. Their smaller share when compared with the 2001 recession can be attributed to the enormous job losses of this period; thus, while 421,000 of the 1.6 million net job losses in 2001 were of temporary agency workers, in 2008–09, 796,000 temporary agency workers lost their jobs out of a total net job

**Figure 2.27. Occupations with highest concentration of temporary agency workers, United States, 2012 (percentages)**

Source: US Bureau of Labor Statistics' Occupational Employment Statistics data; analysis by ProPublica.

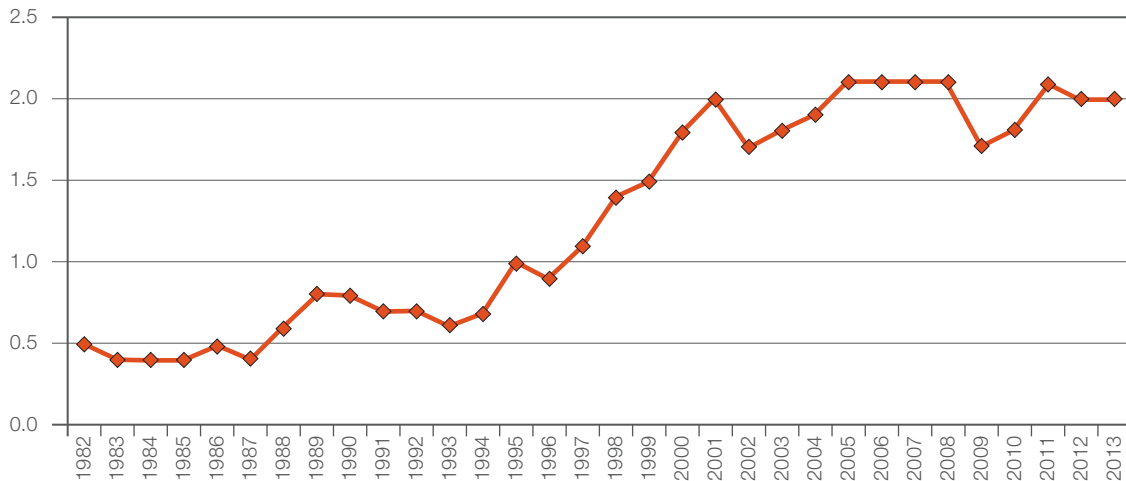
loss of 7.5 million.<sup>121</sup> Thirty months into the recovery, 38.2 per cent of net jobs created were in temporary agency employment. Thus it seems that employers are “turning to temp services in tight labour markets in order to access workers, but then still using them during slack labour markets by virtue of increased economic uncertainty”.<sup>122</sup>

Data also reveal a concentration of temporary agency workers in particular occupations. In general, temporary agency workers worked in production jobs (43.7 per cent) and office jobs (41.2 per cent), most of which were clerical, with the remainder found in technical (10.2 per cent) and managerial and professional jobs (4.0 per cent). Yet the concentration was high within particular occupational categories. According to data from the US Bureau of Labor Statistics, in 2012 nearly one in three production workers and one in five labourers in the United States were employed by a temporary employment agency (figure 2.27). Most of these occupations were blue-collar jobs, though many human resource specialists and data entry keyers were also employed through temporary employment agencies.

There is a similar pattern in Canada, where 43 per cent of temporary agency workers were in processing jobs in manufacturing and utilities, and 48 per cent in clerical work in the management, administrative and other support industries.<sup>123</sup>

During the 1990s, TAW was the most rapidly growing form of non-standard employment in the European Union. By 2000, 2 per cent of workers in EU-15 were on temporary agency contracts. Figure 2.28 provides data on the long-term evolution of temporary agency employment in France, where it accounted for 0.5 per cent of all workers in 1982, rising sharply in the 1990s to 2 per cent by 2000, and subsequently fluctuating around that level.

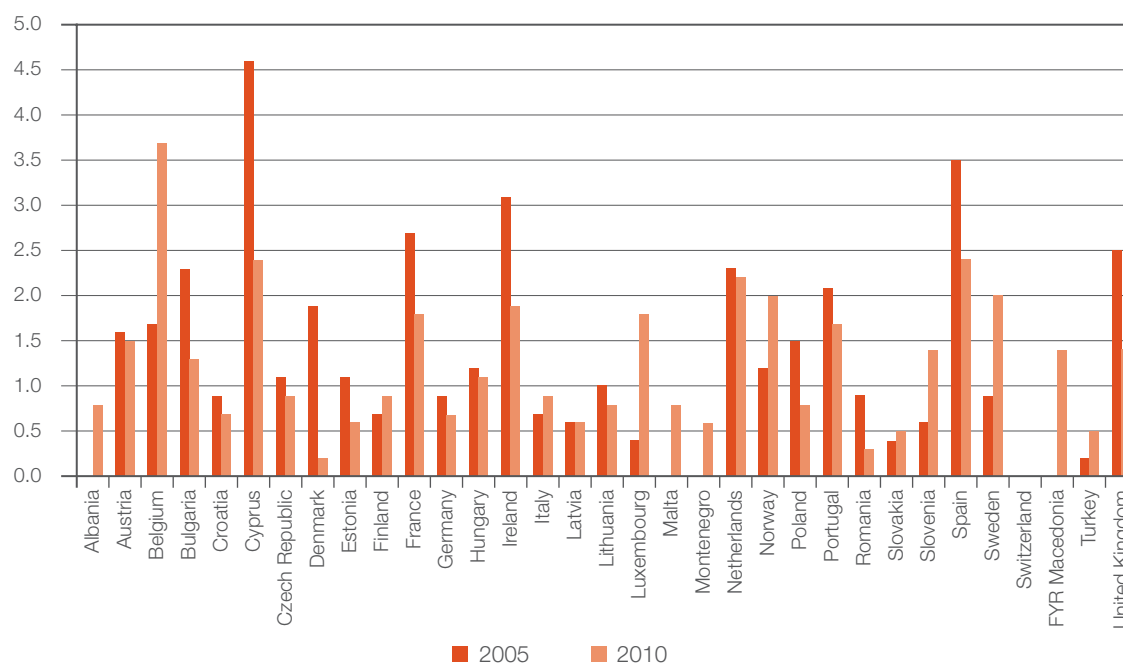
The growth in the temporary employment agency industry in Europe over the past several decades has been in part attributable to the strong legislative push on behalf

**Figure 2.28.** Temporary agency workers as a percentage of all workers, France, 1982–2013

Source: Enquête Emploi (INSEE).

of the industry confederation, the World Employment Confederation,<sup>124</sup> though there is significant variation across countries within Europe – according to the presence of a historical tradition of temporary employment, but also whether there have been other options available for contracting workers for a temporary period.<sup>124</sup> In some countries, legislation authorizing private employment agencies did not exist until recently, leaving the industry in a grey zone and stymieing its growth. For example, the Russian Federation’s first law on temporary employment agencies entered into force on 1 January 2016; in the Czech Republic and Poland, licensing legislation came into effect in the mid-2000s as part of a broader set of post-socialist reforms, though the growth of the industry was also precipitated by transnational firms moving into these countries. As these firms had long-standing relationships with leading temporary employment agencies and “required workers on a temporary basis”, the transnational temporary staffing agencies were able to establish themselves and “began to grow their market share through expanding their client base among domestic firms”.<sup>126</sup>

Figure 2.29 provides data on temporary agency employment as a percentage of employees in 33 countries surveyed by the European Working Conditions Survey. According to the survey, employment in TAW in both 2005 and 2010 was below 1 per cent of employment in Albania, Finland, Germany, Hungary, Italy, Malta, Montenegro and Turkey. In other countries, such as the Netherlands, the industry is well established and TAW was 2.3 per cent in 2005 and 2.2 per cent in 2010. Overall, for these countries, the average proportion was 1.4 per cent in 2005 and 1.3 per cent in 2010. Between 2005 and 2010, agency employment declined in 20 countries but increased in 14 others. Many of the decreases took place in countries that were negatively affected by the economic crisis, such as Cyprus, Ireland, Spain and Portugal, whereas there were increases in former transition countries where the industry was gaining presence in the labour market.

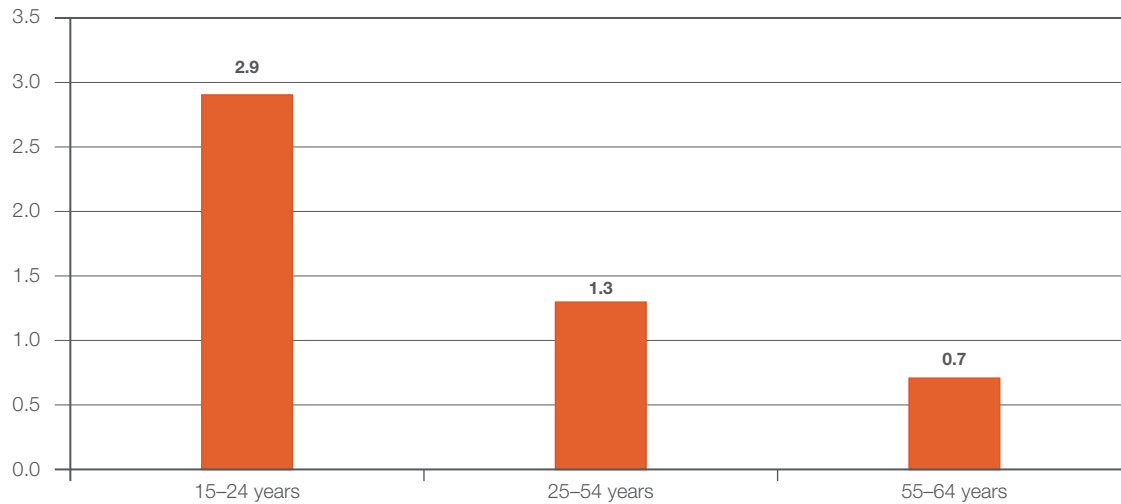
**Figure 2.29.** Temporary agency workers as a percentage of employees, selected countries, 2005 and 2010

Source: European Working Conditions Survey (Eurofound).

As in other countries studied, analysing data on TAW by age, occupation and skill level reveals that the incidence of such work does not cut evenly across the labour market. In 2012, European Labour Force Survey data for 14 European countries showed that youths aged 15–24 had a temporary agency employment rate (2.9 per cent) more than double that of prime-aged workers, i.e. those aged 25–54 (1.3 per cent) (figure 2.30). The large presence of TAW in industry shows up in its relatively higher prevalence among elementary occupations, with 3.3 per cent of workers, followed by plant and machine operators, with 2.2 per cent. The incidence of TAW among professional jobs was lowest, with only 0.4 per cent of workers employed under such contracts (figure 2.31). A similar pattern emerges from educational data: the incidence of TAW among the low-skilled (1.8 per cent) is more than double that of the high-skilled (0.8 per cent). A more detailed occupational analysis for France reveals that while 2.5 per cent of employees in 2013 had a TAW contract, amongst low-skilled labourers the incidence was nearly ten times higher, at 20.9 per cent.<sup>127</sup>

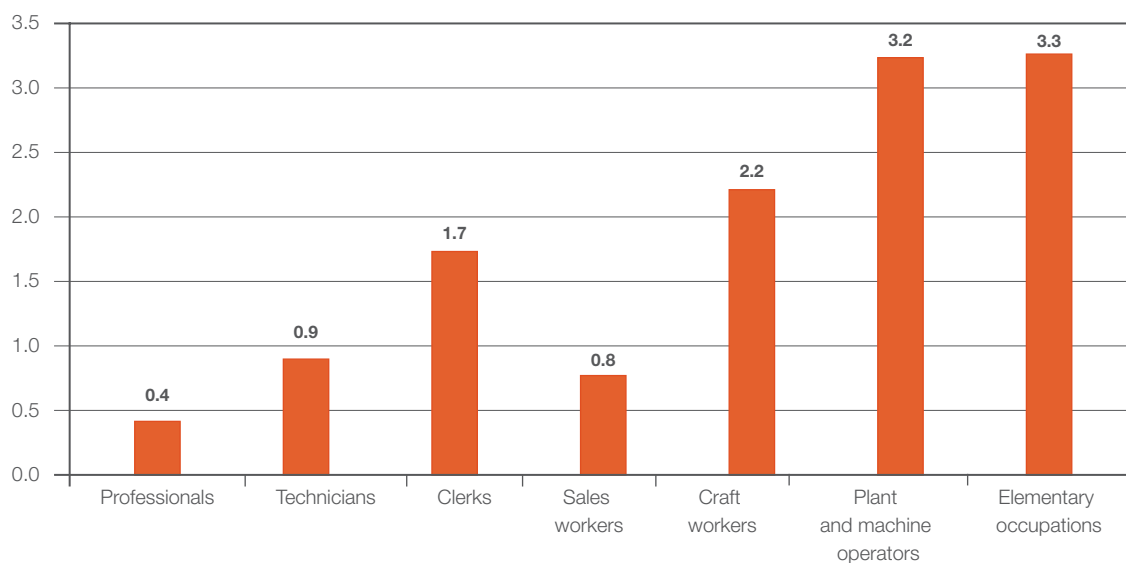
In Israel, the debate on multi-party employment arrangements has focused primarily on subcontracted workers. The Central Bureau of Statistics estimates that about 5.4 per cent of the labour force is comprised labour-contracted employees, most of whom are employed in the sectors of cleaning, security and personal care-giving services. Contract labourers account for between 15 and 20 per cent of the public sector workforce.<sup>128</sup>

In many countries in Asia, the use of multi-party employment relationships, including temporary employment agencies, has grown significantly over the past several decades, prompting some countries to take legislative action to curtail the entrance and activities

**Figure 2.30.** Percentage of workers employed in temporary agency work, by age, 2012

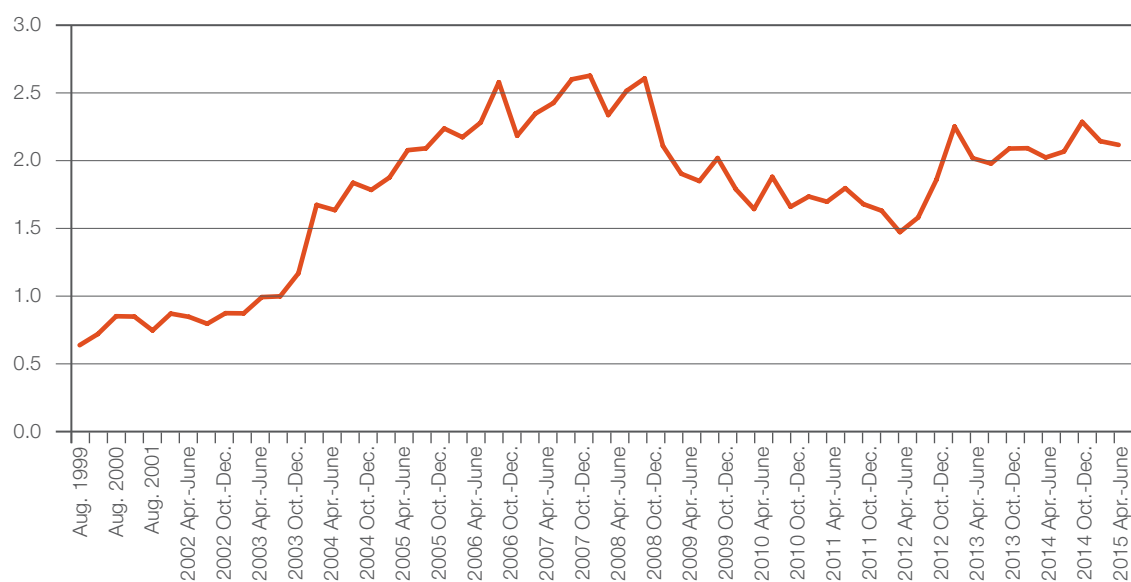
Note: Countries surveyed include Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom. Shown as percentage of working population (includes self-employed).

Source: European Labour Force Survey.

**Figure 2.31.** Percentage of workers employed in temporary agency work, by occupation, 2012

Note: Countries surveyed include Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom. Shown as percentage of working population (includes self-employed).

Source: European Labour Force Survey.

**Figure 2.32.** Temporary agency workers as a percentage of employees, Japan, 1999–2015

Source: Special Survey of Labour Force, 1999–2001; Labour Force survey, 2002–15, special tabulations from Statistics Japan.

of rogue agencies. In Japan, “dispatched” or temporary agency employment increased from 0.5 per cent in August 1999 to 2.1 per cent in spring 2015, with employment fluctuating around 2 per cent since the mid-2000s, depending on the economic conditions (figure 2.32). Dispatched workers are highly concentrated in production jobs (39.5 per cent) and clerical work (36.6 per cent).<sup>129</sup> The growth of dispatched employment has occurred alongside other forms of NSE such as temporary (*arbeit*) and “part-time” workers, who made up 24 per cent of employees in 2015. There has also been an increase in the use of contract workers. Data show that this category increased from 4.8 per cent in early 2013 to 5.3 per cent in early 2015.

In the Republic of Korea, 3.5 per cent of paid employees were employed as temporary agency workers in 2013, an increase over the 2.3 per cent recorded in 2001. In addition, 1.1 per cent of paid employees were “dispatched workers”.<sup>130</sup> Another category of employment, known as “in-house subcontracting”, is widespread in the country. In-house subcontracted workers are workers who work at the contracting or lead firm but are employed by a subcontractor (which is not a temporary employment agency). Having originated in manufacturing in the 1960s and 1970s, in-house subcontracting later expanded into the public and service sectors after the financial crisis of 1997.<sup>131</sup> According to a 2008 Survey on In-House Subcontracting carried out by the Korean Ministry of Labour, “in-house subcontracted workers” made up 19 per cent of the total workforce of the firms surveyed and 28 per cent of the workforce of those firms that use in-house subcontracting. In-house subcontracting does not fall under the purview of the 1998 Act on the Protection, etc., of Dispatched Workers (Act No. 5512); there are no regulations governing it. Nonetheless, the government has been providing



administrative guidance on its use and in a number of high-profile cases has ruled that it constitutes an illegal dispatch of workers.<sup>132</sup>

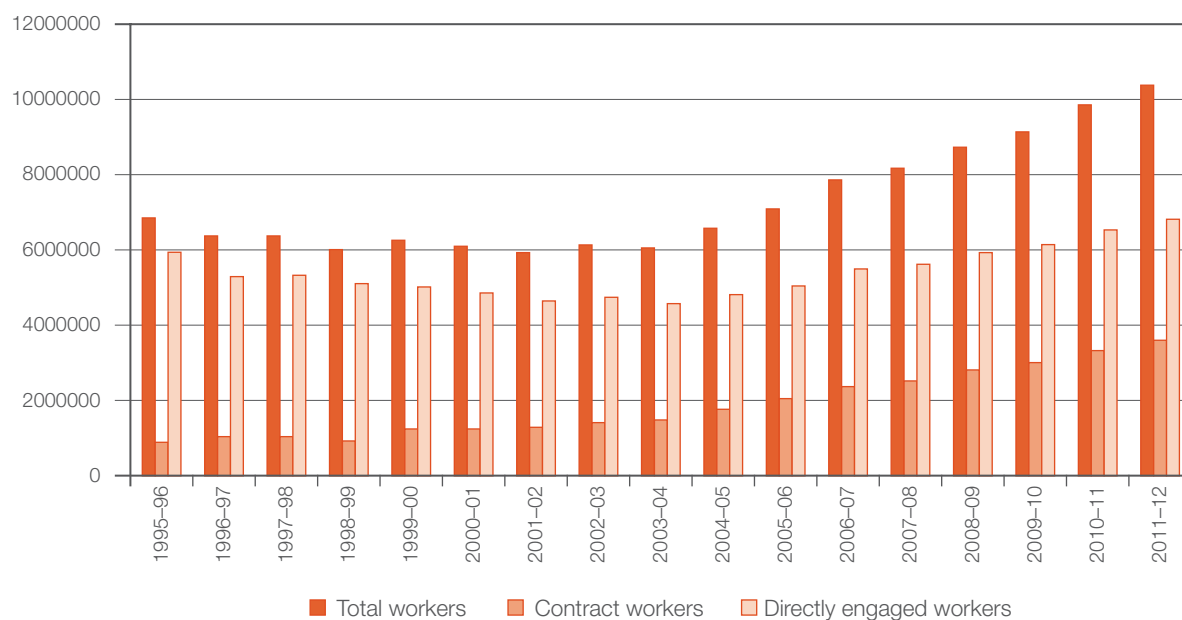
In the Philippines, “the hiring of workers through intermediaries or manpower agencies has grown in recent years”, departing from its traditional role of providing security and janitorial services to encompass a wide range of services beyond the non-core activities of the firm.<sup>133</sup> In 2014, according to the 2013/2014 Integrated Survey on Labor and Employment, a nationwide survey covering 8,400 registered establishments with at least 20 workers, 61.5 per cent of establishments contracted “agency-hired” workers, defined as “workers employed by contractors to perform or complete a job, work or service pursuant to a service agreement within the premises of the establishment”. Although these workers are not counted amongst the establishments’ total employees, according to the survey, they made up 12.2 per cent of their total workforce. Nearly two-fifths (36.8 per cent) of agency workers are employed for security and janitorial services, with an additional quarter (25.8 per cent) performing production and assembly jobs.<sup>134</sup>

In Indonesia, agency work (or “labour outsourcing”) emerged in the 1990s, and grew following the passage of the 2003 Indonesian Manpower Law.<sup>135</sup> There are no official statistics on labour outsourcing, though Indonesian trade unions report a very high incidence with up to 40 per cent of workers in the metalworking industry and more than 60 per cent of workers engaged in the textile industry employed under these contractual forms.<sup>136</sup> A study of labour outsourcing practices in the manufacturing sector found that many workers had been shifted from permanent employment contracts to engagement through labour supply companies and that workers engaged through labour supply agencies were more likely to be non-managerial, technical and support staff.<sup>137</sup>

Viet Nam has sought to regulate agency work (commonly referred to as “labour outsourcing”) in recent years, which is often taken as an indication of the increasing prevalence of this practice.<sup>138</sup> Nonetheless, there are no national data available to confirm the proportion of employment agency work. Surveys conducted by the Ministry for Labour, Invalids and Social Affairs (MOLISA) and the ILO between 2009 and 2011 found 59 labour hire agencies operating in Ho Chi Minh City, some of which hired thousands of workers.<sup>139</sup> Case studies suggest that agency work and subcontracting are common, with an Oxfam-commissioned study of Unilever operations in southern Viet Nam finding that over half (53 per cent) of workers, most of whom were migrant workers, were engaged by a third party.<sup>140</sup>

In India, employment relationships involving multiple parties are commonly referred to as “contract labour”, understood as workers who have been hired through a contractor.<sup>141</sup> The term “contractor” includes both those who have undertaken to supply workers for an establishment and those who have undertaken any work in an establishment with the help of contract labour. Contract labour in India is regulated by the Contract Labour (Regulation and Abolition) Act, 1970, which regulates the employment of contract labour, including the provision of protection with respect to minimum wages, overtime and social security. The Act also prohibits the use of contract labour in “core activities” which are of a perennial nature.<sup>142</sup>

The only systematic source of data on contract labour in India is the Annual Survey of Industries (ASI) of the organized manufacturing sector. Factories registered under the Factories Act 1948 are required to provide data on workers directly engaged by

**Figure 2.33.** Workers in organized manufacturing, engaged directly and through contractors, India, 1995–96 to 2011–12

Note: Computed from unit level Annual Survey of Industries (ASI) data.

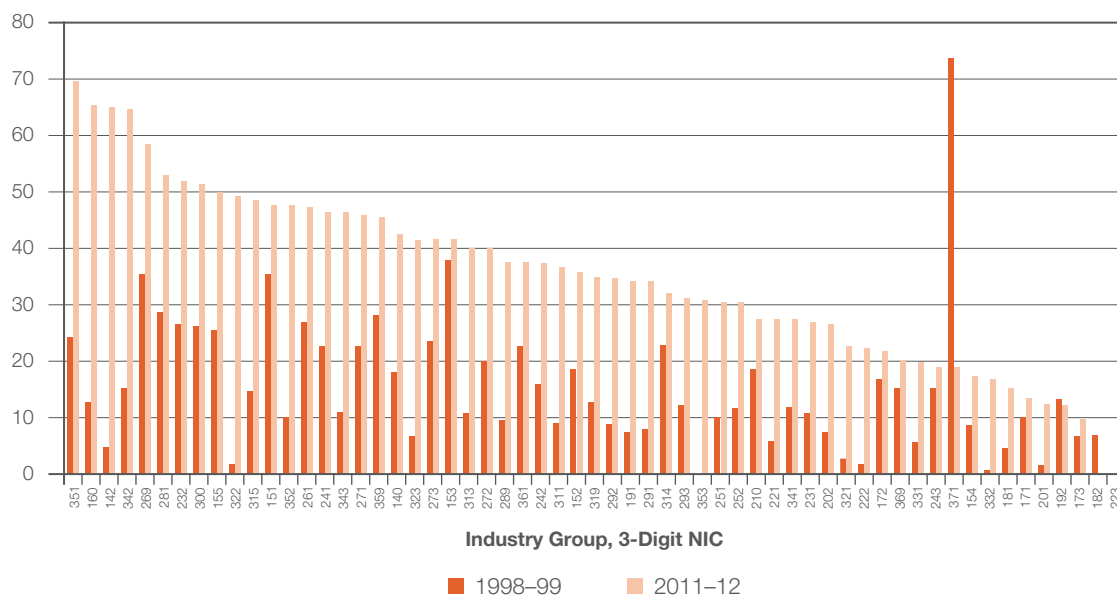
Source: Srivastava, 2015.

them or through contractors. These data leave out of their purview all establishments not covered by the Factories Act as well as all workers in factories not registered as contract workers, which is a significant limitation.

Despite likely omissions as a result of the non-registration of workers, the data show that over the past several decades there has been a sharp increase in the use of contract labour within Indian manufacturing. Contract labour was negligible in the early 1970s, rose to 12.1 per cent in the mid-1980s, fluctuated around 15 per cent in the 1990s, but experienced a strong increase throughout the 2000s, reaching 34.7 per cent in 2011–12.

Indeed, between 1996 and 2012, the overall employment of workers in registered manufacturing in India grew at an average annual rate of 2.8 per cent, yet most of this gain went towards the hiring of contract workers (9.4 per cent annual increase for contract workers compared with 1 per cent for directly employed workers). In the first half of this time period, during 1996–2004, overall employment in manufacturing fell by 1.4 per cent annually and by 2.2 per cent for directly employed workers, whereas use of contract workers increased at an average annual rate of 7.1 per cent. In the second period, overall employment increased by 7.0 per cent annually, with employment of contract workers increasing by 11.7 per cent and of directly engaged workers by 5.1 per cent (figure 2.33). At the same time, there was also a geographic extension of the use of contract labour in manufacturing across Indian states.<sup>143</sup>

The marked increase in hiring of contract workers was an industry-wide phenomenon, with industries that had relied relatively little on contract labour in 1998–99 coming to depend heavily on it by 2011–12 (figure 2.34). In 1998–99, industry Group 371

**Figure 2.34.** Percentage of contract workers by industry group, 3-digit NIC, India, 1998–99 compared to 2011–12

Note: Computed from unit level ASI data, based on national industrial classification (NIC).

Source: Srivastava, 2016.

(Recycling of Waste and Scrap) had the highest concentration of contract workers (73.6 per cent); by 2011–12, Building of Ships and Boats (NIC 351) had surged to first place (69.7 per cent), which was indicative of the extension of contract labour to relatively capital-intensive industries. Box 2.7 provides a more detailed look at the use of contract labour in two Indian manufacturing sectors.

In Chile, the 2011 ENCLA survey on working conditions and labour relations in registered, private sector firms with five or more employees found that 3.6 per cent of firms employed agency workers, representing an increase over the 2.8 per cent level reported in 2008. However, 13.6 per cent of large firms, defined as having 200 or more employees, reported using agency work. Overall, in 2011, agency workers comprised approximately 4 per cent of the workforce of the firms surveyed. The largest users of employment providers were in the transport and communications sector, agriculture and fishing, and manufacturing. Subcontracting was much more prevalent, with 38 per cent of firms subcontracting, an increase over the 31 per cent reported in 2008. The activities most commonly outsourced were legal services, cleaning and maintenance, transport and distribution, construction and the “primary activity of the firm”. Chilean law permits subcontracting of core activities and amongst firms that subcontracted, 24 per cent subcontracted core activities, with a higher incidence (33 per cent) amongst large firms. In addition, the study found that 66 per cent of large firms with unions subcontracted, compared with 39 per cent of large firms without union presence.<sup>144</sup>

Chile is also one of the few countries that includes a question in its household survey (CASEN) on third-party contractual arrangements. According to these data, in 2011,

**Box 2.7. A closer look at contract labour in India: the garment and construction sectors**

A survey of the garment and construction sectors of Delhi, New Okhla and Gurgaon conducted in 2012–13 provides an in-depth look at the use and evolution of contract labour in India.<sup>145</sup> Four types of recruitment processes were used: (i) direct hiring by firms or managers; (ii) hiring through in-house labour contractors who could be employees of the firm, and could either be licensed or unlicensed contractors; (iii) hiring through external labour contractors, who could again be licensed or unlicensed; (iv) work contractors who could function in-house and whose employees would hence be within the purview of the Contract Labour Act 1970, or could be outsourced work contractors (jobbers). The contractors' licensing applications revealed that the manufacturing processes were treated as non-core. In all three cities, contract labour was permitted for non-core activities, after due registration of employers and contractors.<sup>146</sup>

Recruitment practices varied between firms. In the 26 factories and eight workshops studied, between 5 per cent and 20 per cent of the workers were hired directly, the rest of their workforce being contract labour. However, in seven factories all workers were found to have been engaged directly. Directly engaged workers were either casual workers or regular workers, generally on oral contracts. Thirteen of the factories covered in the survey had licensed contractors, but not all workers recruited and supplied by them were officially on their rolls, and hence not all workers received social security protection. Fifteen firms had unlicensed contractors, usually supplying 20 to 50 workers: they were on separate muster rolls and so the workers were not covered by social security. Two in-sourced work contractors were covered in the survey, both licensed, one of which had most workers on its rolls who also received social security. Only 1.7 per cent of workers surveyed had written contracts, 47 per cent were on indefinite oral contracts, while the rest were casually employed.

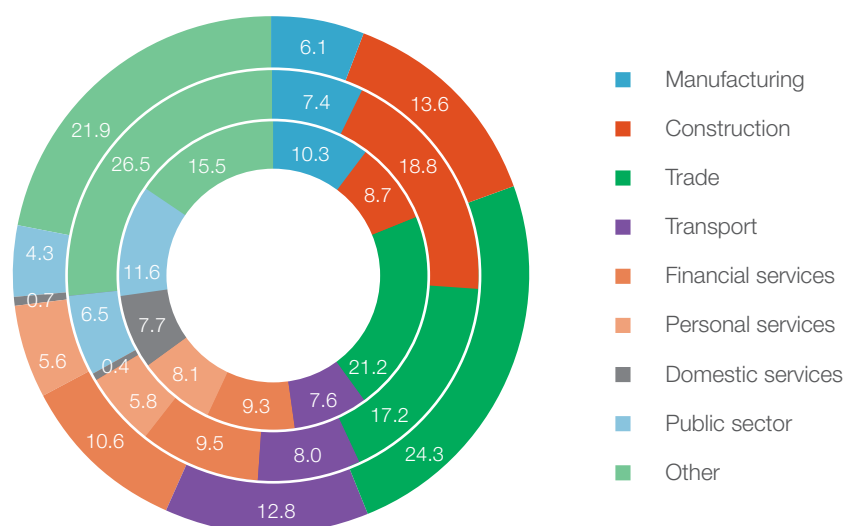
Workers employed through unlicensed contractors, and some proportion of workers employed through licensed contractors, or even directly engaged, did not appear on the main rolls of the contractor or factory, and their muster rolls or attendance sheets were maintained separately. These workers would not therefore be picked up in ASI data, indicating a degree of under-reporting of contract workers employed.

The practice of unregistered employment agencies also appears to be widespread in India. A 2013 survey of 100 private placement agencies found that although 67 of them claimed to be registered, only three were able to provide documentation of registration. Furthermore, 73 per cent charged the workers registration fees and 55 per cent charged them placement fees.<sup>147</sup>

Source: Srivastava, 2016.

92.9 per cent of employees were hired by the company in which they worked, 6.1 per cent had signed a contract with a subcontractor and 1.1 per cent had a contract with a temporary employment agency. Thus the proportion of workers employed by a temporary employment agency was much lower than was found in the ENCLA survey, which is not surprising given that the CASEN includes employees in firms with fewer than five employees and unregistered firms. The data showed that men were more likely to be subcontracted than women (7.5 per cent of men versus 4.0 per cent for women) and were also more likely to have a contract with a temporary employment agency (1.2 per cent of men versus 0.9 per cent of women). The incidence of both these contractual forms was higher among younger age cohorts (7 per cent of under 25s were outsourced, compared with 5.8 per cent of workers over the age of 45; 1.5 per cent were in TAW, compared with 0.9 per cent of workers over the age of 45). As expected, there was a higher incidence of third-party contractual arrangements in the construction and trade sectors (figure 2.35).

**Figure 2.35.** Percentage of direct hires, subcontracted workers and temporary agency workers, by economic sector, Chile, 2011

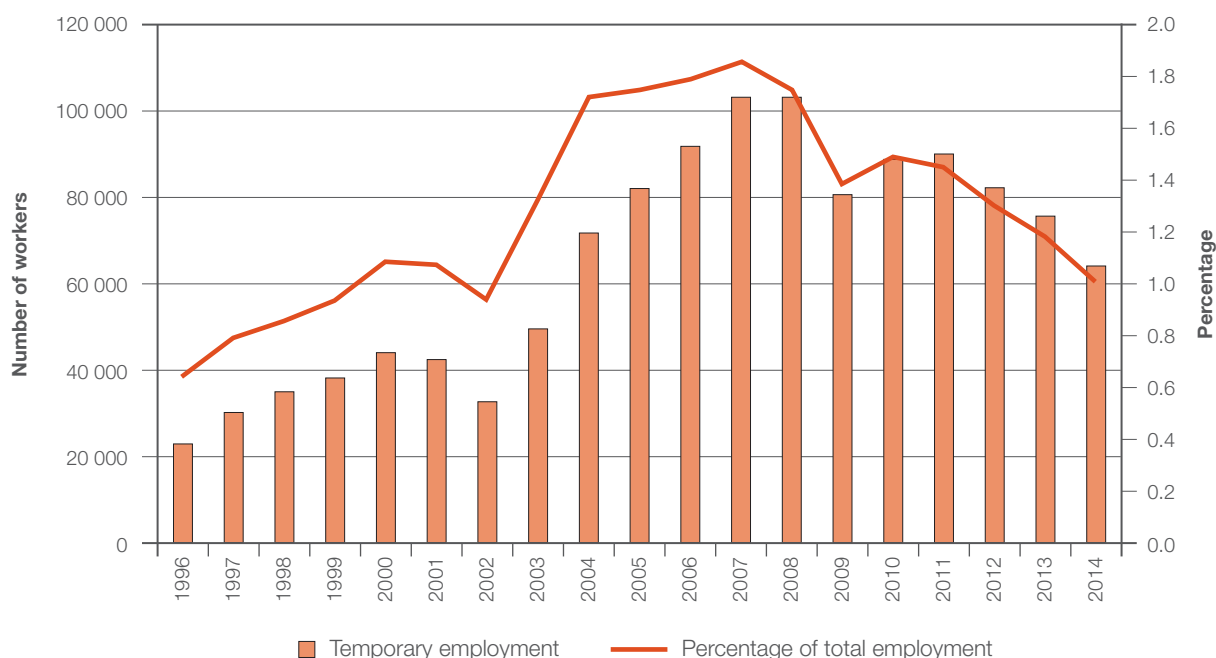


Note: The innermost ring is direct hires, the middle ring is subcontracted workers and the outer ring is temporary agency workers. The data give the distribution of contractual forms by economic sector.

Source: CASEN, 2011.

Argentine law only allows the use of agency workers for the temporary replacement of absent workers or to respond to certain special and temporary business needs. Administrative data of registered firms which pay social security contributions for their workers (Sistema Integrado Previsional Argentino) provide information on the evolution of temporary agency employment in the country. In 1996, registered temporary agency employment stood at 22,500 workers, representing 0.6 per cent of registered workers. Ten years later and with strong economic and employment growth, TAW had grown to just over 100,000, nearly 2 per cent of all registered employment in the country. However, with the slowdown of the economy in the 2010s, agency employment fell to 64,000 by 2014 (1 per cent of registered employees) (figure 2.36). Nearly 60 per cent of temporary assignments are in manufacturing jobs and around 20 per cent are in retail.<sup>148</sup>

Data on Africa are scarce, with the exception of some sectoral and occupational information. In South Africa, the National Association of Bargaining Councils estimated that in 2010, 6.5 per cent of the total workforce was employed by labour brokers.<sup>149</sup> Industrial classification data revealed that the contract cleaning, security and farm-hands sector grew by 8.3 per cent between 1999 and 2011, far surpassing economy-wide employment growth of 2.1 per cent.<sup>150</sup> In Zambia, 48 per cent of the labour force in the mining industry was employed by contractor and labour broker companies in 2009, mostly on short-term contracts.<sup>151</sup> Subcontracting was also found to be widespread in the mining sectors of South Africa and Lesotho.<sup>152</sup>

**Figure 2.36.** Evolution of temporary agency work in Argentina, 1996–2014

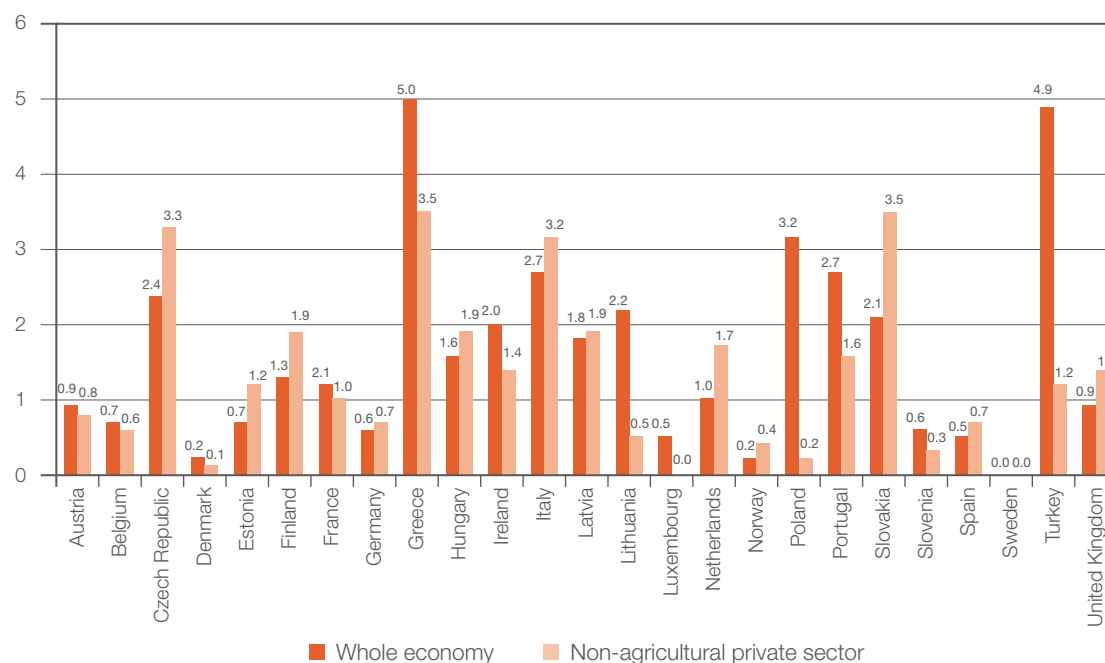
Source: Employment and Business Dynamics Observatory, Ministry of Labour and Social Security, Argentina.

## 2.4. DISGUISED EMPLOYMENT AND DEPENDENT SELF-EMPLOYMENT

Dependent self-employment refers to services that are performed for a business under a contract that is different from an employment contract. Such workers depend on one or a small number of clients for their income or receive detailed instructions regarding how the work is to be done. As explained in Chapter 1, few countries have legal statutes governing this category of work. Most countries do not, and the presence of this form of employment represents a legal grey area as the respective rights and obligations of the parties concerned may not be clear. In some instances, there is a deliberate attempt by employers to misclassify workers as independent, self-employed or, alternatively, as workers employed by a third party in a triangular employment relationship. These situations are referred to as “disguised employment”.

For policy purposes, it is important for countries to have an idea of how many workers may be in either dependent self-employment or disguised employment relationships. Unfortunately, data can only be gleaned, in some instances, from labour force surveys through a combination of questions. Even countries that have legal categories for dependent self-employment, such as Germany and Spain, do not explicitly address this employment category in their labour force surveys. One exception is Italy, where a specific question in the labour force survey does allow para-subordinate workers (or *collaboratori*) to identify themselves. There, in 2014, para-subordinate workers made up 1.7 per cent (378,000 workers) of total employment.



**Figure 2.37.** Dependent self-employed as a percentage of dependent workers, Europe, 2010

Note: The survey identifies dependent self-employed workers as own-account workers who satisfy at least two of the following conditions: (1) they have only one employer/client; (2) they cannot hire employees even in the case of heavy workload; and (3) they cannot autonomously take the most important decisions to run their business.

Source: OECD, 2014, based on the fifth European Working Conditions Survey, Eurofound.

As a result of rising concerns over the incidence and potential growth of dependent and disguised self-employment, the European Working Conditions Survey, 2010, included three questions that could be used to estimate the incidence in different European countries. It found that dependent self-employment ranged from statistically negligible in Sweden to over 3 per cent of non-agricultural, private sector employment in the Czech Republic, Greece, Italy and Slovakia (figure 2.37); it also appeared to be prevalent in the agricultural sectors of Greece, Poland and Turkey. The OECD argues that these estimates are likely to be too low, as workers may not recognize themselves as self-employed if they are in a situation of dependency; furthermore, dependent self-employment is characterized as a “non-trivial share of dependent employment”.<sup>153</sup>

Elsewhere in Europe, Slovakia is one of the few countries that publishes statistics on “false self-employed” or the “self-employed whose job has the form of dependent work of employee”. In the first quarter of 2015, 3.6 per cent of employed workers, or 86,500 people, were false self-employed.<sup>154</sup>

Several of the surveys undertaken in Latin America provide information that can be used to estimate dependent self-employment. For example, in Argentina in 2014, 2.3 per cent of workers, or 364,200 people, identified themselves in the labour force survey as “a worker/employee for a boss/company/institution” but were responsible for their own

social security payments. To this group can be added a smaller group who identified themselves as own-account workers, with only one client, who did not own capital equipment and had no business partners. There were an additional 41,500 workers (0.3 per cent) who met these multiple criteria.

In Mexico, the labour force survey was able to capture information on “subordinated workers who do not receive a wage” (*trabajadores subordinados no asalariados*). These were workers who identified themselves as independent but had only one client, did not employ anyone else, did not have their own vehicle or premises and reported income that was different from profits.<sup>155</sup> In the fourth quarter of 2014, these workers represented 4.1 per cent of total employment.<sup>156</sup> In Chile, the 2011 ENCLA survey on labour relations and working conditions, an establishment survey, revealed that 12–17 per cent of subcontracting firms were made up either entirely or partly of ex-employees of the lead firms, suggesting the possibility of disguised employment relationships.<sup>157</sup>

In Australia, independent contractors make up 8.5 per cent of total employees. Of this group, 38 per cent reported in 2013 that they did not have authority over their own work, and 80 per cent of those specified that it was their employer/supervisor/manager, business or person contracted to, including client, who had such authority. Half of these workers had only one active contract. Based on these multiple responses, disguised or dependent self-employment would account for 1.7 per cent of total employment in the country, or 197,000 people.<sup>158</sup>

In the early 1990s, the Republic of Korea introduced freelance-like employment contracts, known as “special employment”, under which workers were not protected by labour laws governing the employment relationship. Yet many of the workers who had this status were still subject to managerial control, including of their hours of work and conduct.<sup>159</sup> According to the Korea Labor Institute, special employment workers accounted for 3.5 per cent of employed workers in 2011, a decrease in relative terms since the early 2000s, though absolute numbers have remained flat.<sup>160</sup> Certain sectors are associated with this form of employment, including the private tutoring industry which employs 100,000 tutors, as well as the construction industry.<sup>161</sup>

In the United States, disguised self-employment is commonly referred to as “misclassified self-employment” and is understood as occurring when “employers treat workers who would otherwise be wage or salaried employees as independent contractors”.<sup>162</sup> Estimates of employee misclassification in the United States come from unemployment compensation tax audits done by different US state-level labour departments. Most of these audits target specific sectors and have focused in many instances on the construction industry, where the practice of misclassification is common. It is particularly problematic in this industry because misclassification by employers means they do not pay workers’ compensation or unemployment insurance and thus the worker is placed in a vulnerable situation if there is an occupational accident or during periods of unemployment. For the six states for which audit data exist, it was found that between 8 and 13 per cent of construction workers were misclassified.<sup>163</sup>

A study of construction in the United Kingdom in the early 2010s suggests that disguised self-employment is a problem in this industry: as many as 54 per cent of all manual construction workers were classified as self-employed, two to five times more than

in the construction industries of France, Germany and Spain.<sup>164</sup> Another sector where dependent self-employment and disguised employment, as well as other forms of non-standard employment, are common and potentially on the increase is the media and culture industries (box 2.8).

Similarly, many businesses in the on-demand or gig economy have chosen to hire their workers as “independent contractors”. This practice has been the subject of several high-profile labour disputes, in which workers have contested the classification.<sup>165</sup> The on-demand economy still forms a relatively small part of the labour force – current estimates range from 0.4 per cent of the labour force in the United States<sup>166</sup> to 3 per cent in the United Kingdom<sup>167</sup> – but is nonetheless likely to expand significantly in the years to come. Thus how workers are classified by employers, and whether governments accept this classification, is likely to have important implications for the labour market as a whole.

### **Box 2.8. Non-standard employment in the media and culture industries**

The media and culture industries encompass many varied occupations, such as journalists, editors, writers, agents; visual artists such as designers and photographers; musicians, singers, actors and dancers; technicians, producers and directors of film. Worldwide, the sector has a long tradition of non-standard work, characterized by atypical working hours, project-based work, self-employment (including dependent self-employment), unclear contractual arrangements and questions over the employment status of its workforce. In 2004, an ILO tripartite meeting of experts for this sector concluded that there was “a trend towards freelance, self-employed or informal economy work” in this sector, with many media and culture workers not covered by legislative provisions on social security, even in countries with high social security coverage.<sup>168</sup>

While systematic data are rare, a 2011 survey by the International Federation of Actors (FIA)<sup>169</sup> reported that self-employment among dancers has been on the rise over the past two decades, and that dancers had been encouraged to become self-employed by employers. Around 2010, the percentage of self-employed dancers out of the total number of professional dancers was 76 per cent in Finland, 50 per cent in Norway, though only 5 per cent in the Netherlands.<sup>170</sup> In several countries, self-employed dancers hold several different employment statuses at the same time, being simultaneously self-employed and also employed, often under short-term employment contracts for a project. The survey also uncovered that the employment status of many dancers was affected by the available budget of the employer. Project-based funding had led many dancers to being employed on short-term project-based contracts, making permanent and long-term fixed-term contracts the exception rather than the rule, even in national theatres. In the context of greater labour flexibility, mobility and drops in public funding, numerous media and culture workers in general face irregular and unpredictable employment opportunities and may thus be more likely to sign non-standard contracts and to have little control over their working conditions.

Workers in the creative industries often label themselves “freelancers”. A freelancer can be defined as someone “pursuing a gainful activity on their own account, under the conditions laid down by national law”,<sup>171</sup> in contrast to an employee, who is subordinate to and dependent on an employer. Between 2008 and 2012, the number of “independent professionals”, or freelancers, also referred to as “I-Pros”, in arts, entertainment and recreation grew by about 12.5 per cent in EU-27.<sup>172</sup> In Germany, freelancers represent 42 per cent of total employment in creative occupations; another 25 per cent were on fixed-term contracts.<sup>173</sup> Freelancers can be seen as falling somewhere between dependent employees and self-employed workers. Some observers note that there is a sizeable segmentation within the sector of freelance workers, some engaged in mundane manual activities and in a precarious situation, while others, usually highly skilled,

Box 2.8. continued

have sufficient work and are earning 150 per cent more than equivalent employees. The latter group of highly skilled freelancers are often engaged in stimulating activities such as innovation and implementation of new technology, and seek the diversity, creativity and independence that comes from freelance, project-based work.<sup>174</sup>

While for many workers in this industry, self-employment and freelancing are a choice, other self-employed workers in the industry see their rights being eroded. Some of these lost rights are linked to funding cuts brought about by the global economic recession, such as reductions in the daily rates for touring (up to 80 per cent in Romania and Slovenia around 2013).<sup>175</sup> Technological changes also bring new challenges in terms of workload and working hours. For example, journalists are increasingly expected to remain permanently connected to the web, to monitor their newspaper's website and to continuously check comments, and also to disseminate articles through their private social media accounts.<sup>176</sup> In Germany, there are fewer photo editors now and regular journalists are expected to be technologically capable of uploading and formatting their own photos.<sup>177</sup>

There is also a growing use of paid or unpaid internship or work experience schemes for young people starting out in their careers in the media and culture industries, which may last for months or even years, but only occasionally result in regular permanent employment. Recent cases in the United States film and magazine industries have questioned whether certain unpaid interns were in fact employees.<sup>178</sup>

In some countries, the regulatory framework establishes the existence of an employment relationship for certain media and culture professionals. In France, performing artists, models and professional journalists who might otherwise be regarded as self-employed are presumed to have an employment relationship under certain conditions; in Spain, artists engaged in public performances who entered into an arrangement with an organizer of public performances or a manager, on behalf of and under the organization and direction of the latter, are deemed to have a special employment relationship; and in Panama, performers and musicians are considered employees. Some other countries, however, have recently taken steps to deregulate the industry. For example, an October 2010 amendment to the New Zealand Employment Relations Act 2000 excluded from the statutory definition of "employee" all those engaged in film production work, thereby removing employment-based rights and protections. In 2001, the European Arts and Entertainment Alliance (EAEA) and the European Trade Union Confederation (ETUC) conducted a study of the legal, taxation and social protection frameworks for media, arts and entertainment workers in the European Union, which showed that workers not considered as employees could, in some situations, be either fully or partially covered by social protection measures for employees.<sup>179</sup>

Source: Unless noted otherwise, this section substantially draws on ILO, 2014g.

## 2.5. SUMMARY

This chapter has reviewed global evidence on the incidence and trends of various forms of non-standard employment. It has shown that the prevalence of different types of NSE in a labour market reflects, to a large extent, the historical evolution of the labour markets and the legal constraints imposed on them. Moreover, since these employment arrangements offer greater flexibility to employers, their role in employment is also greatly affected by economic conditions. Given these diverse influences, it is not surprising that trends across countries are not uniform.

*Temporary employment* started attracting particular policy attention with its expansion beyond traditional use about three decades ago throughout the world. In the past ten



*Orchestra musician, United States*

© Jessica Maida

years, despite the ups and downs in its incidence induced by the recent global economic recession, it has increased or remained stable in a vast majority of countries for which data are available.

In Europe, where the main form of NSE is fixed-term contracts, champions of temporary employment are Poland, Spain, Portugal, Cyprus and the Netherlands, all of which have levels over 20 per cent. Countries such as Malta and Slovakia witnessed a nearly twofold increase in temporary employment, and in Ireland its incidence tripled over the past decade. While reasons for being in temporary work are diverse, 62 per cent of European temporary workers reported in 2014 that they worked temporarily because they could not find a permanent job, while around 9 per cent were on probation. In the Russian Federation, the growth of temporary employment has been sizeable, albeit starting from an initially low level. Similar patterns are also found in other industrialized countries. Temporary employment has doubled in Canada over the past three decades. Levels of casual employment have remained stable and high at a quarter of wage employment in Australia. “Non-standard” employment, in general, drastically increased in relative terms in Japan to reach 37 per cent in 2015, and in absolute terms in the Republic of Korea, to reach about 6 million employees in 2013 – a third of its workforce.

Temporary employment is high by international standards in Asia, where all of its forms – fixed-term, seasonal, and casual – are widely present. It ranges from 24 per cent of wage employment in the Philippines to 67 per cent in Viet Nam, and is also widespread in China, India, Indonesia and Malaysia. Casual work constitutes nearly two-thirds of



wage employment in Bangladesh and India, and around a quarter in Indonesia, while the incidence of fixed-term contracts reached 16 per cent in Cambodia in 2012.

Latin American countries reveal diverse experiences. While in Argentina and Brazil the use of temporary employment is limited at present, it was quite widespread in preceding decades in Argentina. Other countries of the region exhibit relatively high and growing levels of temporary work; Peru and Ecuador top the list, with around 60 per cent of wage employees in temporary contractual arrangements. Informality remains an important issue in both Latin America and Asia, where many countries are facing a double-segmentation problem with labour markets segmented across formality–informality and across temporary–permanent contracts divides.

In Africa, the most widespread form of temporary employment continues to be casual employment. One in four employees is casual in Kenya; more than one in three in Zimbabwe and Mali. Temporary employment in general has reached over 50 per cent in Ethiopia and the United Republic of Tanzania (hereinafter “Tanzania”), and is particularly high in rural areas. The growth of its specific form – fixed-term contracts – has been observed in the past few years on two opposing ends of the continent: in South Africa and Morocco.

*Part-time work*, similarly to temporary employment, has been on the rise in many parts of the world since the 2000s. In Europe, nearly one out of every five employees is working part time. This employment arrangement is heralded in northern Europe, the United Kingdom, and Switzerland in particular, where a third of employees are part-timers and the vast majority are women. While reasons for working part-time are diverse, around one-third of European part-timers are in this arrangement because they could not find a full-time job. This incidence of involuntary part time has become exacerbated over the past decade in numerous countries, but especially so in Greece, Spain, France, Italy, Cyprus, Hungary, Portugal and Slovakia – mimicking the trends in involuntary temporary work in these same countries. The proportion of “short part-time” jobs and other types of arrangements, such as on-call work, including zero-hours contracts, has increased substantially. In other developed countries, part-time employment has remained stable and high in Australia, Canada, New Zealand and Israel, with a third of employees working part time; it has continued to expand in Japan, the Republic of Korea and the United States.

Part-time employment is also widespread in other parts of the world. In Asia, it has been on the rise in Indonesia, Viet Nam, the Philippines and Hong Kong (China). In Latin America, while it remained stable at around 15 per cent in Brazil and at around 20 per cent in Mexico, it grew substantially in Chile. At the same time, several Latin American countries witnessed a decline in involuntary part-time work, especially Argentina, Brazil, Ecuador and Peru. In Africa, part-time employment is most widespread in Zimbabwe, where its incidence of 50 per cent dwarfs part-time work elsewhere in the world. Part time is also sizeable in Mozambique, Uganda and Madagascar, though much of it is a reflection of this arrangement’s casual nature. Time-related underemployment remains a considerable issue in Africa, as well as among women as compared to men in all parts of the world.

While the data on *temporary agency work and other contractual relationships involving multiple parties* are scarce, they reveal that these employment arrangements constitute



a small yet growing share of wage employment. Temporary agency employment spans from 1 to over 6 per cent of wage employment in countries with available data. According to the World Employment Confederation, 40 million workers worldwide participated in TAW in 2013, the largest markets being the United States, China, Europe and Japan. In the United States, 1.3 per cent of the workforce were employed as temporary agency workers in 2010, but these workers experienced 10.6 per cent of net job losses during the 2008–09 recession.

Considered as the fastest-growing form of NSE in Europe throughout the 1990s (albeit from initially close to zero), temporary agency work accounted for 2 per cent of EU-15 employment in 2000, and 1.3 per cent of wage employment in 34 European countries in 2010. While remaining below 1 per cent of wage employment in Albania, Finland, Germany, Hungary, Italy, Malta, Montenegro and Turkey, it reached 2.2 per cent in the Netherlands and 2.4 per cent in Cyprus, Spain and Bulgaria. Between 2005 and 2010, it declined in 20 countries but rose in 14 others, reflecting the uneven impact of the economic crisis. In Israel, over 5 per cent of the labour force was hired through labour contractors.

Asian countries have witnessed the growth of various forms of dispatched, agency, manpower, subcontracted or outsourced work throughout the past decades. In Japan, dispatched employment rose to 2.1 per cent in 2015. In the Republic of Korea, temporary agency and dispatched workers constituted 4.4 per cent of wage employment in 2013. In the Philippines, as much as 61.5 per cent of establishments contracted “agency-hired” workers in 2014. In Indian manufacturing, contract labour reached 34.7 per cent in 2011–12, up from negligible levels in the early 1970s. Indonesia and Viet Nam likewise reported a significant spread of these employment forms.

In other parts of the world, data remain scarce. Where they exist, they show substantial growth of subcontracted work in South Africa, Lesotho and Chile (where it comprised up to 6 per cent of employees in 2011), and of labour brokerage in Zambia and South Africa (6.5 per cent of employees in 2010). Temporary agency work declined in Argentina to 1 per cent of registered employment in 2014, down from 2 per cent in 1996.

By its definition, *dependent self-employment* is very hard to identify, and *disguised employment* even more so. Scarce available evidence points to the non-negligible presence of these forms of employment in Italy, the Czech Republic, Slovakia and Greece, including in the agriculture sector in Poland, Turkey and Greece. Dependent self-employment was reported by 2.3 per cent of workers in Argentina, and by 4.1 per cent of workers in Mexico in 2014. Various sources point to its noteworthy presence in Australia, the Republic of Korea, the United States and the United Kingdom. With the advent of the on-demand economy, the growth of these employment arrangements needs to be closely monitored in the years to come.

Although the latest economic recession and some recent legal changes forestalled the growth of non-standard employment in some countries, this chapter has shown that – globally – there are strong tendencies in favour of NSE, and towards a diversification of its forms. As numerous forces responsible for the rise of NSE – notably structural transformation, technological change, globalization and the evolving structure of the labour force – will not only persist but may intensify in the future, it is not unreasonable

to expect that NSE will continue to proliferate. And it will continue posing, in an increasingly intensified manner, numerous challenges. In developed countries, these challenges are likely to be linked to the creation of new employment opportunities without falling into the traps of dualism and segmented labour markets, as well as responding to the consequences of the on-demand economy. In developing countries, the challenge will be to continue the push towards greater labour market formalization without forsaking standard jobs and their inclusiveness. In all countries, the key questions will be linked to ensuring that non-standard jobs constitute decent work. Chapter 5 considers the extent to which this is currently the case.

## NOTES

- 1 ILO, 2014a.
- 2 Ibid.
- 3 ILO, 2015d.
- 4 Ibid.
- 5 Euwals and Hogerbrugge, 2006.
- 6 ILO, 2010b.
- 7 ILO, 2016a.
- 8 Barrientos, 2013.
- 9 ILO, 2016a.
- 10 Golden and Appelbaum, 1992.
- 11 Kummerling and Lehndorff, 2014.
- 12 “They carry out any work offered by anyone who can pay, whether a magistrate, or a private customer, or a workshop-owner who receives orders from a third party. These brickmakers may work as hired labourers for a contractor one day, on another day perform services as day labourers for a private house owner. The contracts might be written or verbal and run for one day, for days, for weeks or until a specific project is complete. The contract might or might not tie the worker to the workshop. Thus the difference between a paid workman and a one-man contractor or entrepreneur can be illusory.” Kreissig, *Free labour in the Hellenistic age*, p. 31, cited in Brass and Van der Linden, 1997.
- 13 Defined as employees whose the main job will terminate either after a period fixed in advance, or after a period not known in advance, but nevertheless defined by objective criteria, such as the completion of an assignment or the period of absence of an employee temporarily replaced (ELFS definition). Persons with a seasonal job, engaged by an employment agency with limited duration or with specific training contracts, are included.
- 14 Figures respectively for EU-10, EU-25 and EU-28. Source: Cazes and de Laiglesia, 2015.
- 15 Le Barbanchon and Malherbet, 2013.
- 16 Ibid.
- 17 Boeri, 2011; Bentolila et al., 2010; Eichhorst and Marx, 2011.
- 18 Le Barbanchon and Malherbet, 2013.
- 19 Ibid.
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- 22 OECD, 2014.
- 23 Molina and Lopez-Roldan, 2015.
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- 26 Gimpelson, 2004.
- 27 Ivanova and Zueva, 2012.
- 28 ILO, 2011.
- 29 Computation based on Ukrainian LFS, 2013. Courtesy of Olga Kupets.
- 30 Vega Rufz, 2005; Cazes and de Laiglesia, 2015.
- 31 Bertranou et al., 2014.
- 32 Schmid and Wagner, 2016.
- 33 Ruiz-Tagle and Sehnbruch, 2015.
- 34 Ibid., p. 235.
- 35 Hunneus, Leiva and Micco, 2012.
- 36 Maurizio, 2016.
- 37 Ibid.
- 38 The Peruvian labour force survey does not ask informal workers about the expected length of their employment. Temporary contracts include fixed-term contracts, as well as the other temporary contractual arrangements, including probationary contracts, service contracts, and the special contractual status available to public administration workers.
- 39 Jaramillo, 2013.
- 40 Pena, 2013.
- 41 Data for 1997–2014 from Statistics Canada. Data for 1989 cited in Fang and MacPhail, 2008, p. 52.
- 42 Fuller and Vosko, 2007.
- 43 US General Accounting Office, 2015.
- 44 Australian Bureau of Statistics, 2015.
- 45 Ibid.
- 46 Pocock, Buchanan and Campbell, 2004, pp. 21–23.
- 47 Anderson and Quinlan, 2008; Campbell, 2008.
- 48 Bray and Underhill, 2011.
- 49 Bray and Stewart, 2013.
- 50 Howe, Newman and Hardy, 2012.
- 51 Campbell, 2008; Howe, Newman and Hardy, 2012.
- 52 Australian Bureau of Statistics, 2015: ABS 6105.0.
- 53 Australian Bureau of Statistics, 2015: ABS 6333.0.
- 54 Shin, 2013.
- 55 Osawa, Kim and Kingston, 2013; Lee and Eyraud, 2008; Asao et al., 2013.
- 56 Statistics Japan. Data for 1984–2001 from the Special Survey of Labour Force, and for 2002–15, from Labour Force survey, special tabulations.
- 57 Osawa, Kim and Kingston, 2013, p. 314.
- 58 Ha and Lee, 2013.
- 59 Cazes and de Laiglesia, 2015.
- 60 Zeng et al., forthcoming.
- 61 Lee and Eyraud, 2008.
- 62 Ibid.
- 63 Ofreneo, 2013; Gubry, Le and Nguyen, 2011.
- 64 Nguyen, Nguyen-Huu and Le, 2016.
- 65 Serrano, 2014.
- 66 Asian Development Bank, 2010.
- 67 Due to difference in data sources and in definitions, Chinese scholars provide different estimates of NSE. For an overview, see Zeng et al., forthcoming.
- 68 Ibid.
- 69 Nguyen, Nguyen-Huu and Le, 2016.
- 70 Lee and Eyraud, 2008.
- 71 Asian Development Bank, 2011; Papola, 2013; Srivastava, 2016.
- 72 Srivastava, 2016.
- 73 Landau, Mahy and Mitchell, 2015.
- 74 Nguyen, Nguyen-Huu and Le, 2016.
- 75 Dumas and Houdré, 2016.
- 76 Ibid.
- 77 Schmid and Wagner, 2016, based on UBOS 2011/2012.
- 78 Wambugu and Kabubo-Mariara, 2012.

- 79 Fomba Kamga, Mboutchouang and Nkoumou, 2016.
- 80 Dumas and Houdré, 2016.
- 81 Kjeldstad and Nymoen, 2012.
- 82 Messenger and Ray, 2015.
- 83 Visser, 2002a.
- 84 Eurofound, 2007.
- 85 Eurofound, 2012a.
- 86 ILO, 2015e.
- 87 Kalleberg, 2000; Asao, 2011.
- 88 Ibid.
- 89 Australian Bureau of Statistics, 2015, ABS 6105.0.
- 90 Schmid and Wagner, 2016.
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- 104 Messenger and Ghosheh, 2013.
- 105 Garcia-Serrano and Malo, 2013.
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- 115 CIETT, 2015.
- 116 Luo, Mann and Holden, 2010.
- 117 Hired directly by companies to work for a specified period of time.
- 118 In the 2001 National Employers' Survey, temporary agency workers accounted for 2.1 per cent of the average establishment's on-site workforce, but an additional 2.6 per cent were temporary workers engaged directly by the employer. A further 1.8 per cent of the on-site workforce consisted of "vendor on premise" workers (0.9 per cent) and "professional employer organization" workers (PEOs) (0.9 per cent). Cited in Cappelli and Keller, 2013.
- 119 GAO, 2015.
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- 121 Theodore and Peck, 2013.
- 122 Peck and Theodore, 2007, p. 174.
- 123 Fuller and Vosko, 2008.
- 124 Coe and Ward, 2014; Garz, 2013; van Liemt, 2013.
- 125 van Liemt, 2013; Eichhorst and Marx, 2015.
- 126 Coe and Ward, 2014, p. 112.
- 127 Analysis based on ISCO 93 (labourers, elementary occupations) as cited in Françon and Marx, 2015.
- 128 Neuman, 2014.
- 129 Asao, 2011.
- 130 Data provided by Dr B.-H. Lee of the Korea Labour Institute.
- 131 Soo-Mi Eun, 2012.
- 132 Ibid, pp. 1–2.
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- 134 Ibid.
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- 136 ITUC, 2014, p. 26, cited in Landau, Mahy and Mitchell., 2015.
- 137 Tjandraningsih, 2013.
- 138 Pupos, 2014.
- 139 Tran, 2012.
- 140 Wilshaw et al., 2013, cited in Landau, Mahy and Mitchell, 2015.
- 141 This section draws heavily on Srivastava, 2016, which was commissioned by the ILO for this report.
- 142 See Srivastava, 2016 for an explanation of the scope and provisions of the Contract Labour Act.
- 143 Neethi, 2008.
- 144 Chile, Dirección del Trabajo, 2012.
- 145 The study consisted of interviews with workers, employers, contractors and trade unions in 26 factories and eight workshops. Each of the workshops was large enough to be registered as a factory, but had evaded registration due to peripheral location (Srivastava, 2016).
- 146 The licensing information was obtained through the Right to Information Act, permitting the researchers to analyse the applications filed by contractors for registration with the department.
- 147 Samantroy, 2013.
- 148 Goldftus Wasser, 2014.
- 149 Benjamin, 2013.
- 150 Bhorat et al., 2013.
- 151 Matenga, 2009.
- 152 Crush et al., 2001.
- 153 OECD, 2014, p. 169.
- 154 ILO, 2015f.
- 155 Based on these answers, the Mexican national statistical office, INEGI, reclassifies these workers as dependent workers (ibid.).
- 156 Ibid.
- 157 Chile Dirección del Trabajo, 2012.
- 158 ILO, 2015f.
- 159 Chang, 2009, p. 172.
- 160 Cited in Shin, 2013, p. 343.
- 161 Chang, 2009, p. 172.
- 162 Carré and Wilson, 2004, p. 1.
- 163 The states are Michigan, New York, Illinois, Maine, Massachusetts and Pennsylvania. Data cited in Canak and Adams, 2010.
- 164 Behling and Harvey, 2015, p. 984.
- 165 Cherry, 2016.
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- 167 Huws and Joyce, 2016.  
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170 Ibid.  
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173 Eichhorst, Marx and Tobsch, 2015.  
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179 EAEA–ETUC, 2001.

## CHAPTER 2 APPENDIX: STATISTICAL DEFINITIONS AND DATA ISSUES





**A**ccurate, detailed, comparable cross-country data on the incidence and trends of non-standard employment are notably lacking. There are several reasons for this paucity of data. First, the concept of non-standard employment (NSE) is vast. But even for some of its subcategories – temporary work, employment relationships involving multiple parties, and dependent self-employment – the existing international statistical standard, the International Classification of Status in Employment, 1993 (the ICSE-93), which would allow for comparable data collection, contains conceptual ambiguities (see box A2.1).

Second, there are also serious shortcomings on the application side, as countries do not systematically apply the ICSE-93, or else they use modified questions not strictly comparable across countries. In 2015, the ILO conducted a review of national practices with respect to the compilation of statistics on status in employment from labour force and related surveys, covering 146 employment surveys submitted to it (ILO, 2015g). The review showed that among those countries that had recently conducted a labour force survey, 108 countries measured forms of NSE, though not in uniform ways. Of those, 73 included questions on fixed-term contracts (FTCs), 60 included a question on casual work, and in 58 questionnaires there was a question about seasonal work. Only 14 questionnaires contained a question relating to on-call work or zero-hours contracts. Temporary agency work or triangular work relationships were identified in 40 questionnaires, mostly in Western and Eastern Europe (see table A2.1).

Countries also collect data using a variety of similar, but distinct, concepts, which are not always strictly comparable. For example, numerous national statistical offices use notions of contingent, definite duration, limited duration, occasional or non-permanent employment interchangeably with the concept of temporary employment. Moreover, the legal definitions of the sub-forms of temporary employment also vary across countries, as is particularly exemplified by the notion of “casual work”. In Australia, “casual” work may include “part-time”, and is defined as involving an employee who is not entitled to paid annual leave and paid sick leave but is entitled to receive a higher rate of pay to compensate for this. In other parts of the world, casual work is synonymous with daily, piece-rate, and very short-term work. The relative importance of different forms of NSE is also not uniform across countries. Indeed, the very presence in national data of one concept and not another may in itself signal the recognition of the importance of that specific form of employment in a given country. It does not, however, signal that other forms are absent: they may simply be reported collectively with other forms. It is important to bear in mind these particularities when comparing national statistical data presented throughout this report.

Unfortunately, even among the countries that administered the questions in their labour force surveys, not all reported or provided the data obtained. This further reduces the possibility of meaningfully monitoring the situation with respect to NSE. It also explains why, throughout this report, other sources of information have been used, including EUROSTAT, the European Working Conditions Survey – a quinquennial survey produced by the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) – and the World Bank Enterprise Survey. The definitions used by these organizations also vary, however, limiting comparability between them. For example, EUROSTAT defines temporary workers as “employees whose main job will terminate

either after a period fixed in advance, or after a period not known in advance, but nevertheless defined by objective criteria, such as the completion of an assignment or the period of absence of an employee temporarily replaced (ELFS). Persons with a seasonal job, engaged by an employment agency with limited duration or with specific training contracts, are included.” In contrast, the World Bank Enterprise Survey uses the definition of “temporary or seasonal employees, defined as all paid, short-term (less than one year) employees with no guarantee of renewal of employment contract”. These differences in definitions should be kept in mind when comparing statistical information in the report.

**Table A2.1.** Number of countries classified by region according to the treatment of special groups in non-standard employment

	All regions	Africa	Americas	Arab States	Asia and the Pacific	Eastern Europe and Central Asia	Western Europe
<b>Fixed-term contracts</b>							
Included in Status in Employment	4	0	1	0	2	0	1
Total identified	73	14	13	1	15	15	15
<b>Casual/occasional work</b>							
Included in Status in Employment	10	1	0	0	7	0	2
Total identified	60	1	5	2	16	10	11
<b>Seasonal work</b>							
Included in Status in Employment	1	0	0	0	0	0	1
Total identified	58	15	4	4	11	12	12
<b>Zero-hours contracts</b>							
Included in Status in Employment	0	0	0	0	0	0	0
Total identified	14	0	1	0	0	3	10
<b>Temporary agency work</b>							
Included in Status in Employment	1	0	0	0	0	0	1
Total identified	40	1	4	0	5	14	16

	All regions	Africa	Americas	Arab States	Asia and the Pacific	Eastern Europe and Central Asia	Western Europe
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#### Duration of contract

Included in Status in Employment	0	0	0	0	0	0	0
Predefined response categories	38	2	5	0	7	11	13
Open-ended question	17	4	0	0	3	3	7

#### Apprenticeship

Included in Status in Employment	34	18	8	1	5	1	1
Total identified	76	22	13	1	9	12	19

#### Other training periods

Included in Status in Employment	16	6	1	1	5	1	2
Total identified	56	7	3	1	10	15	20

Source: ILO, 2015g.

#### Box A2.1. Tracking non-standard employment by means of the ICSE-93

The existing international statistical standard, the ICSE-93, contains the following group definitions and statistical treatment of particular groups:

Paragraph 8.1: Employees are all those workers who hold the type of job defined as “paid employment jobs” (cf. paragraph 6). Employees with stable contracts are those “employees” who have had, and continue to have, an explicit (written or oral) or implicit contract of employment, or a succession of such contracts, with the same employer on a continuous basis. “On a continuous basis” implies a period of employment which is longer than a specified minimum determined according to national circumstances. (If interruptions are allowed in this minimum period, their maximum duration should also be determined according to national circumstances.) Regular employees are those “employees with stable contracts” for whom the employing organization is responsible for payment of relevant taxes and social security contributions and/or where the contractual relationship is subject to national labour legislation.

Paragraph 14 (b): Regular employees with fixed-term contracts are “regular employees” (cf. paragraph 8) whose contract of employment specifies a particular date of termination.

Paragraph 14 (c): Regular employees with contracts without limits of time are “regular employees” (cf. paragraph 8) who have contracts which only can be terminated for specified causes such as incompetence, serious misconduct, or for economic reasons according to national legislation or custom.

Box A2.1. continued

Paragraph 14 (d): Workers in precarious employment can either: (a) be workers whose contract of employment leads to the classification of the incumbent as belonging to the groups of “casual workers” (cf. item (e)), “short-term workers” (cf. item (f)) or “seasonal workers” (cf. item (g)); or (b) be workers whose contract of employment will allow the employing enterprise or person to terminate the contract at short notice and/or at will, the specific circumstances to be determined by national legislation and custom.

Paragraph 14 (e): Casual workers are workers who have an explicit or implicit contract of employment which is not expected to continue for more than a short period, whose duration is to be determined by national circumstances. These workers may be classified as being “employees” (cf. paragraph 8) or “own-account workers” (cf. paragraph 10) according to the specific characteristics of the employment contract.

Paragraph 14 (f): Workers in short-term employment are workers who hold explicit or implicit contracts of employment which are expected to last longer than the period used to define “casual workers” (cf. item (e)), but shorter than the one used to define “regular employees” (cf. paragraph 8). These workers may be classified as “employees” (cf. paragraph 8) or “own-account workers” (cf. paragraph 10) according to the specific characteristics of the employment contract.

Paragraph 14 (g): Workers in seasonal employment are workers who hold explicit or implicit contracts of employment where the timing and duration of the contract is significantly influenced by seasonal factors such as the climatic cycle, public holidays and/or agricultural harvests. These workers may be classified as “employees” (cf. paragraph 8) or “own-account workers” (cf. paragraph 10) according to the specific characteristics of the employment contract.

Paragraph 14 (h): Outworkers are workers who: (a) hold explicit or implicit contracts of employment under which they agree to work for a particular enterprise, or to supply a certain quantity of goods or services to a particular enterprise, by prior arrangement or contract with that enterprise; but (b) whose place of work is not within any of the establishments which make up that enterprise. These workers may be classified as being in “paid employment” (cf. paragraph 6) or in “self-employment” (cf. paragraph 7) according to the specific terms of their contract. They may be classified as “employers” if they engage other workers on terms as described in paragraph 9.

Paragraph 14 (i): Contractors are workers who: (a) have registered with the tax authorities (and/or other relevant bodies) as a separate business unit responsible for the relevant forms of taxes, and/or who have made arrangements so that their employing organization is not responsible for relevant social security payments, and/or the contractual relationship is not subject to national labour legislation applicable to, for example, “regular employees” (cf. paragraph 9); but who (b) hold explicit or implicit contracts which correspond to those of “paid employment”. These workers may be classified as in a “self-employment” job (cf. paragraph 7) or as in a “paid employment” job (cf. paragraph 6) according to national circumstances.

Paragraph 14 (j): Workers who hold explicit or implicit contracts of “paid employment” (cf. paragraph 6) from one organization, but who work at the site of and/or under instructions from a second organization which pays the first organization a fee for their services, may be classified separately from other “employees”, and according to whether the primary organization is a temporary work agency or another type of enterprise.

There are several conceptual difficulties with this current classification. First, the categorization of several forms of NSE in a possible overarching concept of either employees or self-employed is not always clear, as it bears sometimes ambiguous implications of economic risk and the dependency of the worker. Second, the boundary between regular employees and the various forms of precarious employment, as well as the boundary between casual workers and workers in short-term employment, is subject to variations in national circumstances and legal definitions. Third, the concept of “regular employees” blurs employees with long fixed-term contracts and with no-limit contracts, as some countries do not collect data separately on these two sub-categories. Similarly, some countries collect information on “precarious employment” without listing separately its sub-categories. Fourth, there also seems to be a considerable overlap between

Box A2.1. continued

workers in seasonal employment and those in casual or short-term employment. An additional problem is that, in some countries, the term “casual employment” may refer to contracts that may be terminated at short notice, rather than to a very short-term contract, while in others, such as Australia, it denotes a lack of leave and other entitlements.

In 2013, the International Conference on Labour Statisticians (ICLS) passed a resolution calling for a revision of the existing ICSE-93. The ICLS organized a working group, to be facilitated by the ILO, the Secretariat to the ICLS, to prepare a proposal for a new classification. This work is currently in progress. Non-standard employment is a central consideration in the discussions and is expected to feature within the proposed revision to the status in employment. The working group is tasked with presenting its proposal to the 19th ICLS, scheduled for 2018.

Source: ILO, 2013e.





# CHAPTER 3

## Women, young people and migrants in non-standard employment

**N**on-standard employment (NSE) is not spread evenly across the labour market. In general, across the world, women, young people and migrants are more likely to be found in non-standard arrangements compared to other population groups. Their over-representation is a reflection of the greater difficulties that these workers have in entering and remaining in the labour market, which in turn exemplifies the degree of discrimination and disadvantage that they face, and reflects the subsequent reactions of employers. For women in particular, it echoes the unequal distribution of unpaid work they undertake in the home and the consequences of this inequality on the likelihood of obtaining standard jobs – given the hours and availability that some standard employment requires – as well as the reservation that some employers have in hiring women because of other demands on them outside work.

This chapter analyses the incidence of NSE among women, young people and migrants. While it focuses on these groups, it also looks at sectors and occupations in which NSE is most prevalent. The chapter also attempts to provide insight into the extent to which the changing demographic composition of the labour force has contributed to its rise. Indeed, it remains debatable whether the increased participation, and thus supply, of women, young people and migrants in the labour market, or the higher demand on the part of enterprises for non-standard work arrangements (to be addressed in Chapter 4) has led to the overall spread of NSE and the disproportional uptake by specific groups of workers.

Over the past several decades there have been significant demographic shifts in the labour force. While women continue to be under-represented in the global labour force, with half of women participating in the labour force compared with 76 per cent of men, over the past 15 years, women across the globe have moved increasingly into wage employment. Since 2000, the share of women who are employed has increased by almost 10 percentage points to 52.1 per cent, slightly over men's share of 51.2 per cent.<sup>1</sup> With respect to young people, however, labour supply has moved in the opposite direction. While the world youth population grew by 185 million between the early 1990s and mid-2010s, the youth labour force participation rate dropped impressively by 11.6 percentage points, primarily because of an increase in educational attendance which delayed entrance to the labour market. In contrast, during the same period, the adult labour force participation rate declined by only 1 percentage point.<sup>2</sup> With respect to

international migrants, their numbers increased from 154 million in 1990 to 232 million in 2015. In relative terms, though, international migration remained moderate, rising from 2.9 to 3.2 per cent of the world population.<sup>3</sup>

While these supply shifts cannot be ignored, it is also the case (as discussed in Chapter 2) that the world of work has undergone significant transformations over the last few

### **Box 3.1. Non-standard employment in the hospitality and tourism sector**

The hospitality and tourism sector has been one of the most rapidly growing sectors of the global economy in the past three decades. After a short dip caused by the global economic recession, between 2011 and 2015, the growth of international tourism even outpaced growth in world merchandise trade, despite the slow economic recovery. In 2015, tourism reached 7 per cent of the world's total exports and 30 per cent of the export of services. After fuels and chemicals, tourism occupied third place in the worldwide exports category, though it ranked first in many developing countries. There are multiple reasons for the growth of this sector. They include continuously decreasing relative costs of travel due to technological innovation, better infrastructure, high-speed information and communications technologies, the proliferation of low-cost airlines and less stringent visa requirements in many parts of the world. There are also emerging and fast-growing new outbound travel markets. For example, between 2000 and 2006 outbound travel from China alone grew by 22 per cent annually. As a result, since 1990, international tourist arrivals have been growing annually by 4.3 per cent, and this growth is expected to continue over the next 20 years. Development of technologies such as software for online reservations for personalized leisure and tourism and for information sharing through customers' ratings of quality of services, constantly changes the face of the business and the roles of its workers.

Tourism is very labour intensive. In 2010, it accounted for 8 per cent of all direct and indirect jobs globally. Women represent 60 to 70 per cent of the sector's workforce. Half of all those employed in the sector are 25 years of age or less, and generally the sector tends to be oriented towards employing young people. Because of low skill requirements and the high extent of informality, migrant, ethnic and cultural minorities are also over-represented in the sector's labour force.

While the industry is very diverse, it is characterized globally by high fragmentation, chain business and franchising, which have strong repercussions on the organizational strategy, including human resource management. Work processes within large chains and firms operating under franchises are highly standardized and simplified, and require little training so that they can be performed by casual and part-time employees, usually young and low- to medium-skilled workers. Large chains increasingly turn to outsourcing and to subcontracting significant parts of the enterprise. Frequent ownership changes associated with moving over to franchise contracts with a view to maximizing short-term performance also bring with them inevitable restructuring that can undermine the stability of jobs.

The jobs generated by the sector usually offer little formal training and are not expected to last for a lifetime. They are also often characterized by unsocial, unpredictable and irregular hours and shifts, including working at night, on weekends and at holiday times. Because of a very high rotation of a young and migrant workforce, union density in the sector is low, and worker representation is weak. This means that workers' bargaining power is also low, and there is much scope for raising workers' awareness about their rights.

The sector also generates many jobs indirectly. Related occupations include the provision of taxi and other types of personal driving services, tourist guides, producers of gifts and crafts and street vendors in touristic areas. Many of these jobs are casual, seasonal and part time. In developing countries, they are also often taken up by women and children.

Source: Adapted from ILO, 2010b and UNWTO, 2016.

decades, including the proliferation of global supply chains and important technological developments. These developments have created additional demand for non-standard work arrangements. Indeed, some services activities that have grown in importance have traditionally relied on non-standard arrangements, and are often staffed by workers from specific demographic groups (see box 3.1). Some sectors have a strong association with the traditional roles performed by women, others are associated with lower-skilled work, and are thus more likely to be taken up by migrants and young people. Within both services and industries, the race to the bottom for lower labour costs continues to make non-standard employment arrangements attractive to firms. As many jobs are routine and have lower screening and replacement costs, turnover is not as costly and allows firms to offer lower wages. Women, young people and migrants have lower bargaining power compared to other workers, making them more likely to accept non-standard work, and especially non-standard work of inferior quality.

On a global level, it is not possible to tease out one single reason for the over-representation of particular groups in NSE. Some country-specific analyses, however, suggest that it is the demand side that is most responsible.<sup>4</sup> In what follows, this chapter offers a description of trends in and the incidence of NSE for women, young people and migrants, as well as a discussion of whether (and where) it is the supply or the demand that was most responsible for the observed outcomes, and in what manner gender, age and place of birth make workers more likely to accept non-standard jobs.

### 3.1. WOMEN

Gaining access to decent work – and to employment opportunities in general – remains a challenge for women throughout the world, despite progress in achieving educational parity with men. Women have considerably lower labour force participation rates than men – 26 percentage points lower – and higher chances of being unemployed, when they do participate.<sup>5</sup>

Women's outcomes in the labour market are often a reflection of their position in the home.<sup>6</sup> Throughout the world, women work fewer hours in paid employment, while performing the vast majority of unpaid household and care work. On average, women carry out at least two and a half times more unpaid household and care work than men in countries for which data are available. As a result, even though women's time in paid work is less than that of men's, women work longer hours per day than men when both paid work and unpaid work are taken into consideration. Moreover, even when women are employed, they still carry out more hours of unpaid household and care work than men, which limits their ability to increase their hours in paid work.<sup>7</sup>

The greater domestic and care responsibilities of women influence their choice of occupations, so that when they do participate in the labour market, they are often limited in the jobs that they can take on. Traditionally, their participation has been “at the margins” of the labour market, often in NSE.<sup>8</sup> Their labour market experience is also a reflection of public policies as well as of the preferences of employers for and against hiring women.

Public policies can either reinforce gender stereotyping – and its subsequent ramifications in the labour market – or remedy it. Indeed, differences in labour force participation rates frequently reflect prevailing social welfare policies, tax policies and the provision of public services.<sup>9</sup> For example, in Germany, women’s participation in the labour force has trailed that of northern Europe because of tax policies that punish second earners, morning-only schooling, inadequate childcare facilities and a social security system based on a full-time breadwinner. Although Germany is in the process of extending schooling and improving access to childcare, these reforms are recent. In contrast, Sweden, which in the 1950s and 1960s similarly supported the male breadwinner model, began transforming its welfare state in the 1970s on the assumption that all fit adults should be in employment. The social security system changed from one of “derived entitlements” to “individual rights”, and paid work was accommodated through the provision of high-quality public care services as well as flexible paid leave policies.<sup>10</sup> Moreover, parental leave policies could be shared between mother and father and incentives were given to allow fathers to take parental leave. Other European countries have followed Sweden’s example, instituting policies aimed at increasing overall labour force participation of women, by promoting tax systems that favour second earners, supporting childcare services and paid parental leave policies, and facilitating and promoting good quality part-time work.<sup>11</sup>

In many parts of the developing world, working hours continue to be very long, with statutory limits often set at 48 hours per week. Long hours of regular employment, coupled with deficiencies in physical infrastructure resulting in long commutes, longer times needed to complete household chores and higher fertility rates have made women’s participation in the labour market more difficult. As such, women’s participation in the labour market has long been characterized as U-shaped, with poor women typically undertaking paid work in order to supplement the family income – “a ‘distress sale’ of labour by poverty”<sup>12</sup> – then leaving paid work (or work as an unpaid contributing family member) when the collective family income increases, only to re-enter paid employment at higher levels of income.

With globalization, however, an unprecedented number of women have entered wage employment, displacing traditional patterns of labour market participation. For instance, in East Asia between 1995 and 2015, the share of women in wage and salaried work more than doubled; in China, women’s share in wage employment rose from 32 to 55 per cent.<sup>13</sup> The shift of manufacturing to developing countries, particularly in “light” industries such as textiles, garments and electronics, has had direct ramifications on women’s employment in those countries. These labour-intensive industries have favoured women over men in their hiring, in part because of employers’ perception that women have a greater ability to carry out routine light industrial tasks,<sup>14</sup> because they can pay them lower wages, but also because their more tenuous attachment to the labour market fits well with the fluctuating demands of these industries.<sup>15</sup>

In developed countries, globalization has led to a loss of manufacturing jobs and a growth in services, which also benefited those occupations that featured a greater presence of women. Moreover, an increase in unemployment for men and, in some instances, restrictions on benefit entitlements during subsequent rounds of welfare reforms, prompted many women to enter the labour market – the “additional worker effect” – and to remain there, because of their increasing income insecurity.<sup>16</sup>

### 3.1.1. Women in part-time work

Part-time employment is the most widespread type of NSE found among women. In 2014, over 60 per cent of women were in part-time jobs in the Netherlands and India; over 50 per cent in Zimbabwe and Mozambique; and over 40 per cent in a number of countries including Argentina, Australia, Austria, Belgium, Canada, Germany, Ireland, Italy, Japan, Mali, Malta, New Zealand, Niger, Switzerland and the United Kingdom (figure 3.1).

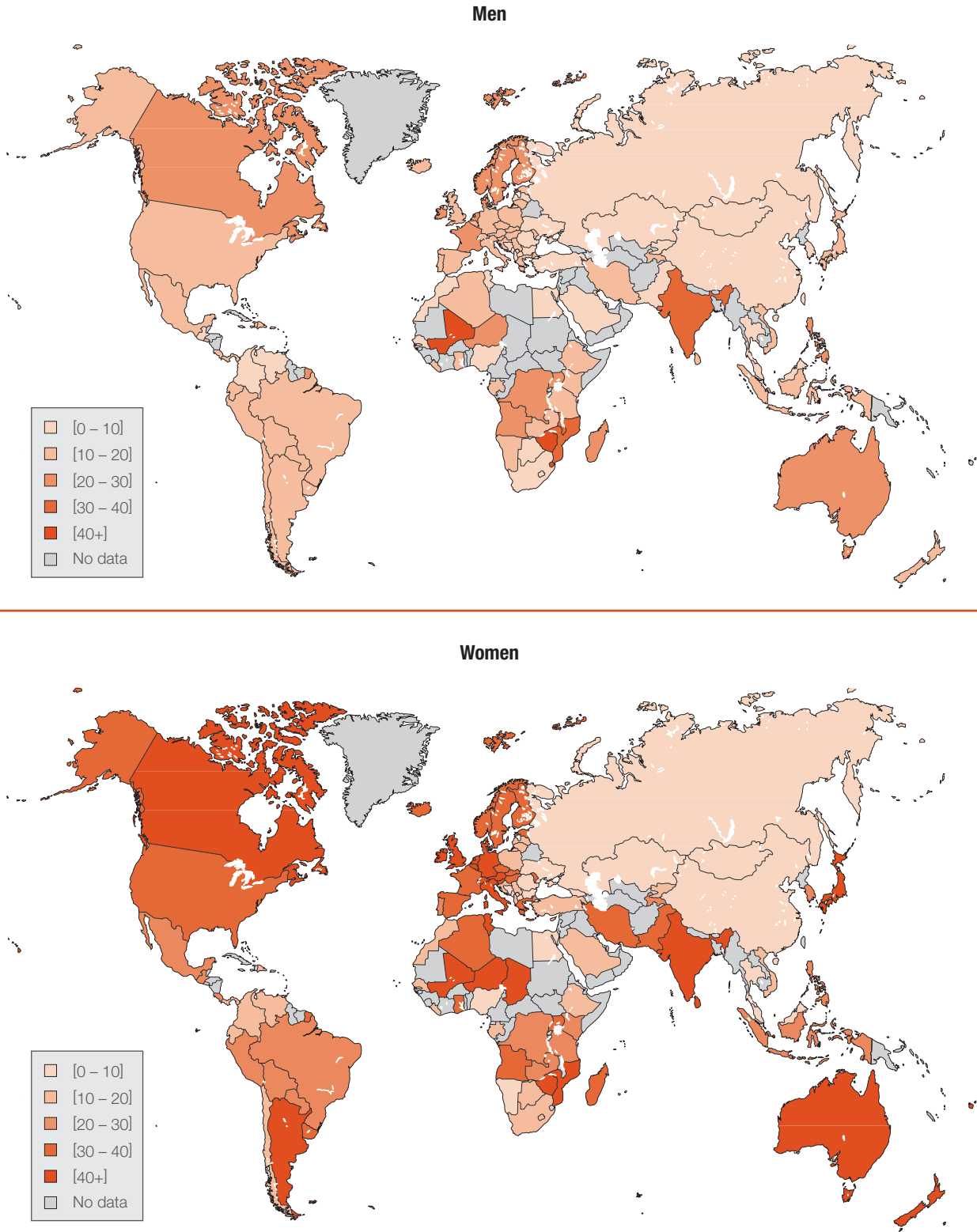
In nearly all countries of the world, women are also more likely to be found in part-time work than men. While women make up less than 40 per cent of total employment, their share of all those working part time is 57 per cent.<sup>17</sup> Gender differences with respect to part-time work are over 30 percentage points in the Netherlands and Argentina. There is at least a 25 percentage points difference in Austria, Belgium, Germany, India, Italy, Japan, Niger, Pakistan and Switzerland. Marginal part-time work – involving less than 15 hours per week – features particularly sizeable gender differences in the majority of countries (figure 3.2). The leaders in marginal part-time work among women are Brazil, Germany, India, Mozambique, the Netherlands, Niger and Switzerland, even though in Brazil and Mozambique marginal part-time work is also prominent among men. In Ireland, women are nearly three times more likely than men to work less than nine hours a week, three times more likely than men to work between nine and 18 hours, and over twice as likely to work 19–35 hours per week; women also make up the majority of employees with variable part-time hours.<sup>18</sup>

By far the main reason for women being over-represented in part-time work is their traditional role as caregivers, a role in which they devote greater time to childcare, care for elderly parents and other dependants, as well as to other domestic responsibilities. In Europe in 2014, 27 per cent of all female part-timers reported choosing this type of work because of the need to look after children or incapacitated adults, against only 4.2 per cent of male part-timers.<sup>19</sup> Part-time work can thus be an important means for enabling women to integrate into the labour force.<sup>20</sup>

However, whether it can help promote gender equality will depend on the quality of the part-time work and how it is viewed by society. The Republic of Korea has a low incidence of part-time employment, reflecting a preference by employers to absorb additional workload through the overtime of existing workers. Only 16.4 per cent of wage workers in 2010 were in part-time employment (referred to as “hourly” work), though 74 per cent of these jobs were held by women. Part-time jobs in the Republic of Korea have a low social status and provide limited social benefits.<sup>21</sup>

Many higher-paid, higher-skilled jobs leading to careers are simply unavailable on a part-time basis, and there may be significant obstacles for moving from part-time to full-time jobs, partly as a result of skill requirements, but also because of perceptions about women’s commitment to full-time work as well as the difficulties women can face in working extended hours.<sup>22</sup> In some instances, women wishing to switch from full-time to part-time work may have to change to a lower-skilled occupation.<sup>23</sup> This phenomenon is known as “occupational downgrading”, whereby employees working full-time who want to reduce their working hours, often to address family responsibilities, have to change jobs to accommodate shorter work hours and in the process switch from a

Figure 3.1. Distribution of part-time work (<35 hours per week) among wage employees, 2014 (percentages)

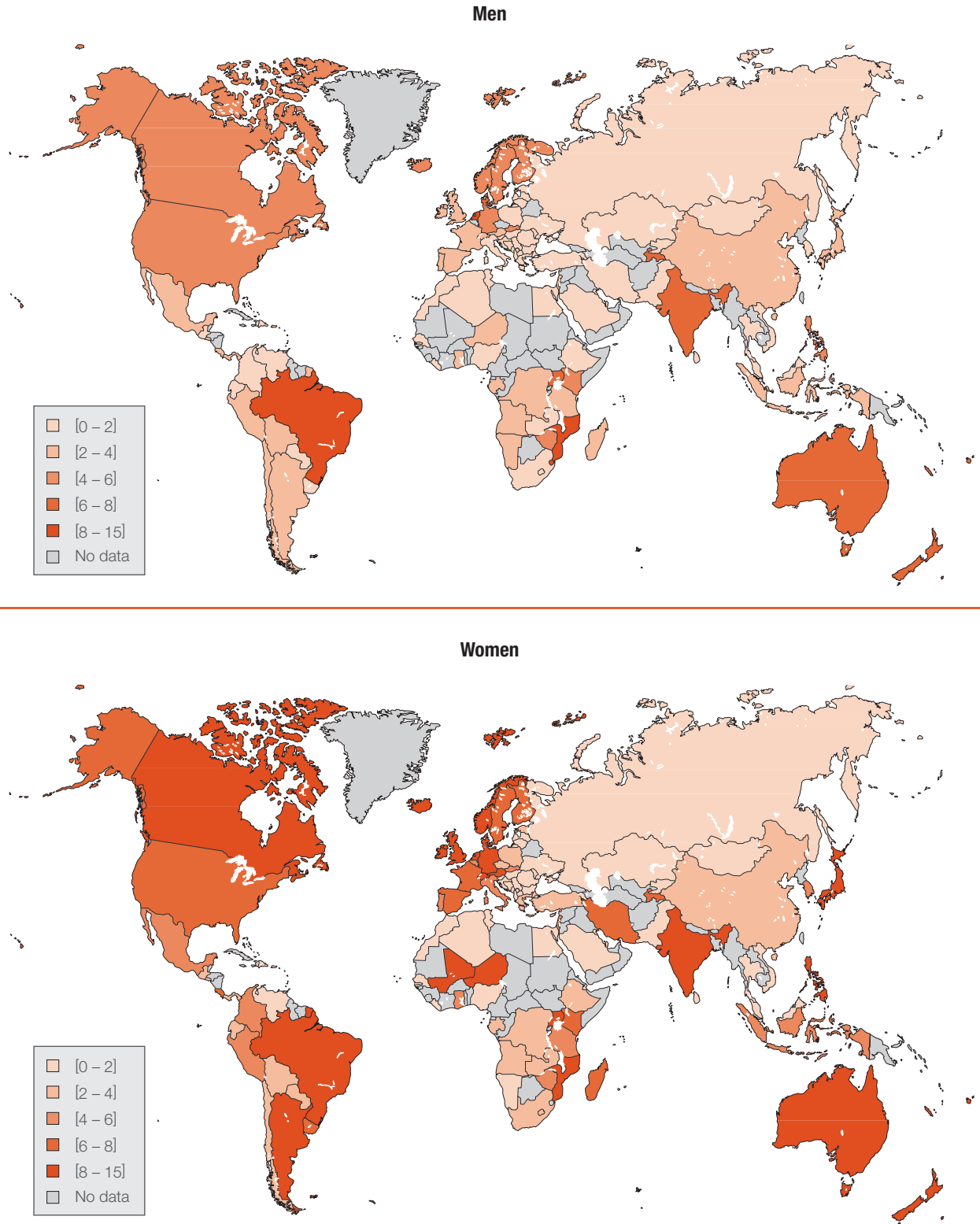


Note: Data correspond to the year 2014 or nearest available year, in the range 2011–14.

Source: ILOSTAT and authors' computations.



Figure 3.2. Distribution of marginal part-time work (<15 hours per week) among wage employees, 2014 (percentages)



Note: Data correspond to the year 2014 or nearest available year, in the range 2011–14.

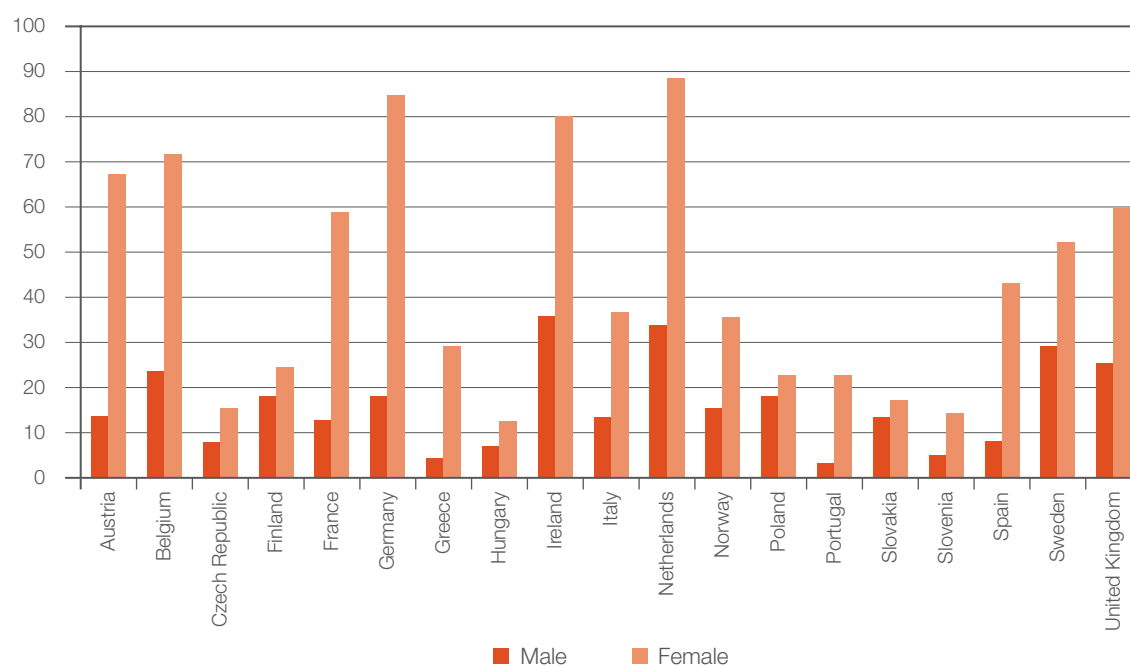
Source: ILOSTAT and authors' computations.

high-skill to a low-skill occupation. Such downgrading is possibly more severe for women in high-skilled occupations than for those in medium-skilled ones.<sup>24</sup>

Different patterns of gender predominance in part-time jobs across countries not only reflect cultural and institutional settings, but also the structure of the country's economy. While agriculture and manufacturing sectors are generally characterized by full-time hours, the services sector relies heavily on part-time work.<sup>25</sup> As the demand for workers in services continues to grow, it is anticipated that more women than men will continue to be found in part-time jobs.

In Europe, in services such as health and social work, education, and in hotels and restaurants over 20 per cent of workers are employed part time,<sup>26</sup> and they are the sectors that continue to expand. Low-skill jobs in retail sales and cleaning employ very high numbers of female part-timers, with the incidence exceeding 70 per cent among women in Belgium, Germany, Ireland and the Netherlands (figure 3.3). The Netherlands is a leading example of a country where a rapid (and rather late in comparison with other European countries) increase in women participating in the labour force was combined with the growth of the services sector. Some estimates show that, in the last decade of the twentieth century, the shift to services accounted for about 8 per cent of the growth of part-time jobs in the Netherlands.<sup>27</sup> Here, employers' need for part-time workers was accompanied by policy measures making such employment attractive to workers, thus propelling an increase in the number of available workers (box 3.2).

**Figure 3.3.** Percentage of part-time workers in the elementary sales and cleaning services sector, by sex, selected European countries, 2009–10



Source: EU-SILC, 2009–10 pooled. Tabulated data from Leschke, 2015.

Other examples include the education sector, which has witnessed a continuing feminization of the workforce in Europe and in North America, but also in the Arab States, Central Asia, East Asia and the Pacific, where women represent over 55 per cent of the teaching staff (in some instance over 80 per cent).<sup>28</sup> As shown in box 3.3, women are not only over-represented in this sector, but the incidence of non-standard work, including part time, is generally higher among women compared to men.

The higher presence of women in marginal part-time jobs in numerous countries can also be explained by their presence in occupations that commonly recruit on an on-call basis. In Sweden, hospitality and elderly care services tend to hire workers under these work arrangements. In Italy, 60 per cent of all employees in the hotel and restaurant sector and 13 per cent of all employees in education, health, social and personal services are employed on an on-call basis.<sup>29</sup> In the United Kingdom, many zero-hours contracts are found in education, health and public administration (30 per cent of all zero-hours contracts) and hospitality and retail services (27 per cent of all zero-hours contracts).<sup>30</sup> This form of work presents a challenge as it contributes to the trend in lower earnings for women. At the same time, without minimum hours, workers in on-call employment are at risk of economic instability and considerable work–family conflict, as they may not be able to anticipate the earnings they will receive.<sup>31</sup>

### **Box 3.2. Part-time employment in the Netherlands**

The Netherlands is sometimes called “the first part-time economy in the world”,<sup>32</sup> as nearly half of wage employees there work part time. While most of the part-timers are women, there is a high proportion of male part-timers too, albeit mainly in the younger age group. Part-time work is not limited to marginal jobs but is a feature of mainstream employment. Most part-time workers are on permanent employment contracts, and the number of part-time hours worked is usually fixed, ensuring a degree of certainty over earnings. All workers in larger firms have the right to request part-time hours, and the law places the onus on the employer to provide a justification for rejecting this against a limited set of business reasons. The average wage gap between full-timers and part-timers is negligible or non-existent. Part-timers may receive overtime premiums when collective agreements provide for increased rates of pay for hours worked beyond those agreed in the individual employment contract. Most part-time workers pay pro rata social insurance contributions in exchange for pro rata entitlements. Various studies also indicate that Dutch women are not only satisfied with part-time work, but also prefer it over full time, and in some instances wish to work fewer hours. How did the Netherlands arrive at this model?

The Netherlands grew into a part-time economy steadily but surely over the past 50 years. A combination of both supply and demand factors, as well as government policies, led to these developments. On the supply side, the emancipation of women and their entry into the labour market, stimulated by higher education outcomes, but also because they lagged behind other countries in childcare provision, meant that part-time work became an attractive alternative to not working for pay or working full time. Dutch women also entered the labour force somewhat later than their European neighbours, but did so rapidly and on a grand scale: between 1991 and 2014, their labour force participation rate leapt from 44 to 58 per cent. On the demand side, employers began to feature part-time employment as their alternative to union demands for a collective reduction of working hours and in order to fill the gap between shorter working hours and the longer operating time required to respond to increased demand. A pivotal moment in the development of part-time work was the Wassenaar Agreement (1982), whereby unions agreed to moderate their wage demands in exchange for policies to combat unemployment, including the development of part-time employment.

Box 3.2. continued

These changes were accompanied by several policy actions. Notably, part time was promoted through the “one and a half earner” model of dual-earner couples to enable both women and men to modify their hours. The quality of part-time work was also ensured through the implementation of the principle of equal treatment; the diffusion of part-time work into higher occupational levels and organizational hierarchies; and regulations that established the right for individuals to switch their working time arrangements between full- and part-time working. The Equal Treatment (Working Hours) Act 1996 (passed before the adoption of the European Directive implementing the Framework Agreement on part-time work) prohibits an employer from discriminating between full- and part-time employees, unless there is an objective justification for doing so. The underlying principle of the Act is that permanent and non-permanent employees should not experience discrimination on the basis of their working hours, and that discrimination between part-timers who work more or fewer hours is prohibited. A part-time worker is entitled to proportionally the same pay, the same bonuses and the same number of days’ holiday. The Working Hours Adjustment Act 2000 enshrined the right for employees to either increase or decrease working hours. Employers can refute employee requests for such changes only on the grounds of specific conflicting business interests. This Act was part of the “work and care” policy, which assembled numerous existing provisions, as well as containing supplementary ones (such as time off to care for family members), with the goal of helping to reconcile employment and family responsibilities. This legislation reflects a certain trend that was already set in several collective agreements. Since the adoption of the Flexible Working Act in 2015, employees can ask not only for a modification of the number of their working hours, but also for changes to their schedules and place of work.

Although the Netherlands still deserves the title of champion of quality part time-work, some types of contractual arrangements, such as on-call work, are far less protective for workers. These include zero-hours contracts and min-max contracts (described in Chapter 6). In the fourth quarter of 2015, on-call workers represented 28 per cent (537,000 workers) of all workers engaged under “flexible contracts”. In addition, 6 per cent (124,000 workers) had a permanent contract with no fixed hours, and 12 per cent (231,000 workers) had a temporary contract with no fixed hours.<sup>33</sup>

Source: Fagan et al., 2014; Booth and Van Ours, 2012; and Visser, 2002a.

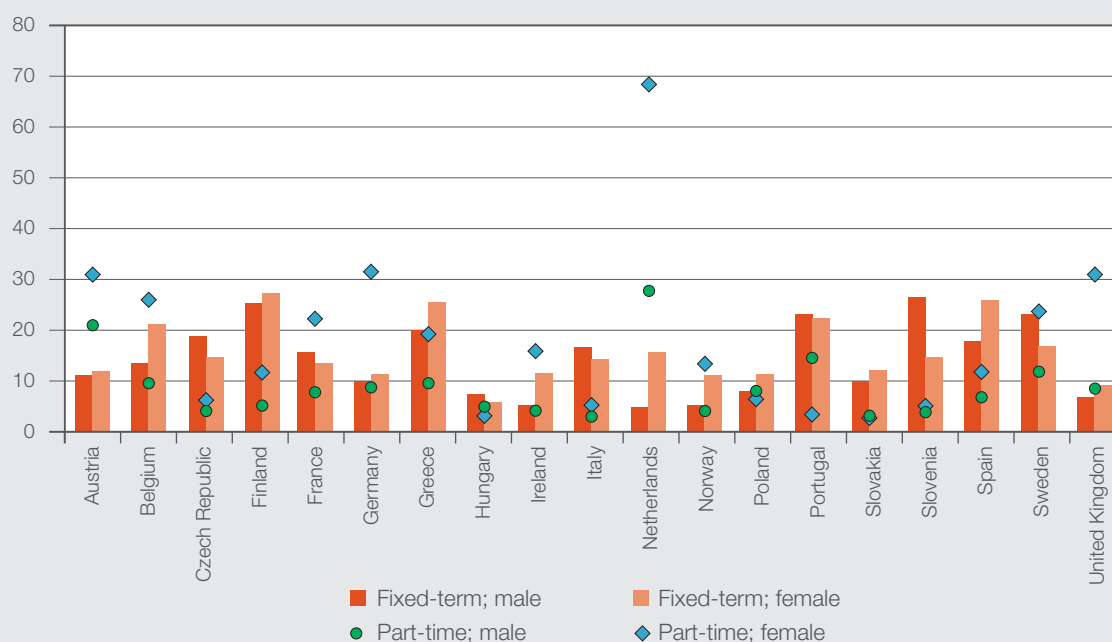
### Box 3.3. The rise of non-standard employment in the education sector in Europe

In Europe, the education sector has experienced a substantial rise in the incidence of temporary and part-time jobs among teaching professionals and academics. In the majority of countries, this is a female-dominated sector, as teaching continues to be regarded as an extension of women’s traditional roles of upbringing and counselling.<sup>34</sup> At the same time, women are also disproportionately represented in both temporary and part-time jobs in this sector (figure 3.4). Temporary employment in education can represent over 20 per cent in countries such as Finland, Greece or Portugal. In Spain, in 2011, 64 per cent of all university researchers and teachers were on temporary contracts, the proportion steadily growing since the mid-1990s.<sup>35</sup> In Italy, the incidence of NSE among teachers and academics has increased twofold since 1995.<sup>36</sup> In Germany, the number of university employees almost doubled from 1992 to 2009, while the number of professors remained fairly constant; in the same period, the share of scientific assistants hired on fixed-term contracts (FTCs) increased from 63 to 83 per cent.<sup>37</sup> Some of the reasons given for this overall growth include the over-supply of university graduates and teaching professionals, a generally higher transferability of their skills across occupations, different contractual regimes between the public and private sectors, as well as cuts in public spending in the educational sector. In addition, in some countries, such as Belgium or Greece, teaching professionals are excluded from general employment protection legislative regimes,<sup>38</sup> meaning that there are fewer constraints on using temporary contracts. In Germany, current legislation does not permit collective agreements to cover topics of employment stability and contract duration.<sup>39</sup> Moreover, public funding

Box 3.3. continued

for research is often distributed to externally funded research projects rather than directly to universities, thus favouring the growth of contracts linked to specific projects.

**Figure 3.4.** Percentage of teaching professionals on fixed-term and part-time contracts, by sex, selected European countries, 2009–10



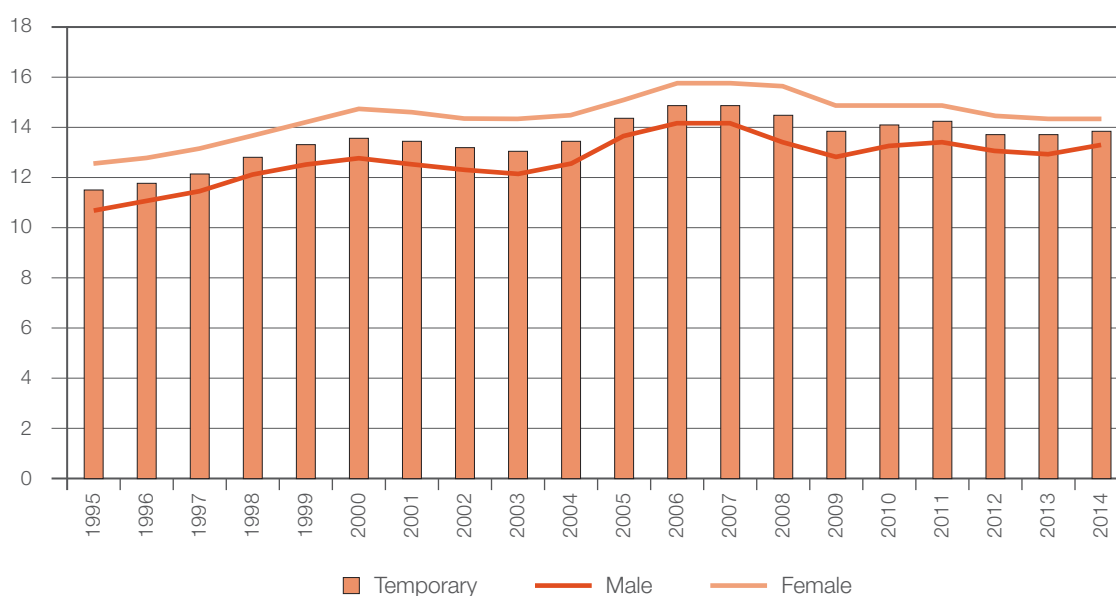
Source: European Union Statistics on Income and Living Conditions (EU-SILC), 2009–10 data pooled. Tabulated data from Leschke, 2015.

### 3.1.2. Women in temporary jobs

Whether women have a higher share of temporary employment compared to men depends on the importance of the specific occupations and sectors in that economy. This is because, in general, occupations and sectors are highly segregated by gender, with men more likely to be employed in construction, for example, and women more likely to be employed in retail. Hence, the greater the importance in the economy of a sector or occupation in which the incidence of temporary work is high, the greater the presence of that group of workers in the labour market.

In Europe, temporary employment is generally more widespread among women than men, though the differences are not large. Figure 3.5 shows the evolution of FTCs by gender between 1995 and 2014, revealing that their incidence among women remained on average 2 percentage points higher than that of men, with the gap somewhat decreasing towards the end of the period. One of the reasons for the higher incidence among women is to be found in the reforms to liberalize the use of FTCs that numerous countries undertook with the stated goal of stimulating or accommodating women's increased participation in the labour market (for example, in Italy).<sup>40</sup> The less restricted use of FTCs allows for easier screening of employees, because if they are not fit for the job,

**Figure 3.5.** Employees with FTCs as a percentage of the working population aged 15–64, total and by sex, average for selected European countries, 1995–2014



Note: Countries included: Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden, the United Kingdom. Yearly data used except for 1995 (only quarterly data available) and weighted for annual estimates. Quarterly data for 1995 exclude Estonia, Germany, Hungary, Poland and the United Kingdom.

Source: European Union Labour Force Survey 1995–2014 (Eurostat).

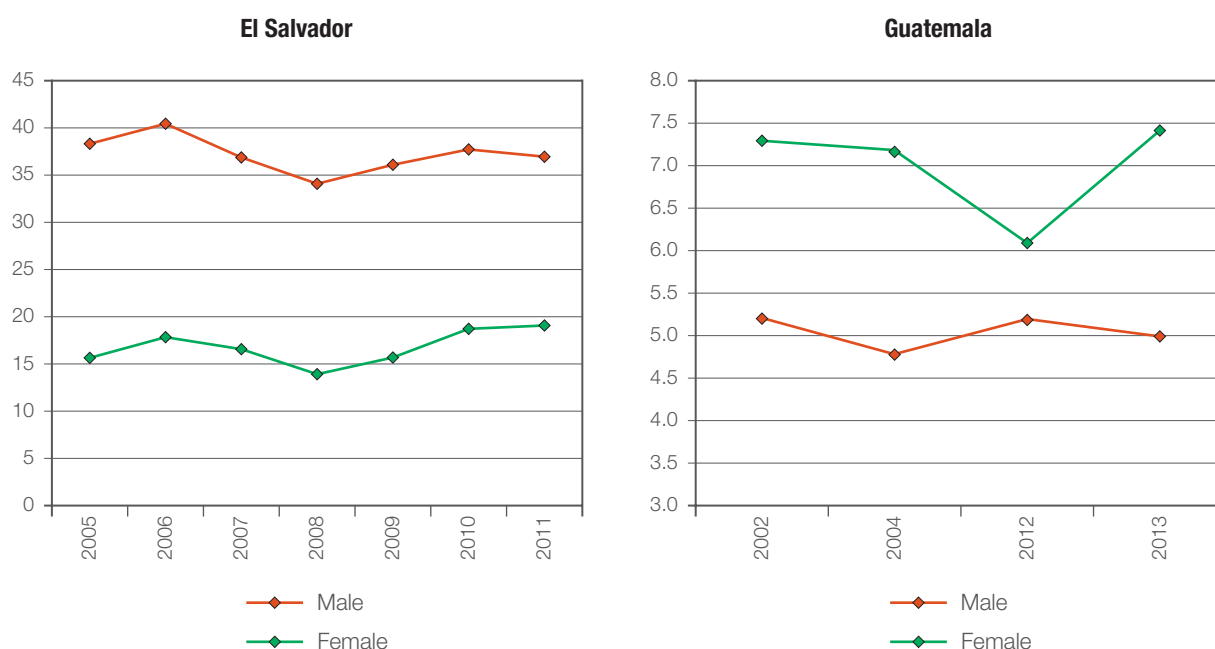
they would simply not be renewed. Thus, in some instances, the easier use of FTCs potentially facilitated the reintegration of women into the labour market after breaks from child-rearing.

Regarding young women, there is some anecdotal evidence that managers may be reluctant to hire them altogether, in order to avoid costs associated with maternity leave.<sup>41</sup> Facilitating the use of FTCs in some instances means that such reluctance is mitigated, as enterprises prefer to hire young women on temporary rather than on permanent contracts.<sup>42</sup> Such practices, however, are not only discriminatory and shortsighted, but also reinforce the view that women are workers “at the margin”, less committed to their careers and less dependent on wage employment for their livelihood – a characterization that risks confining women to temporary employment for prolonged periods of time.

Another and related reason for the higher incidence of temporary jobs among women is their lower bargaining power, making them more likely to accept jobs with lower pay and less stability.<sup>43</sup> The perception that women are partially dependent on family income – and thus less dependent on wage work – results in them receiving lower remuneration for their work.<sup>44</sup> In addition, women tend to receive less support from the State in the form of unemployment benefits, thus having to accept jobs of inferior quality as compared to men.<sup>45</sup>

In Japan, women are over four times more likely than men to hold temporary jobs.<sup>46</sup> The situation in Japan is quite distinctive, as women account for over 80 per cent of



**Figure 3.6.** Evolution of temporary employment, by sex, selected Latin American countries (percentages)

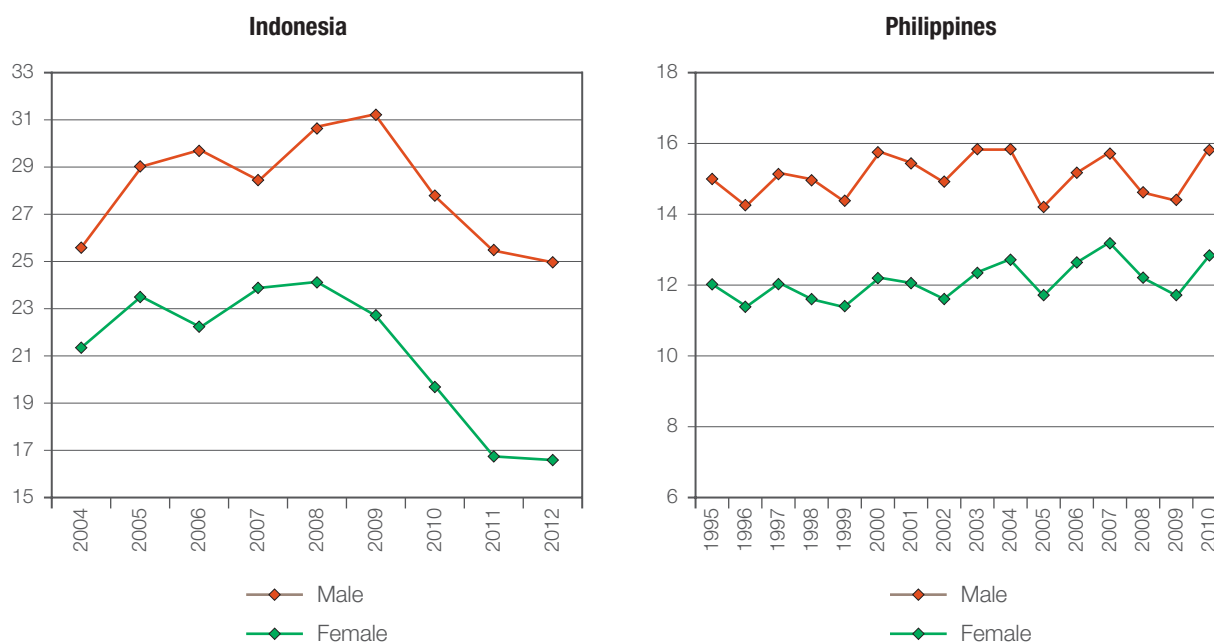
Note: Guatemala: FTCs as a percentage of all male or female employees. El Salvador: temporary workers as a percentage of all male or female employees.

Source: Guatemala: ENEI (ECLAC), 2012–13; El Salvador: EHPM (Dirección General de Estadística y Censos de El Salvador), 2005–11.

temporary workers and the majority of them are below 34 years of age.<sup>47</sup> In the Republic of Korea, women account for 52 per cent of temporary employment (and 59 per cent of non-renewable temporary contract employment) despite making up 43 per cent of overall wage employment.<sup>48</sup>

In other parts of the world, country trends for women and men diverge, as suggested by figures 3.6–3.8. For example, in Guatemala, FTCs are more widespread among women than among men, whereas temporary jobs are more frequent among men in El Salvador (figure 3.6). However, in El Salvador, although total temporary employment has stayed relatively stable over the past decade, this occurred because the share of temporary employment among men has declined, while the share among women has risen. Evidence from other sources also shows that in Latin America more generally there is no clear correlation between FTCs and gender. While in Brazil and Peru temporary employment is more frequent among women, in Argentina, Chile and Ecuador it is more frequent among men.

In the Philippines and Indonesia, temporary work is more common among men compared to women (figure 3.7). In Cambodia and Viet Nam, there is a certain gender segregation even within temporary jobs: men are over-represented in temporary jobs in general, but if only FTCs are considered, there is a relative predominance of women compared to men.<sup>49</sup> In Cameroon, Mali and South Africa (figure 3.8), the proportion of

**Figure 3.7. Evolution of temporary employment, by sex, selected Asian countries (percentages)**

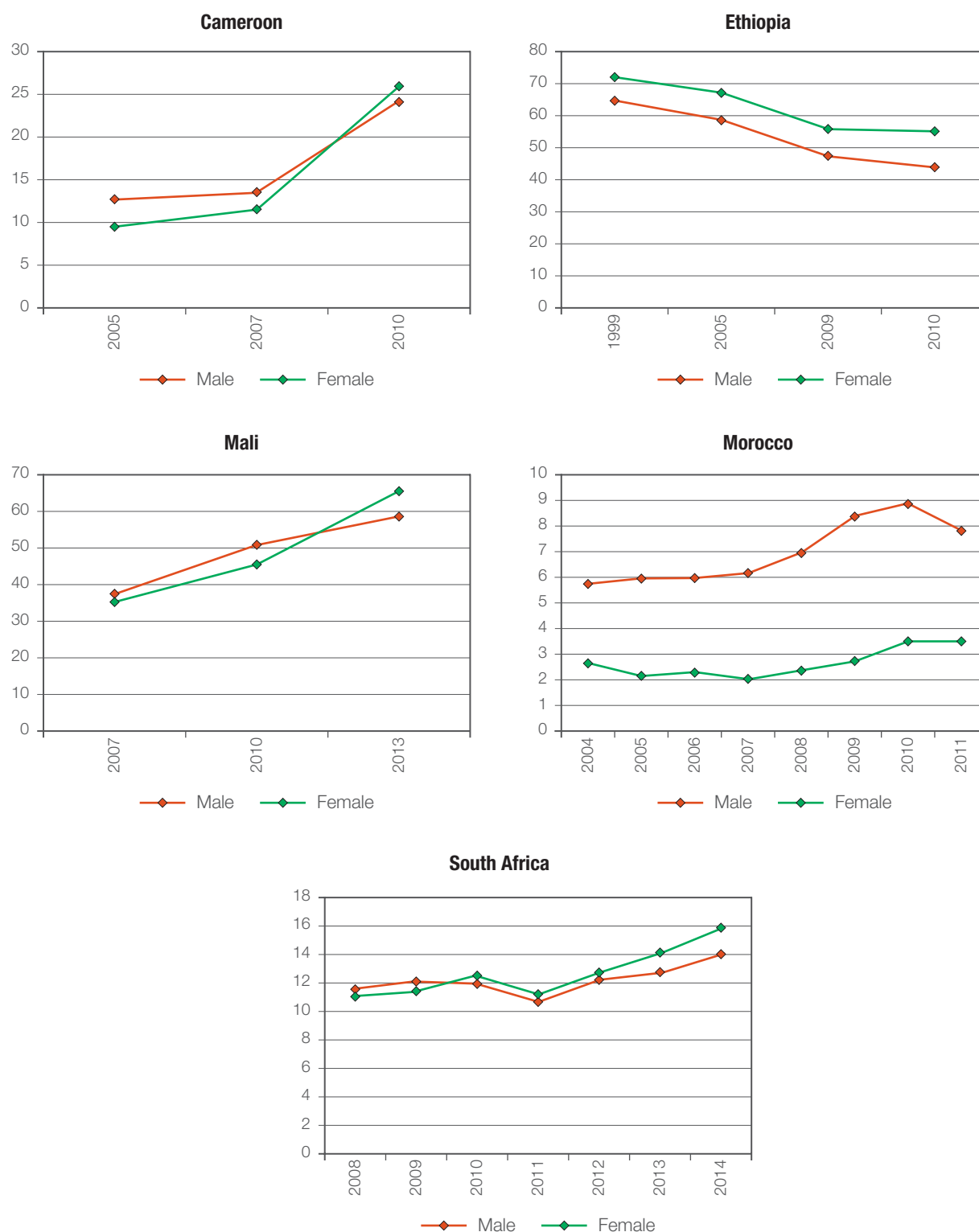
Note: Philippines: those working in “precarious” employment, including short-term or seasonal or casual work or those working for different employers on a day-to-day or week-to-week basis. Indonesia: casual workers as a percentage of wage employees.

Source: Philippines: Household surveys (DWCP, 2012); Indonesia: LFS, 2002–12 (DWCP).

women in temporary jobs grew faster than that of men and, in relative terms, women have overtaken men in temporary employment over the past decade. In Ghana and Uganda, there seems to be no systematic gender gap between men and women in NSE. However, there are sharp gender differences in job transitions: all else being equal, women in temporary jobs have a 30 to 45 per cent lower probability of moving to standard employment compared to men.<sup>50</sup>

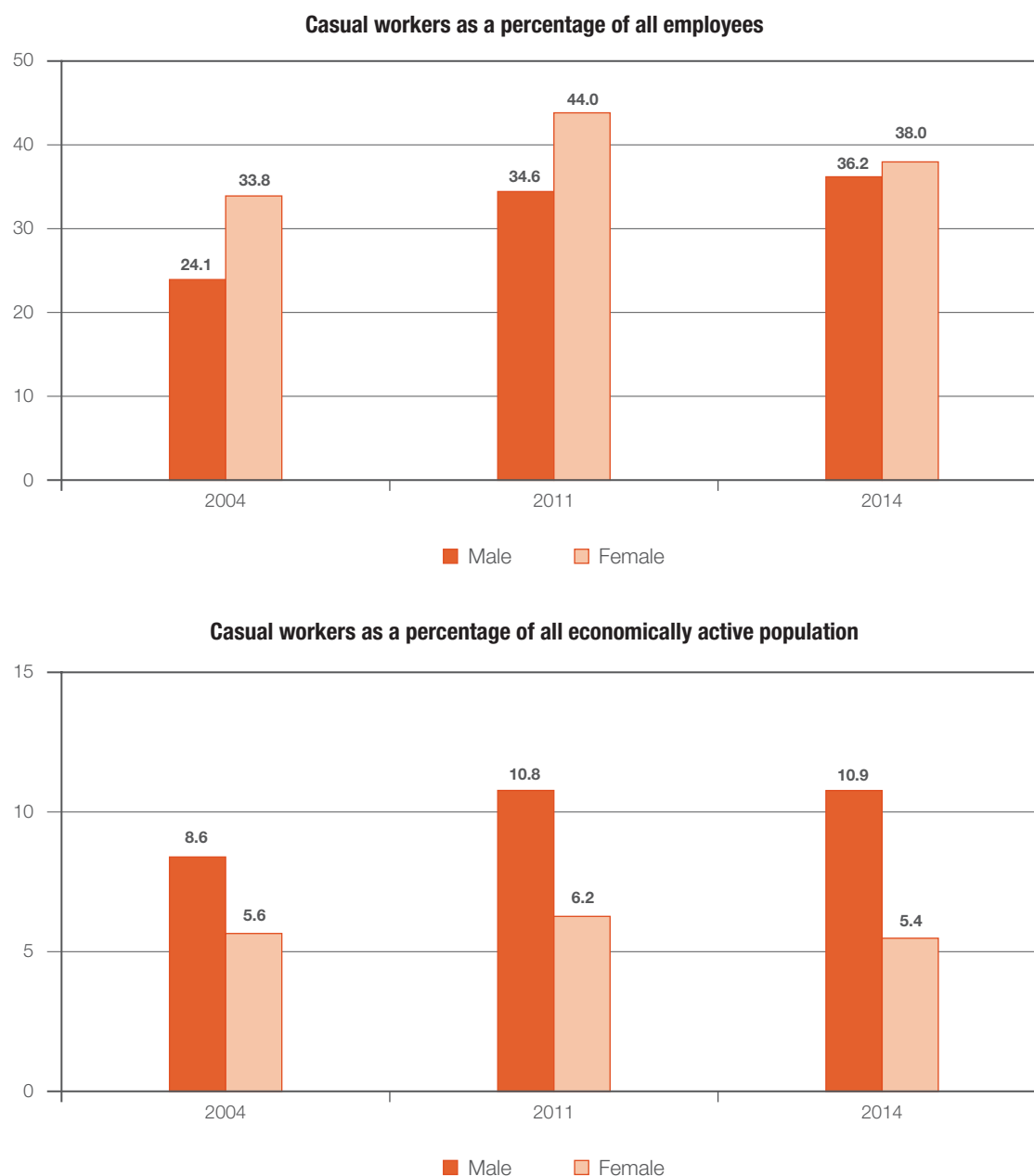
For policy analysis, the distinction between wage employees and the economically active population in the context of gender analysis is important, particularly in developing countries, where labour force participation and the incidence of self-employment differ markedly between men and women. For example, in the case of Zimbabwe, the proportion of casual employment among female employees remained greater than that of male employees between 2004 and 2010, though the proportion of both increased substantially. Nonetheless, the proportion of casual employment among all employed women is still smaller than that of employed men, and the overall relative increase was also lower (figure 3.9).

To shed some more light on this issue, figure 3.10 shows the proportions of female and male temporary workers, compared to the total number of female and male workers in the services sector in selected developing countries, using the World Bank Enterprise Survey.<sup>51</sup> It suggests that both within and across countries the variation of temporary employment among female workers can be huge, ranging from 10 to 80 per cent. With a few exceptions, female temporary workers outnumber, in relative

**Figure 3.8. Evolution of temporary employment, by sex, selected African countries (percentages)**


Note: Cameroon: casual workers as a percentage of all economically active workers; Ethiopia: contract, casual, seasonal and temporary workers; Mali: unstable jobs; Morocco: temporary workers, as a percentage of all economically active workers; South Africa: FTCs as a percentage of all employees.

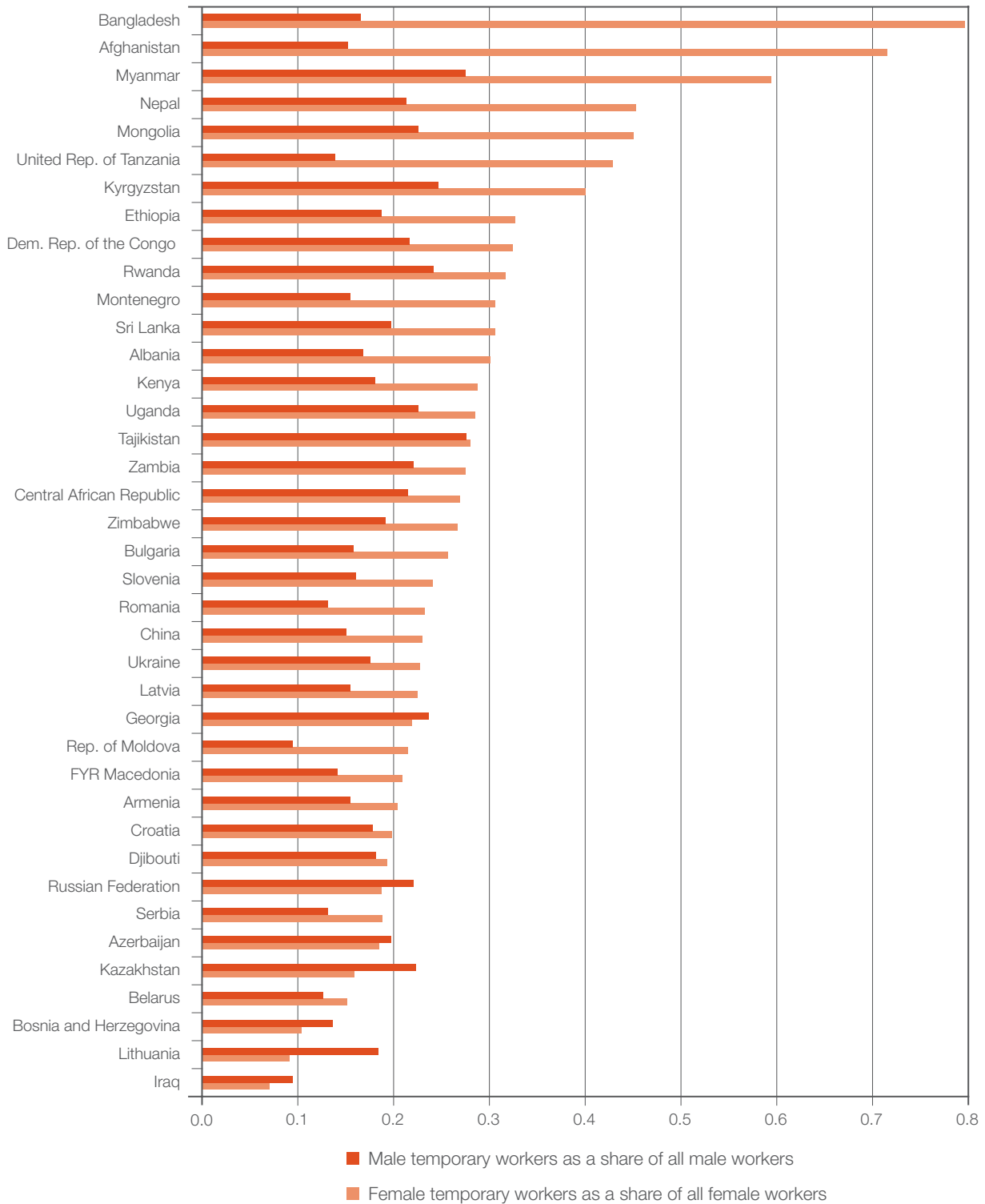
Source: Cameroon: EESI, 2005, 2010; ECAM, 2007 (INS); Ethiopia: NLFS, 1999, 2005; UEUS, 2009, 2010 (CSA); Mali: EPAM, 2007, 2010; EMOP, 2013; Morocco: Activité, emploi et chômage, 2004–11 (Direction de la Statistique); South Africa: QLFS, 2008–14 (Statistics South Africa).

**Figure 3.9.** Trends in casual work, by sex, Zimbabwe, 2004–14 (percentages)

Source: Zimbabwe LFS, 2011, 2014 (Zimstat).

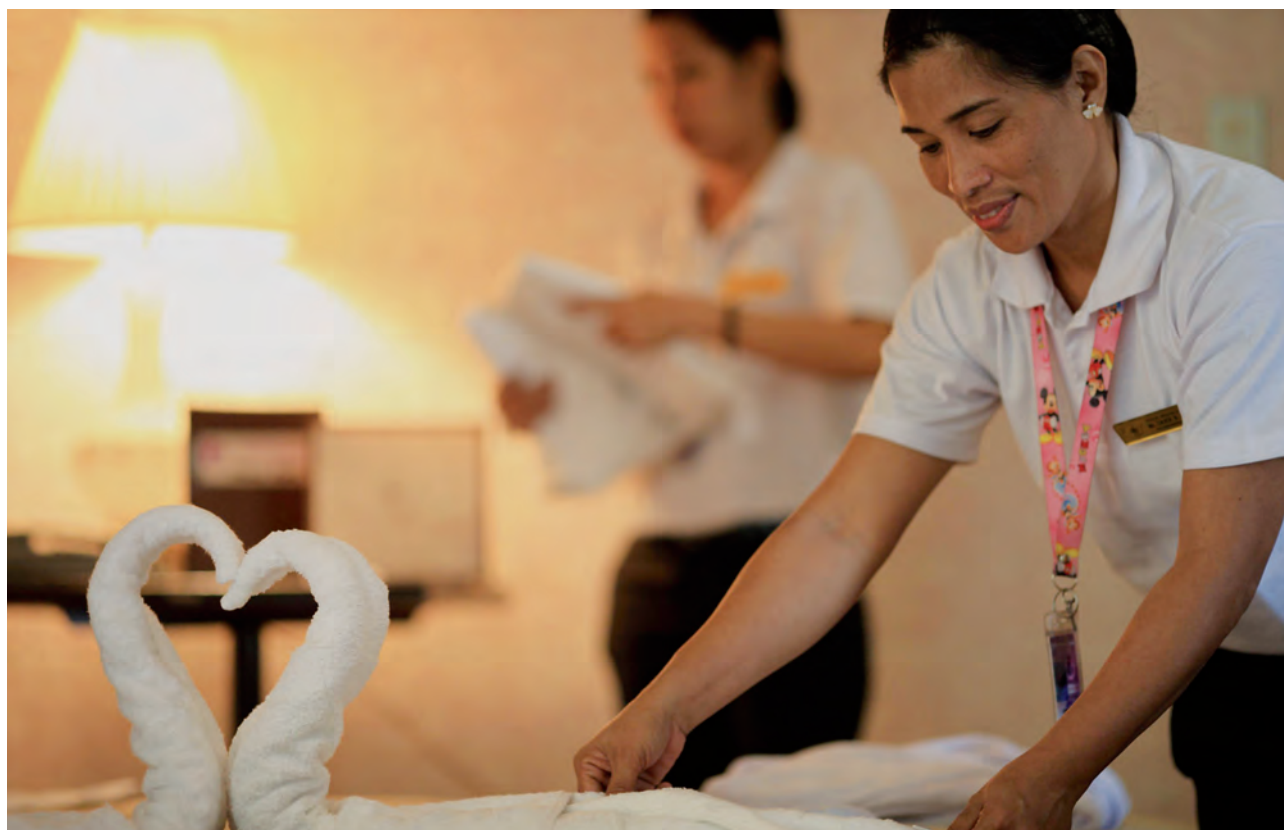
terms, male temporary workers in services. In the services sector, in countries like Bangladesh or Afghanistan, the share of female temporary workers can be over four times higher than the share of temporary male workers. This finding warrants special policy attention, because many occupations within the services sector suffer particularly from difficulties in organizing workers and hence improving their working conditions through collective bargaining. Moreover, some occupations and jobs in services also feature a persistent undervaluation of services provided

Figure 3.10. Temporary employment in the services sector, by sex, selected countries, circa 2013



Note: Data for the latest available year, between 2011 and 2014; for the majority of countries, data refer to 2013.

Source: Authors' computations based on World Bank Enterprise Survey 2014.



Hotel worker trainee, Philippines

© ILO/Ruben Hamahiga Dela Cru

predominantly by women, compared to male-dominated industrial sectors, which also exacerbates gender inequality.<sup>52</sup>

### 3.2. YOUNG PEOPLE

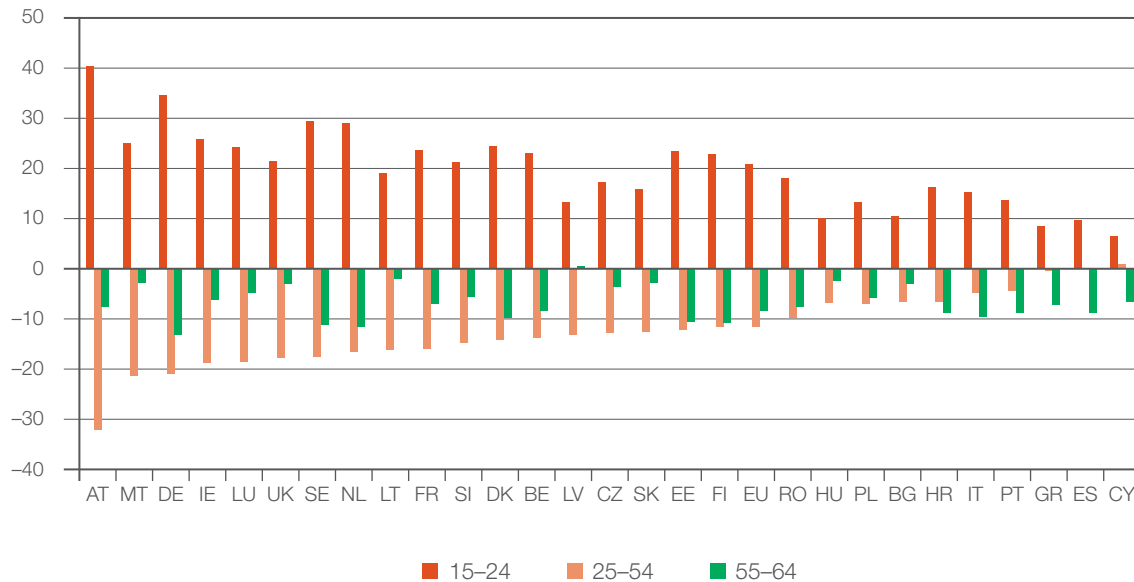
The ILO's 2013 edition of the *Global Employment Trends for Youth* observed that “it is not easy to be young in the labour market today”, given the context of a persistent employment crisis, long job queues and the increasing scarcity of stable employment.<sup>53</sup> Youth unemployment rates are typically double or triple the rates for workers in their thirties or forties, and in 2014 it was estimated that there were 73 million unemployed young people around the globe.

But in order to understand the state of youth in the labour market, it is not sufficient to look only at unemployment levels. It is also the quality and the nature of jobs that young people have that is important, as well as their prospects for advancement. Indeed, young people are known to be particularly prone to ending up in NSE, often in jobs of inferior quality. While youths' employment prospects are linked to the overall employment situation, there are also particular aspects which require specific attention and responses.

In developed countries, the employment of young people in non-standard work arrangements is linked to factors such as the transition from school to work, lack of job experience, as well as labour market fluctuations and policy responses to curb them.



**Figure 3.11.** Share of age groups in NSE relative to their share in total employment in Europe, 2014  
(percentage point difference)



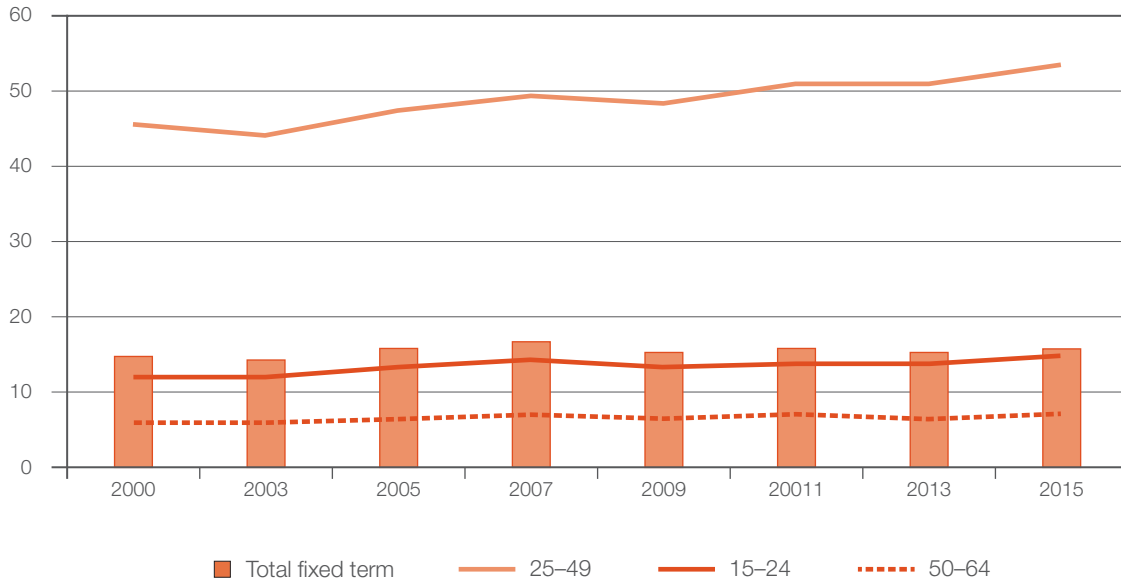
Note: AT – Austria, MT – Malta, DE – Germany, IE – Ireland, LU – Luxembourg, UK – United Kingdom, SE – Sweden, NL – Netherlands, LT – Lithuania, FR – France, SI – Slovenia, DK – Denmark, BE – Belgium, LV – Latvia, CZ – Czech Republic, SK – Slovakia, EE – Estonia, FI – Finland, EU – European Union, RO – Romania, HU – Hungary, PL – Poland, BG – Bulgaria, HR – Croatia, IT – Italy, PT – Portugal, GR – Greece, ES – Spain, CY – Cyprus.

Source: Schmid and Wagner, 2016.

In New Zealand, over 10 per cent of workers below the age of 24 are in casual work, in contrast to 3–4 per cent in other age groups.<sup>54</sup> Most European countries have witnessed an increasing trend in temporary work among their young people. In this region, not only are young people over-represented in general in NSE (figure 3.11), but the incidence of temporary work has also reached over 50 per cent among this age group in recent years, while remaining relatively stable among prime-age and senior workers (figure 3.12). In European countries with available data, young people's share of temporary agency work (TAW) is also more than double the share of prime-age workers, and more than quadruple that of seniors (figure 3.13).

The higher incidence of temporary work among youth in the labour market may reflect the specific provision in the labour market for apprenticeships and internships, which can provide important training to improve young people's future prospects. In Germany, Austria and Denmark, vocational education and training are the main reasons for temporary employment among individuals aged 15–24. In some countries such as Denmark, apprenticeships are expected to lead into stable employment relationships. A somewhat different concept, however, is student internships. In many countries, paid or unpaid internships are integrated into the school curriculum, and have become an implicit requirement of young jobseekers. Case studies in the United States and France show that it is important to prevent abuses in repetitive internship practices which, instead of being a stepping stone into real employment, may just perpetuate job insecurity.<sup>55</sup>

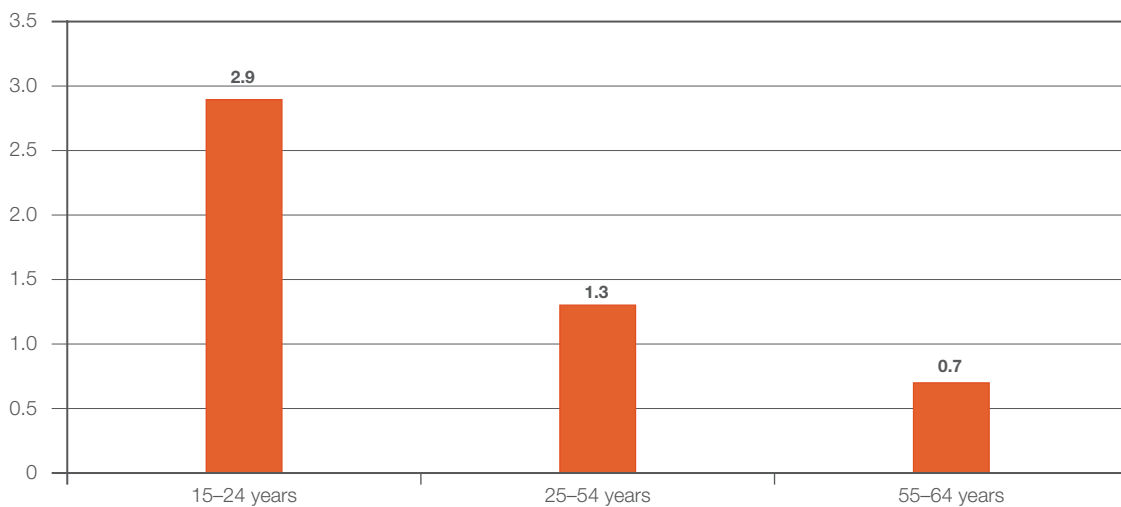
**Figure 3.12.** Employees with FTCs as a percentage of working population aged 15 to 64, by age group, average of selected European countries, 2000–15



Note: Always the second quarter of the year. Countries surveyed: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia and Spain.

Source: European Labour Force Surveys (ELFS), 2000–15.

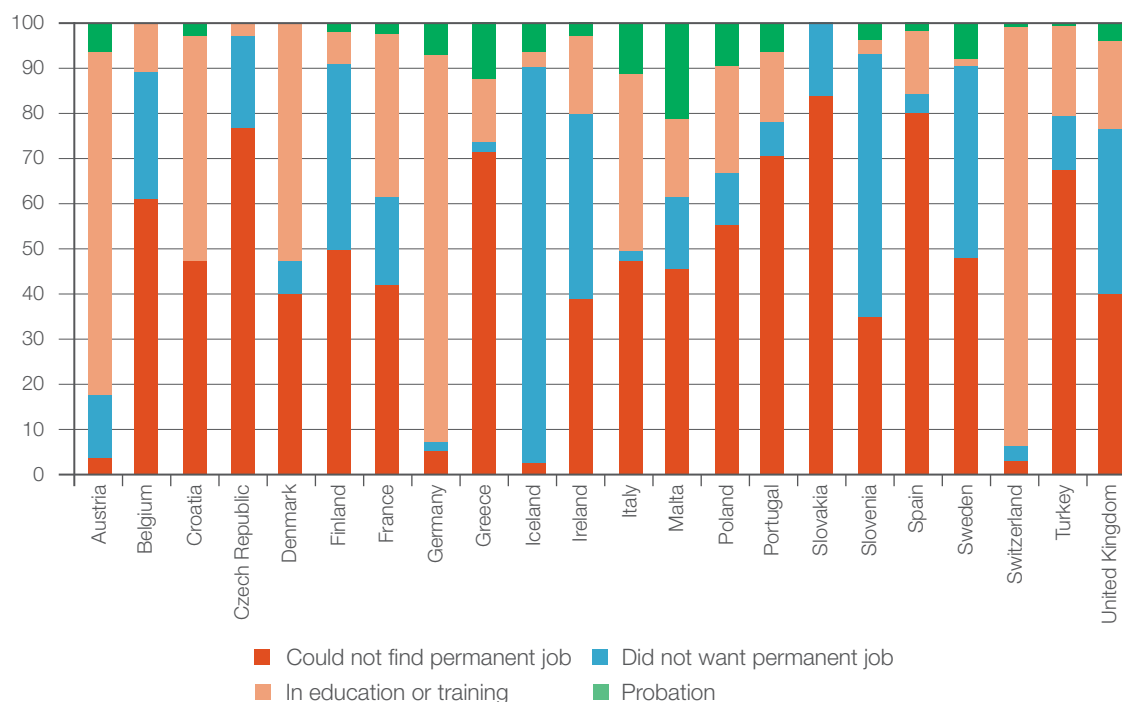
**Figure 3.13.** Percentage of workers employed in temporary agency work, by age, average of selected European countries, 2012



Note: Countries include Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom. Figures show a percentage of the working population (including self-employed).

Source: European Labour Force Survey, 2012.

**Figure 3.14.** Workers aged 15–24, main reason for being in temporary employment (as a percentage of total temporary employment), Europe, 2014



Source: Eurostat, Labour Force Survey (LFS), 2014.

Temporary contracts are also common among students who wish to combine full-time study with work, either during holidays or in between degrees. Such contracts have to be considered separately from training contracts, as there is no expectation that they will lead to a permanent contract or bestow specific skills.<sup>56</sup> In some countries, such as Slovenia, Sweden or Finland, significant numbers of young workers have reported that they did not want a permanent job (figure 3.14), and this is largely because many of them are still studying.<sup>57</sup> Thus temporary employment may represent a conscious choice for many young individuals, as it simultaneously allows them to gain experience, earn money, try out different jobs and industries, build networks and acquire both job-specific and general skills that will be useful for their next steps in the labour market.

Temporary work is also more systematically available to young workers, compared to older workers. As young people lack experience compared to prime-age workers, employers need to assess their skills, so they will often offer temporary contracts for screening or probationary purposes. In countries that use temporary contracts more liberally, or where labour market reforms have been implemented at the margins to facilitate the use of FTCs, the spread of temporary contracts has primarily affected young people, given their status as newcomers to the labour market.

Challenges arise when young people remain in these kinds of jobs, rather than transitioning to more stable employment. Unfortunately, in the majority of European countries,

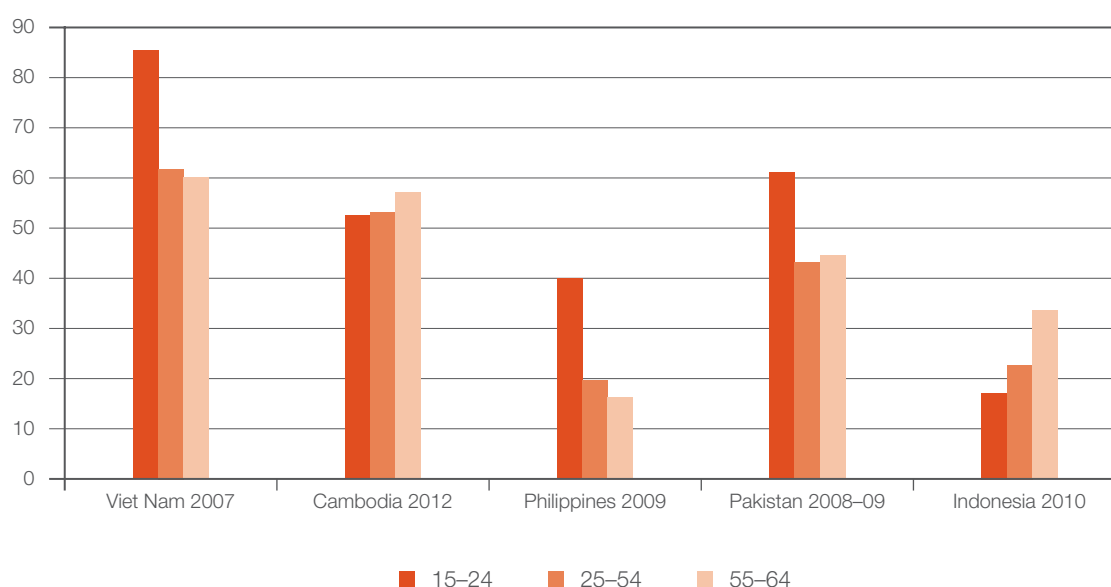
the main reason for temporary employment is still that young workers are unable to find a permanent job. There is a particularly large group of such young workers in Slovakia, Spain, the Czech Republic, Portugal, Greece, as well as in Turkey (figure 3.14). In these countries, temporary employment is not only linked to vocational training and young people's lack of experience, it is also structural, and linked to a more general use of temporary contracts for all age groups.

The global economic recession of the late 2000s demonstrated the instability youth face in temporary jobs in the presence of economic shocks. In Europe, between 2008 and 2012, total employment loss was more than 2 per cent on average, but it was largely concentrated among young workers: whereas relative employment of the oldest workers actually increased in this period, young workers experienced employment losses of as much as 8 per cent, most of it due to non-renewal of their temporary contracts.<sup>58</sup> As labour markets adjust, many young people bear the heaviest burden, with greater vulnerability to unemployment, intermittent work and lower quality of employment. This situation is all the more critical as young people face the challenges of embarking on adult life – moving out of the parental home, starting a family of their own, and in some instances facing the additional responsibility of providing care for ageing relatives. As economies recover, temporary employment tends to increase, thus further exposing youth to employment in non-standard jobs.

Moving from education into work is a crucial phase in life, when young people realize their aspirations, assume their economic independence and find their place in society. Difficulties in the initial phase of this process may have long-lasting consequences. Becoming unemployed at an early stage of labour market transition may give rise to vicious cycles of low employability or stigmatization by employers on grounds of poor productivity.<sup>59</sup> Young workers facing obstacles in finding employment can quickly lose their freshly acquired skills. But the same can be true with some non-standard jobs. If they serve the purposes that they are supposed to serve, such as obtaining experience, combining work with education, and allowing the young person to find stable, full-time, productive employment thereafter, they can only be welcome. However, if they are characterized by involuntary aspects, inferior working conditions, or do not allow to move to better jobs (i.e., they become traps), then they may have long-lasting effects in terms of future career prospects and salary.<sup>60</sup> They may also result in feelings of discouragement and lead to some young people dropping out of the labour market altogether.

In developing countries, as in the developed countries, youth are over-represented in temporary employment. In Uganda, the incidence of casual workers is twice as high among young people as among prime-age workers; it is up to four times as high in Ghana.<sup>61</sup> In Viet Nam, the Philippines and Pakistan, temporary contracts are most widespread among young people aged 15–24. In Indonesia, the share is higher in the seniors' age group, but this figure reflects only casual work, which does not include vocational training contracts. In Cambodia, the share of temporary employment is equally high across all age groups, at around 50 per cent (figure 3.15).

The ILO's School-to-Work Transition Surveys (SWTS), conducted in 34 low- and middle- income countries during the mid-2000s and early 2010s, permit analysing the stability of various employment arrangements by measuring the percentage of youth

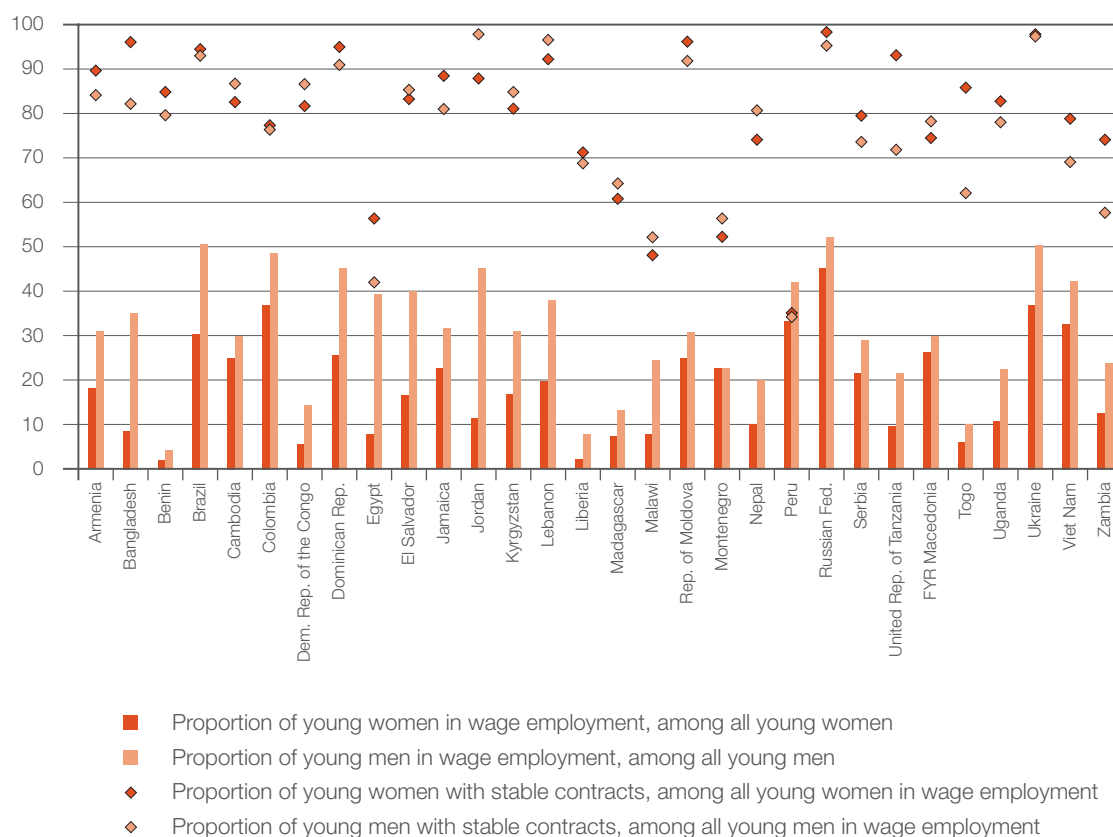
**Figure 3.15.** Temporary workers as a percentage of wage employees in selected Asian countries, by age group, 2007–10

Note: For Indonesia, temporary employment implies only casual jobs.

Source: Viet Nam: LFS, 2007; Cambodia: Labour Force and Child Labour Survey, 2012; Philippines: LFS, 2009; Pakistan: LFS 2008–09; Indonesia: LFS, 2010. Calculations by Nguyen et al., 2016.

employed at the time of the survey in a wage contract of either unlimited duration or at least 12 months' duration.<sup>62</sup> The highest proportion of stable contracts among young people in wage employment were found in Jordan, Ukraine and the Russian Federation (over 95 per cent). At the other end of spectrum were Peru, Egypt and Malawi, where less than 50 per cent of young people in wage employment had stable contracts. In the majority of sub-Saharan African countries, the share of stable contracts among wage employees is low, but in those countries most of the young workers have no contracts at all or are to be found outside of wage employment. Figure 3.16 shows that temporary employment among wage employees does not differ much between young men and women. However, these figures also need to be considered alongside figures showing that, in all countries, there is a substantially lower proportion of young women who are engaged in wage employment compared to young men.

The data from the SWTS reveal that in all of the surveyed countries, the percentage of youth that were able to transition to any first job is always higher than the percentage of youth that accomplished transition to a stable job. While this finding is to be expected, what is surprising is the gaps in the percentages. In some countries, the difference is more than five-fold, such as in the Republic of Moldova, Egypt and especially sub-Saharan African countries such as Benin, Liberia, Madagascar or Togo.<sup>63</sup> In Peru, where temporary employment represents a large share of wage employment in general, 90 per cent of all young workers surveyed had only had FTCs.<sup>64</sup> Moreover, there are

**Figure 3.16.** The proportion of young men and women in wage employment and in stable wage employment

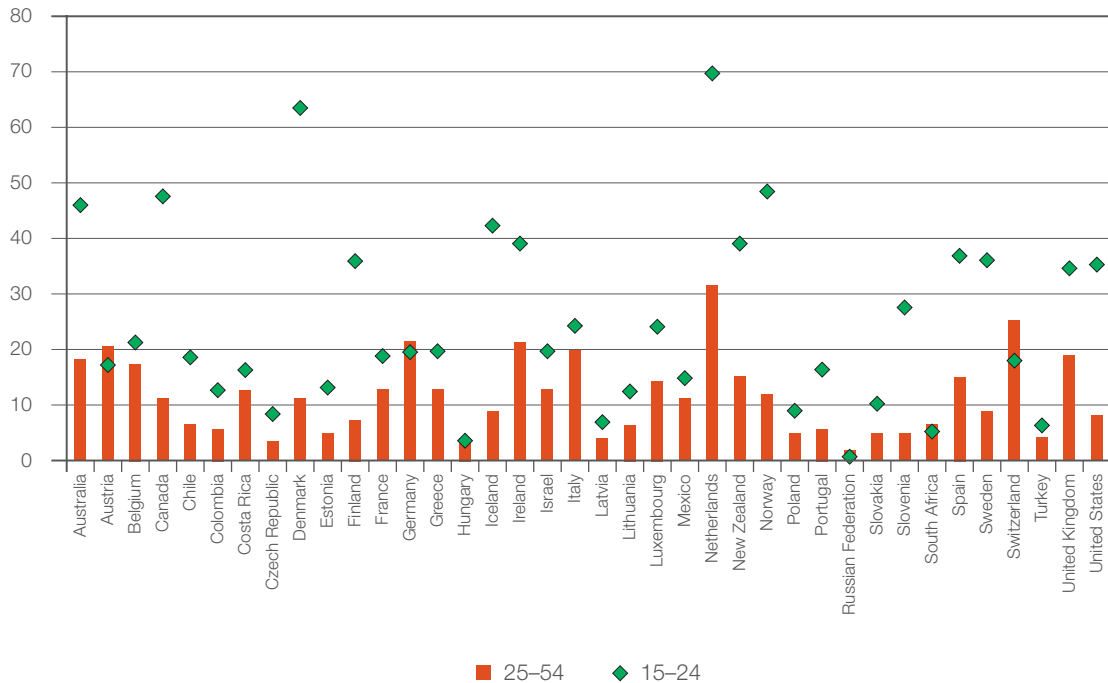
Note: Age group analysed: 15–29 years.

Source: Authors' computations, adapted from ILO School-to-Work Transition Surveys, latest year of data collection.

some young people, especially young women, who are not expected ever to move on to a stable job; these numbers are remarkably high in sub-Saharan Africa, ranging from 55 per cent in Tanzania and Togo to 87 per cent in Benin. These findings reflect overall trends in labour markets where there is a general lack of wage employment and stable employment. The proportion of young people who are not expected ever to move on to a stable job is also relatively high in the Middle East, North Africa and Asia, especially in the countries of Samoa and Nepal,<sup>65</sup> though very few people in these countries work in wage employment. Those who do (primarily men) are in stable paid jobs, but the majority of the others remain unemployed, become self-employed, or drop out of the labour market altogether.

In addition to being over-represented in temporary work and TAW, young people often take up part-time work. Available data suggest that, in numerous high- and middle-income countries, the incidence of part-time work is substantially higher among young workers than among prime-age workers: it is nearly six times higher in Denmark, and five times higher in Finland, Iceland and Slovenia. In Canada, Chile, the Czech Republic, Norway, Portugal and the United States, the incidence of part-



**Figure 3.17.** Incidence of part-time work among young and prime-age workers, 2014

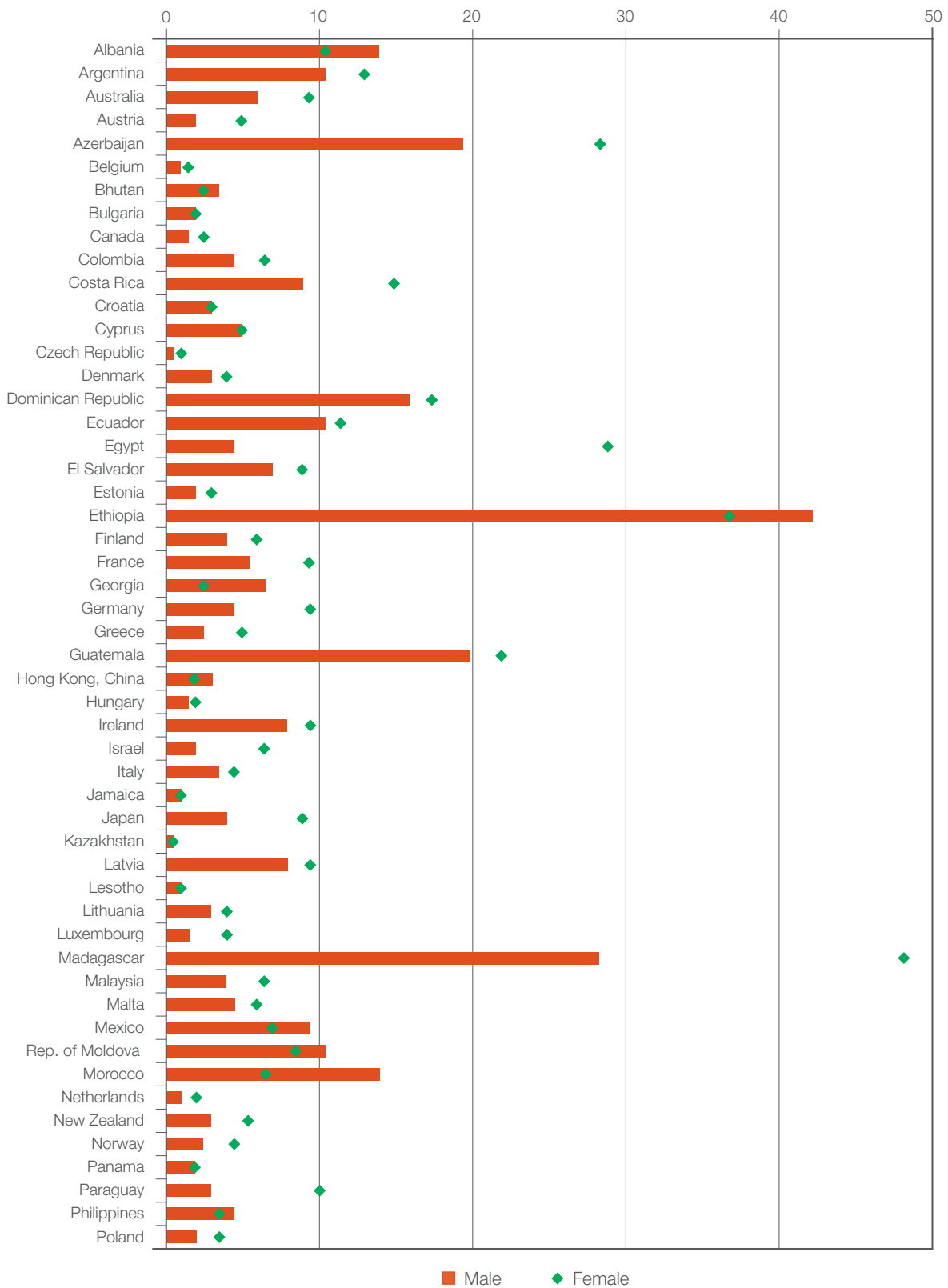
Source: Computations based on OECD STAT.

time work is three times as high among young workers. Some exceptions are Austria, Germany and Switzerland, where part-time work is more prevalent among prime-age workers, though the differences between these two groups of workers are not significant (figure 3.17).

For many young workers throughout the world, part-time work is a means of combining education and work, as well as enabling them to manage family or other personal circumstances while still being in the labour market. As with temporary employment, part-time work can be voluntary or involuntary. In developing countries in particular, the proportion of involuntary part-time among youth can be sizeable (figure 3.18). In the majority of countries, young women are more likely to be underemployed than young men, with particularly striking differences in Egypt, Madagascar and, to some extent, Japan and Paraguay. At the same time, in the majority of countries, youth underemployment for both men and women tends to move together, reflecting a more general lack of full-time jobs.

It is important to realize that “youth” is not a completely homogeneous group of people: there are groups that can be more, or less, vulnerable to NSE; for example, young women face quite different patterns of work compared to young men at the outset of their working lives. In many parts of the world, these differences emerge in childhood, with varying literacy rates, stereotyping regarding girls’ abilities in certain subjects and orientation of girls towards “feminine” occupations. Stereotyping frequently persists

Figure 3.18. Incidence of involuntary part-time work among young men and women, 2014



Source: Computations based on ILO STAT.

in vocational guidance on the part of school staff or employment services, while discrimination in recruitment remains an important barrier to labour market entry. Moreover, families and society at large continue to expect that the primary role of a woman is to marry and bear children, as well as maintaining the family household. Such views persist in both developing and developed countries, placing a lower value on women's economic contributions and looking upon the income they generate as merely secondary or complementary.<sup>66</sup> In general, young women have reduced prospects in their transition to work from education compared to men, as evidenced in figure 3.16. Those who do accomplish this transition often find themselves “at the margins” of employment.

Another vulnerable group is rural youth. At best, 65.8 per cent of young workers in rural areas of the Middle East and North Africa held a stable job in 2013, followed by 48.1 per cent of young workers in rural areas of Eastern Europe and Central Asia. At the other extreme is sub-Saharan Africa, where only 8.8 per cent of youth in rural areas had a paid job that lasted longer than 12 months, compared to 24.1 per cent in urban areas.<sup>67</sup> In rural areas, insecure working conditions, including unstable jobs, continue to hold back young women, although it is important to point out that in the low-income countries, young men in rural areas do not fare much better. In the agricultural sector, there is more widespread casual work, including casual work for young people. For example, in Asia, 29.9 per cent of young paid workers worked as casual labourers, against 7 per cent in the non-agricultural sector. In sub-Saharan Africa, the proportion of young workers in casual labour is 32.5 per cent in the agricultural and 19 per cent in the non-agricultural sector, both shares being the highest percentages of all the regions covered by the SWTS.<sup>68</sup>

A dominant factor in determining the quality of work that young people attain – as well as the ease of transition to good quality work – is education. Analysis from the SWTS shows that most lower-skilled young people end up in vulnerable employment, while educated youth eventually find stable paid employment (at least in the middle-income countries) – although they may face a long period of unemployment first. The most disadvantaged group remains that of early school-leavers, who have difficulties in finding not only a stable job, but any job.<sup>69</sup> Similar results are obtained from transition analysis of data from Spain,<sup>70</sup> Uganda and Ghana.<sup>71</sup> They show that NSE more generally may be a stepping stone for educated young workers aspiring to high-skilled jobs, but seems to be a dead end for lower-educated ones. These findings reinforce the idea that education is the best preparation for accessing better jobs (though job creation is still the main issue), but also suggest that extensive use of temporary contracts, as well as policies further liberalizing their use, may further deepen the segmentation of labour markets.

On the macroeconomic level, ensuring decent productive employment for youth is vital not only for sustainable economic growth, but also for other developmental and societal issues, including migration, family formation, personal levels of happiness and life satisfaction,<sup>72</sup> and civil stability.<sup>73</sup> The greater the likelihood that young people can find a place in productive employment, the better their prospects for living better lives, and for making progress towards inclusive development.<sup>74</sup>

### 3.3. MIGRANTS

The total number of international migrants increased by 50 per cent between 1990 and 2015, though they continue to constitute a tiny proportion of the world's population. In 2015, out of 232 million international migrants, 207 million were of working age and 150 million in employment.<sup>75</sup> In addition, there are 740 million internal migrants worldwide,<sup>76</sup> making internal migration considerably more extensive than international migration in many parts of the world, especially in India and China.

This section focuses mainly on international migrants as a population group that is particularly prone to being employed in non-standard jobs. After discussing the case of temporary labour migrants who, by virtue of their status and the modalities of entry into destination countries, inevitably take up temporary jobs, the section reviews some specific characteristics of migrant workers that lead even those migrants who are coming to the country to settle permanently to be more likely to work in NSE. The section also stresses that migrant workers are often over-represented in sectors with a traditionally high number of non-standard jobs, compared with native-born workers.

#### 3.3.1. Duration of stay and modalities of entry into a destination country

In many parts of the world, migrant workers are employed in temporary jobs or through temporary employment agencies because they have been recruited through such agencies in the first place in their countries of origin; thus these jobs often represent the only entry point to the labour markets of the destination countries. In many instances, they are self-selected into NSE from the very start of their migration experience. Migrant workers are usually bound to return to their native countries after the expiration of their contracts and visas. While numerous countries have been tightening rules and programmes for permanent residency, there has been a renewed interest in the expansion of temporary migration programmes as a way of creating “win-win” solutions for both origin and destination countries. Temporary migration programmes can offer host countries a pool of potential workers without the concern that they will want to settle there permanently; as for the countries of origin, the pressure on their domestic labour markets is reduced and a steady flow of remittances is ensured. Such programmes are also seen as a lawful alternative to illegal migration, especially human smuggling. As international migration continues, the importance of such programmes is expected to grow.<sup>77</sup>

There is a variety of temporary worker programmes to be found in both developed and developing countries, including, but not limited to, those for seasonal workers, guest workers, intra-company transferees, working holiday-makers, trainee programmes for young professionals, entertainers, athletes or au pairs.<sup>78</sup> The modalities of entry into the destination countries for temporary work can be broadly classified under three headings:<sup>79</sup>

- *Seasonal programmes, seasonal jobs.* These programmes usually have temporary foreign workers filling temporary or seasonal jobs. As the jobs are seasonal, migrants have fewer reasons to remain in the host country when their contracts end. Examples are Australia's Seasonal Worker Programme and New Zealand's Recognized Seasonal Employer Scheme, which were developed to allow Pacific Islanders to fill agricultural jobs. Between 2008–09 and 2012–13, over 42,600 Pacific

Islanders were employed in New Zealand and Australia under such schemes.<sup>80</sup> One of the most recent regulatory examples is Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. The Directive not only establishes the rules for entry and stay, but also outlines labour rights for seasonal workers from outside the EU.<sup>81</sup>

- *Temporary workers, permanent jobs.* These are the most common temporary worker programmes, and their aim is to rotate temporary foreign workers in year-round or permanent jobs. Temporary workers typically receive one- or multiple-year work permits, but there is a wide variation in employer and migrant rights to extend the stays and to adjust status. For example, H-2A temporary work permits in the United States do not give access to permanent residency. In Italy, temporary workers can slip in and out of legal status as their employers register them for a year, but do not re-register them.
- *“Probationary” modes on entry.* Workers may apply for jobs in destination countries that are open to any qualified individual, regardless of nationality (usually highly qualified persons). If recruited, they are granted work and residence permits, which are usually valid for a definite term, hence implying a definite-term validity of the work contract. Such permits can be extended at the request of the employers, and may allow for family reunification. In some instances, such permits can progressively grant longer residence rights after several rounds of uninterrupted renewals. “Probationary” modes of entry are also known as “two-step” modes of entry, and are increasingly the way of gaining access to permanent residence in countries such as Canada.

During the “guest worker” era of the 1960s, government agencies in countries of origin and destination recruited most of their migrant workers under bilateral agreements. While bilateral agreements or Memorandums of Understanding (MOUs) still provide the framework for low-skilled labour migration in some migration corridors (see table 3.1 for examples), private employment agencies are increasingly acting as mediators in the recruitment and dispatch of workers across national borders.

Over the past two decades, in what started as an essentially Asian phenomenon operating along migration corridors to the Gulf, private intermediaries, matching workers in one country to jobs in another, have become a feature of globalized labour markets. In 2011, there were some 140,000 private recruitment agencies worldwide, 61 per cent of which were in Asia and the Pacific, though not all of them were involved in cross-border activities. Each year, from 1999 to 2003, about 40 per cent of Bangladeshi migrant workers and, in 2004, 75 per cent of those from Sri Lanka, used the services of such agencies.<sup>82</sup> Recent data show that, depending on the destination country, up to 30 per cent of immigrants can be working for employers that supply migrant workers to other employers.<sup>83</sup>

Both public and private employment agencies continue to play an important role in helping to match demand for migrant labour with its supply. At the same time, there are growing concerns that some of the employment agencies operate outside the formal legal framework – by making false promises about the nature and conditions of work abroad, withholding payments, or becoming involved in human trafficking and forced labour.

**Table 3.1. Examples of bilateral labour migration agreements/MOUs**

Types and scope of agreements	Regions and countries
Migration of low- and middle-skilled workers covering the following areas (not exhaustive): <ul style="list-style-type: none"> <li>■ Recruitment</li> <li>■ Transportation</li> <li>■ Working conditions</li> <li>■ Provisions of accommodation</li> <li>■ Return</li> </ul>	<ul style="list-style-type: none"> <li>■ South Asia and Middle East (e.g. Sri Lanka–Jordan, India–Qatar)</li> <li>■ South-East Asia (e.g. Thailand with Cambodia, Lao People’s Democratic Republic and Viet Nam)</li> <li>■ Republic of Korea with 15 Asian countries under Employment Permit System</li> <li>■ EU countries with Latin America, Africa and Central and Eastern Europe (e.g. Spain with Ecuador, Colombia, Dominican Republic, Morocco, Portugal–Ukraine)</li> </ul>
Covering specific sectors	<ul style="list-style-type: none"> <li>■ Agriculture (e.g. Canada with Mexico and Caribbean countries)</li> <li>■ Domestic work (e.g. Indonesia–Malaysia, Philippines–Saudi Arabia)</li> <li>■ Construction (e.g. Israel–Republic of Moldova)</li> </ul>
Covering labour migration and other areas (i.e. development, irregular migration)	<ul style="list-style-type: none"> <li>■ EU Mobility Partnerships with Armenia, Cabo Verde, Georgia, Republic of Moldova and Morocco</li> <li>■ Spain with West African countries (e.g. Mali, Senegal)</li> </ul>
Mobility of young professionals	<ul style="list-style-type: none"> <li>■ France with African (e.g. Benin, Cabo Verde, Congo, Gabon, Mauritius, Morocco, Senegal, Tunisia) and other countries (e.g. Argentina, Montenegro, Russian Federation, Serbia)</li> </ul>
Between trade unions in origin and destination countries on migrant worker protection	<ul style="list-style-type: none"> <li>■ Trade unions in the Russian Federation with unions in Armenia and Georgia</li> <li>■ Sri Lanka with Bahrain, Jordan and Kuwait</li> <li>■ Italy with Republic of Moldova and Ukraine</li> <li>■ Lao People’s Democratic Republic with Thailand</li> </ul>

Source: ILO, 2013c.

It is thus important to enforce and improve existing national laws and international agreements that regulate the activities of such agencies, to create effective mechanisms for addressing complaints and providing remedies for rights’ violations, to improve collaboration between private and public employment agencies, to promote fair business practices, and to raise awareness among potential migrants about possible abuses. In 2014, the ILO launched a global “Fair Recruitment Initiative” with the aim of addressing these issues.<sup>84</sup>

### 3.3.2. Why migrant workers are more prone to non-standard employment

Migrants also enter destination countries outside temporary migration programmes. They may initially come as students, family members of foreign workers, or for hu-



manitarian reasons. In these cases, their individual characteristics may make them more likely to be employed in non-standard work once in the destination country.

First, compared to native workers, migrant workers may lack the required language skills and social and professional networks in the host country. This prevents them from having full information about labour market opportunities and about their rights, and considerably lowers their bargaining power. As a result, they may be offered non-standard contracts more as a matter of course than native workers would be. A crucial aspect of migrants' integration into the labour market of their host country is the transferability of their formal schooling from their country of origin to the destination country. Because of the differences in education systems and quality of education across countries, migrants' diplomas and skills are often not recognized.<sup>85</sup> Similarly, they may not be able to apply their work experience, if the two countries differ in terms of technical skills required and in the needs for specific hard and soft skills, even if the jobs are similar. As a result, employers often have an imperfect understanding of what foreign credentials mean or of the migrant worker's overall skill level.<sup>86</sup> Thus employers may systematically use temporary contracts as a screening device for migrant workers, even if the immigrants possess the same language and technical skills as the native workers. If poor skill transferability is a problem, migrant workers may also be attracted by temporary agency jobs whose screening demands may be lower.<sup>87</sup>

A second factor is that migrant workers are usually under great pressure to find work quickly to repay migration costs or remit money home, so there are high costs involved for them in waiting for a suitable standard job. At the same time, they are not typically eligible for unemployment benefits and rarely own their home. As a result, they are often ready to work under less favourable conditions than native-born workers, and are hence more prone to accepting non-standard jobs. Bearing this in mind, the incidence of NSE among migrant workers is still highly variable depending on gender, intended duration of stay and return plans, as well as their country of origin. For example, in Europe, migrant women are more likely to be in temporary and part-time jobs compared to both migrant men and native-born women. The differences are especially stark for the temporary employment status of migrant women of non-European origin (table 3.2), as these women also have the lowest overall participation rates in the labour market and very high unemployment rates.<sup>88</sup>

Third, the legal status of migrants has implications for their ability to undertake formal working relationships,<sup>89</sup> but also for employment in temporary employment agencies in particular, as migrants in an irregular situation may use these agencies to disguise their irregular status.<sup>90</sup> It is not unusual for temporary agencies to tailor their recruitment to the migrant labour force, allowing them to circumvent barriers for access to the labour market such as temporary immigration status or absence of work permits. In the United States, one of the most extreme forms of casual employment – day labour sought on the street – has been almost exclusively performed by migrant workers, usually of Latin American origin. Various estimates suggest that the proportion of migrant workers among day labourers in the United States may be as high as 90 per cent.<sup>91</sup>

In addition, recent immigrants are often more likely to find themselves in these situations compared to established migrants.<sup>92</sup> This is because longer periods spent in a destination country allow migrants to gain local experience, confirm or renew qualifications and

**Table 3.2.** Percentage of permanent vs temporary and full-time vs part-time workforce (aged 15–59) in EU-27, by origin, 2009

	Permanent	Temporary	Full-time	Part-time
<b>Women</b>				
Native-born	89.5	10.5	70.5	29.5
Migrants from other EU-27 countries	85.2	14.8	61.3	38.7
Third-country migrants	78.8	21.2	61.9	38.1
<b>Men</b>				
Native-born	91.4	8.6	94.9	5.1
Migrants from other EU-27 countries	87.5	12.5	93.6	6.4
Third-country migrants	79.2	20.8	89.0	11.0

Source: Eurostat, 2010, European Labour Force Survey, tabulations by Kontos, 2011.

obtain enhanced knowledge about labour market opportunities. It is thus not unreasonable to expect that more established migrants would be less prone to take up temporary or temporary agency jobs. Indeed, some studies show that temporary agency work can be a stepping stone into permanent work for migrant workers.<sup>93</sup>

Transferability of credentials is particularly challenging for refugees and asylum seekers. Unlike labour migrants, who actively choose migration as well as the specific countries and sectors for purposes of work, individuals fleeing wars, conflicts or political persecution are less likely to have skills or a work history that is adaptable to their host country's labour market. They are also less likely to have work permits, pushing them into informal work and lower-quality jobs. The recent refugee crisis in Europe and the Middle East and North Africa region is thus likely to contribute to the growth of NSE in the years to come.

### 3.3.3. Migrant workers in sectors with traditionally high incidence of non-standard jobs

Another reason for greater propensity of migrants to find themselves in non-standard jobs is that they tend to concentrate in sectors where the incidence of such jobs is traditionally high. While large variations exist across countries, migrant workers tend to be most prevalent in construction, seasonal agriculture, domestic care, hotel and restaurant services, and the cleaning sector.<sup>94</sup> Globally, it is estimated that in 2013, migrant domestic workers accounted for 7.7 per cent of all employed international migrants, and 17.2 per cent of all domestic workers were international migrants.<sup>95</sup> While migrant men are disproportionately represented in temporary and temporary agency work in construction, migrant women are over-represented in part-time, temporary and temporary agency work in domestic care, hotel and restaurant services, and in the cleaning sector.<sup>96</sup> In China, approximately one-third of all migrant workers – estimated to represent 15 to 17 per cent of the total Chinese population<sup>97</sup> – are employed in the

construction industry; migrants represent over 90 per cent of construction workers in the country, all hired as temporary workers.<sup>98</sup>

Outcomes for migrant women are highly dependent on whether they have migrated to follow their families or have come to work independently; on their country of origin, as female cultural roles tend to persist after migration; and on their visa and work permit status depending on their reasons for migration. For example, in Europe, migrant women of non-European origin are particularly over-represented in low-skilled occupations (see table 3.3), which mainly include domestic work and cleaning. Their numbers are also high in sales. This occupational and sectoral segregation helps to explain the large presence of migrant women in temporary and part-time jobs outlined in table 3.2. At the same time, patterns of NSE, and especially of part-time employment, among migrant women can be extremely heterogeneous. For example, in domestic care, the outcomes for part-time work will depend on the work arrangements, such as whether the women live in or outside the household in which the domestic services are performed, whether they work for a single or multiple employers or work agencies, and whether they are performing work within a specific migration programme (including au pair and cultural exchanges).<sup>99</sup> In some instances, this work will indeed be part time; in others, overtime and extended hours will be commonplace. In some countries, such as Cyprus, Greece and Spain, the presence of female migrants in the domestic care sector was spurred by and in its turn facilitated the participation of native-born women in the labour market.<sup>100</sup> In others, it has been driven by the fact that women moving for family reunification are not allowed to work; they may thus engage in informal work, especially in the domestic work sector.<sup>101</sup>

#### **3.3.4. Some consequences for migrant workers**

The activities of some of the temporary work agencies extend to encompass all of the stages of the labour migration process. In addition to recruitment and selection, temporary employment agencies and subcontractors may also transport workers to the place of work, arrange housing and ensure the return of workers when the work terminates. These secondary functions are fundamental to temporary agencies' management of migrant labour and their ability to ensure a flexible workforce to suit the client's requirements.<sup>102</sup>

For migrants, the advantages of being employed through such agencies and contractors is not only that they provide work, but also that they may cover upfront migration costs, facilitate paperwork, help overcome language barriers and reduce costs associated with finding accommodation.<sup>103</sup> For end users of labour supplied through agencies with such secondary functions, having workers nearby and in dormitories facilitates just-in-time production management, through easier management of changing shifts and on-call work.

It is easy to see, however, how these advantages could be turned into abusive practices. By allowing employers to organize the workers' time and space inside and outside the production line, "dormitory labour regimes", which in the modern world were initially documented in China<sup>104</sup> but have now spread to other parts of the world, make it possible for agencies to keep the workers under permanent and discreet control and to extract

**Table 3.3. Occupational concentration of women by nationality group in Europe, 2009**

	Native born	EU-born migrants	Third-country migrants
Elementary occupations	9.6	26.4	38.0
Services and sales workers	19.0	20.6	26.5
Office clerks	16.9	12.4	7.9
Other associate professionals	20.6	13.3	8.3
Legislators, senior officials and managers	6.7	6.9	3.9
Professionals	17.2	13.4	7.5

Source: Eurostat, 2010, European Labour Force Survey; tabulations by Kontos, 2011.

additional labour.<sup>105</sup> The low wages, on-site accommodation, and the fact that workers are alone and without family responsibilities mean that they can be easily pushed to accept changes in shifts and overtime, without necessarily receiving appropriate compensation. If transportation from and back to their countries of origin is provided by the agencies, this may also lead to abuses, such as sending migrants back to their own country if they complain about their working conditions. Fear of losing dormitory rights, of deportation, or of non-renewal of temporary visas, coupled with the lack of language skills and knowledge of the local legislation, means that immigrants are mostly helpless to fight or even report worker abuse.<sup>106</sup>

In addition, there is mounting evidence of the exploitative aspects of the activities of cross-border employment agencies, such as charging extortionate fees, charging fees for non-existent jobs abroad, withholding payment of salaries, deliberately misinforming workers regarding the nature, pay and conditions of the work on offer, covering or extorting overstays and unauthorized work, withholding workers' passports, and, at worst, engaging in forced labour and human trafficking.<sup>107</sup> Such examples of migration governance failures are not only detrimental to migrant workers, but also reduce the potential development impact from migration by reducing remittances to their countries of origin.<sup>108</sup> A by-product of the dormitory labour regimes is also the creation of a new category of "permanently temporary" migrants,<sup>109</sup> whereby immigrants repeatedly renew their contracts with a private employment agency, weakening links with their places of origin, yet at the same time not integrating fully into the local labour market.

In some sectors, employers prefer to use migrant workers through temporary labour migration schemes as the workers' visas are then tied to specific contracts that do not grant them autonomy and restrict their right to move freely within the national labour market, thus limiting their opportunities to find better working conditions by changing jobs.<sup>110</sup> However, dependence on one job and one specific employer conspires against a worker's position in bargaining individually with their employer, as well as reducing their ability to organize collectively with other workers to improve working conditions. The ILO Committee of Experts on the Application of Conventions and Recommendations found that the *kafala* system of certain Middle East countries, which ties migrant



*Migrant workers in a dormitory, United Arab Emirates*

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workers to sponsors, may be conducive to forced labour.<sup>111</sup> The growth in temporary labour migration schemes thus raises issues that go beyond labour market efficiency, with concerns over workers' basic human rights as well as their ability to exercise and benefit from their fundamental rights at work, including freedom of association and collective bargaining, the protection against all forms of forced or compulsory labour, and non-discrimination in employment and occupation.

### 3.4. SUMMARY

With the continuing changes in the world of work, it is not unreasonable to expect that women, young people and migrant workers will continue to be over-represented in NSE. For some of these workers, NSE is a choice and an opportunity to integrate into the world of work, but for many others, it is the only possibility for work.

The three groups of workers discussed in this chapter are the most prone to NSE. Their personal characteristics are often reinforced by persisting stereotypes, cultural norms and sometimes outright discrimination. Coupled with lower general attachment to the labour market, other personal and family responsibilities, dependence on other household members and, in the case of international migrants, on their visa status, it is not surprising that these groups typically have lower bargaining power in the labour market. As a result, women, youth and migrants are more likely to suffer from the disadvantages inherent in NSE and to carry a disproportionate burden of these drawbacks, even when this type of work is a choice. Moreover, while there are different reasons for these groups to be in NSE, gender, age and place of birth are not mutually exclusive factors. For



many of these workers, vulnerabilities associated with one aspect of their status may be reinforced by vulnerabilities associated with another.

However, these are precisely the population groups that are central to boosting employment rates and fuelling economic growth for decades to come, particularly in light of an ageing population and shortfalls in total labour supply in many parts of the world. The fundamental challenge thus lies in ensuring that any form of employment, including NSE, helps to advance these groups economically, socially and culturally, rather than confining them to employment ghettos.



## NOTES

- 1 ILO, 2016c.
- 2 ILO, 2015h.
- 3 United Nations, 2013.
- 4 Examples include Euwals and Hogerbrugge, 2006, and Golden and Appelbaum, 1992, for industrialized countries; Standing, 1999, for developing countries.
- 5 Discussion here based on ILO, 2016c.
- 6 Gammage, 2015.
- 7 Sirianni and Negrey, 2000.
- 8 Vosko, 2010.
- 9 Grimshaw, 2011.
- 10 Bosch, 2004.
- 11 Blau and Kahn, 2013; Leschke, 2015. See also OECD, 2010.
- 12 Gammage, 2015, p. 321.
- 13 ILO, 2016c.
- 14 Kucera and Tejani, 2014; Berg, 2005.
- 15 Standing, 1999.
- 16 Ibid.
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- 18 O'Sullivan et al., 2015.
- 19 Schmid and Wagner, 2016; calculations based on ELFS.
- 20 Fagan et al., 2012.
- 21 Jung, 2010.
- 22 ILO, 2016c; Sirianni and Negrey, 2000.
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- 25 Euwals and Hogerbrugge, 2006; Fallick, 1999; Thévenon, 2013.
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- 37 Eichhorst, Marx and Tobsch, 2015.
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- 39 Eichhorst, Marx and Tobsch, 2015.
- 40 Garibaldi and Taddei, 2013.
- 41 *The Guardian*, 2014, describes the results of a survey of 500 British managers and shows that 40 per cent of them generally avoided hiring young women to avoid maternity costs.
- 42 Smirnykh and Wörgötter, 2013; Koukiadaki, 2010.
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- 49 Nguyen, Nguyen-Huu and Le, 2016.
- 50 Dumas and Houdré, 2016.
- 51 World Bank, 2011 and 2014.
- 52 Leschke, 2015; Grimshaw, 2011.
- 53 ILO, 2013b.
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- 55 Perlin, 2015.
- 56 Eurofound, 2013, p. 13.
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- 58 Garibaldi and Taddei, 2013.
- 59 Freeman and Wise, 1982; Blanchard and Diamond, 1994.
- 60 Cavero and Ruiz, 2015.
- 61 Dumas and Houdré, 2016.
- 62 Available at [www.ilo.org/w4y](http://www.ilo.org/w4y).
- 63 Manacorda, Ranzani and Rosati, 2014, table 4.
- 64 Cavero and Ruiz, 2015.
- 65 Manacorda, Ranzani and Rosati, 2014, figure 9.
- 66 The paragraph is based on ILO, 2010c.
- 67 Elder et al., 2015.
- 68 Ibid.
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- 71 Dumas and Houdré, 2016.
- 72 Frey and Stutzer, 2002.
- 73 Eurofound, 2012b, and ILO, 2015h. The link between youth unemployment and civic unrest has recently been called into question in an important study by MercyCorp, 2015. The report concludes that it is not unemployment alone that attracts young people to political violence, but rather the sense of hopelessness, frustration and anger that comes with perceptions of injustice, usually as a result of bad governance.
- 74 ILO, 2015d and 2015h.
- 75 ILO, 2015j.
- 76 Ibid.
- 77 Some of the past temporary migration programmes, however, exhibited significant failures. Those included non-return of migrants, abuses of migrants' rights and distortions of local labour markets. For an overview and examples of failures, as well as ways of addressing them, see, for instance, OSCE, 2006. For a related literature review and the discussion of new temporary migration programme agenda, see also Ruhs and Martin, 2008.
- 78 Abella, 2006.
- 79 Martin, 2006a.
- 80 ILO, 2013c.
- 81 For a review of the Directive, see Fudge and Herzfeld-Olsson, 2014.
- 82 ILO, 2014b.
- 83 Answers of returning migrant workers in Ethiopia, India, Nepal, Pakistan, the Philippines and Viet Nam, to a question about their employer abroad: "Does your employer supply migrant workers to other employers?" From the KNOMAD survey which measures migration costs through a survey of returning migrant workers.
- 84 ILO, 2015i.

- 85 Friedberg, 2000; Mattoo, Neagu and Osden, 2008.
- 86 Chiswick and Miller, 2009.
- 87 Autor and Houseman, 2010.
- 88 Kontos, 2011.
- 89 Vakhitova, forthcoming.
- 90 McDowell et al., 2008.
- 94 Valenzuela et al., 2006; Melendez et al., 2014.
- 92 Empirical literature shows that immigrants assimilate economically in their destination countries: with a longer duration at the destination country, they have a higher propensity of being employed (Wheatley, 1998), earn better wages (Chiswick, 1978; Borjas, 1994), and have a better match of skills to occupations (Aleksynska and Tritah, 2013). This is because of their better command of the language, acquisition of a social network, and enhanced knowledge of labour market opportunities and their rights. Hence, it is reasonable to expect that immigrants with longer duration in a destination country would be less prone to take up temporary jobs.
- 93 Jahn and Rosholm, 2014.
- 94 OECD, 2008; OECD, 2015b; ILO, 2013c.
- 95 ILO, 2015j.
- 96 Ibid.
- 97 Chan, 2010.
- 98 Swider, 2015.
- 99 Kontos, 2011.
- 100 Lyberaki, 2008.
- 101 Anthias, Kontos and Morokvasic-Müller, 2013.
- 102 Andrijasevic and Sacchetto, 2014.
- 103 Martin, 2006b.
- 104 Pun and Smith, 2007.
- 105 Swider, 2015; Andrijasevic and Sacchetto, 2014.
- 106 ILO, 2014b.
- 107 Martin, 2006b; ILO, 2014b.
- 108 ILO, 2013c.
- 109 Swider, 2015.
- 110 Zapata-Barrero, García and Sánchez-Montijano, 2012.
- 111 ILO, 2012a.



*Packing tablets for a pharmaceuticals company, Ghana*

© ILO / Lord





*Porcelain factory, Thailand*

# CHAPTER 4

## Why firms use non-standard employment and how it affects them

**T**he growth of non-standard employment (NSE) is not a natural phenomenon but rather the outcome of explicit decisions made by enterprises throughout the world. Traditionally, NSE has been dominant in particular economic sectors that are subject to seasonal fluctuations, such as agriculture, construction and transport. There are also certain occupations that have a greater association with some of the non-standard forms of work, such as artists who work on specific projects. But NSE has spread to industries that were not previously associated with these arrangements, such as the airline or the telecommunications industry,<sup>1</sup> and is the outcome of a specific organizational choice made by firms. Across the world, NSE tends to be concentrated among a relatively small proportion of enterprises, which have made its use a central part of their organizational strategy.

While some of the motivation for employing workers in non-standard arrangements may be constructive – for example, by allowing enterprises to focus on their “core competencies”, when undertaken solely with the objective of reducing costs, NSE may ultimately have negative consequences for the productivity of the firm, the sector or the economy, particularly if it leads to complacency among businesses in terms of their competitiveness or when it undercuts the responsible employment practices of other companies.

In order to understand why certain forms of NSE have gained popularity in many parts of the world, it is critical to understand employers’ reasons for using them. This chapter analyses the reasons why firms use different forms of NSE, and then looks at the extent of the use of NSE, based on available firm-level evidence. The chapter concludes by discussing the implications for firms of these decisions.

### 4.1. WHY DO FIRMS USE NON-STANDARD EMPLOYMENT?

Many firms use NSE to address specific, short-term labour force needs, for example to replace a temporarily absent worker, to meet short-term needs of seasonal spikes in demand, to cover weekend shifts, or to evaluate newly hired employees before offering them an open-ended contract. At the same time, there is also a small, and in some instances growing number of firms that rely intensively on NSE arrangements, whether for

part-time workers, temporary workers, “leased” workers or the dependent self-employed, and that have made such arrangements the mainstay of their operations. This shift away from “traditional reasons” stems from changing organizational strategies that have been facilitated at times by changes in labour law to accommodate NSE, or the realization that there are gaps in the law that have permitted its use, or else instances in which the law will not be applied.

Different types of NSE can serve distinct purposes, and hence their use may be motivated by a diverse range of objectives. Sometimes one form of employment can be substituted for another, and the use of one particular type of arrangement in one country may reflect the ease or lack thereof in using a specific contractual form. Even though most of the literature on the use and effects of NSE arrangements on firms focuses on temporary employment, this information nonetheless provides insights into the reasons for the use of other forms. An extensive and related literature also exists on outsourcing.

A firm’s decision to engage in non-standard work arrangements will usually be influenced by the specific attributes of the enterprise, such as its size, the industry that it is engaged in, the skill levels of its workforce, its proprietary knowledge, the practices of competing enterprises, as well as the regulatory framework of the country in which it conducts its activities. In addition, firms may prefer non-standard work arrangements as they can offer greater flexibility with respect to staffing, as well as cost advantages. While such reasons have long been recognized by economists, in the early 1990s business management experts began promoting outsourcing and the use of non-standard arrangements for certain functions in the enterprise as a means for companies to focus on their “core” functions. In addition, technology also has a part to play in whether or not non-standard arrangements are used, particularly if it facilitates standardization, making it easier to replace workers.

#### **4.1.1. The quest for flexibility, the core–periphery argument and core competencies**

Businesses are subject to fluctuations in demand for their goods and services, as a result of seasonality, changes in the business cycle, competition from other firms for market share, or external shocks. As such, firms have an incentive to ensure flexibility in their labour force so that they do not employ more staff than necessary when demand falls. The different forms of NSE examined in this report provide a convenient source of what economists call “numerical flexibility”, as they allow businesses to increase or decrease the number of workers they employ.

On the other hand, firms also need to ensure that they have sufficient numbers of dedicated and knowledgeable staff who can carry out the company’s core operations and ensure its longevity. Thus firms often seek a balance between stability and flexibility in their workforce. In their seminal study of internal labour markets, the economists Peter Doeringer and Michael Piore (1971) explained how, within a firm, there are essentially two labour markets: a primary or internal market consisting of jobs that are well paid, stable and have advancement opportunities, and a secondary or external market which is composed of jobs that are lower paid, lower skilled and offer fewer opportunities for training and advancement.<sup>2</sup> They explain how numerous firms in diverse industries have



organized their workforce as internal labour markets, but then complemented this labour force with a secondary group of workers whose skills were more general – and thus more easily replaceable – and where the recruitment, screening and training costs were markedly lower.

Further advances in economic theory have shown how businesses may naturally gravitate towards employing a labour force that is divided between “permanent” or “core” workers and secondary workers who may be either employed on temporary contracts, leased through a temporary employment agency, or hired as part-time or on-call workers with fluctuating hours.<sup>3</sup> Because searching for and recruiting workers with the necessary skills and monitoring their work is costly, firms will pay higher-than-market (or “efficiency”) wages to both motivate and retain core workers. Since adjusting such labour to fluctuations in demand is also expensive, businesses therefore have an incentive to split their workforce. Thus this “dualism” can arise naturally, even in the absence of labour market institutions and regulations.

Empirical evidence in both the economics and management literature shows that temporary workers are indeed used to help firms attain numerical flexibility,<sup>4</sup> allowing companies to withstand adverse macroeconomic conditions, to react to fluctuations in demand due to seasonality,<sup>5</sup> and to respond to financing constraints.<sup>6</sup> Some firms employ temporary workers precisely to shield their core workers from any potential downsizing as a result of demand fluctuations or adverse shocks.<sup>7</sup> Industries subject to highly volatile demand are more likely to make use of temporary labour, but so are smaller businesses as they are less likely to have enough employees available to meet temporary adjustment needs.<sup>8</sup> Thus temporary employment can be a buffer to enable a firm to adjust to fluctuations in demand, though it is also important to stress that other alternatives may be available, such as rescheduling the production and delivery of certain products and services to off-peak periods, or reducing working hours.<sup>9</sup> Moreover, if there are legal restrictions on the renewal of fixed-term contracts (FTCs), then the potential flexibility and cost savings from using temporary workers may diminish.<sup>10</sup>

The literature examining the role of unions and collective bargaining in a firm’s decision to hire temporary workers adds further nuances regarding the use of temporary workers as “buffers”. On the one hand, unions may contribute to the growing use of temporary labour if it will help isolate permanent workers from the negative effects of demand volatility and technological shocks.<sup>11</sup> On the other hand, they may also oppose the use of temporary labour, for example by including clauses explicitly limiting the amount of such labour. They may do so either out of considerations for social cohesion,<sup>12</sup> or because they perceive temporary workers as a threat to their own bargaining power.<sup>13</sup> In some instances, enterprises have turned to subcontracting or temporary agency work (TAW) specifically to avoid unionization and to weaken unions.<sup>14</sup> Unions’ response to the use of temporary labour may also eventually depend on the prevalence of different types of temporary contracts.<sup>15</sup>

With respect to part-time employment, flexibility is often an important motivation for its use, particularly in the services sector. Indeed, some of the increases in part-time employment in certain countries have been attributed to the growth of retail employment and extended opening hours, which have encouraged firms to hire workers on part-time hours to cover these shifts.<sup>16</sup> But part-time employment is also used as a strategy to retain workers who do not have the possibility to work full-time hours, or, as will be discussed

Figure 4.1. Firms' strategies with respect to part-time employment and implications for its quality



Source: Adapted from Fagan et al., 2014.

in the next section, as a cost-reducing strategy. Not surprisingly, these opposing strategies have consequences for the quality of the part-time jobs, as explained in figure 4.1.<sup>17</sup>

In the early 1990s, the management profession began promoting the idea that a firm should outsource functions of the enterprise that were not central to its core operations.<sup>18</sup> An important debate – and some confusion – ensued on how to define a company's “core competencies”: it was explained by leading management experts as “the fundamentals of what the company can do better than anyone else”, typically involving “activities such as product or service design, technology creation, customer service, or logistics that tend to be based on knowledge rather than on ownership of assets or intellectual property per se”.<sup>19</sup> The objective of outsourcing was not necessarily to reduce costs, although this was a potential benefit, but rather to avoid spending valuable management time on activities that were not central to furthering the firms' competitive advantage. One common example cited was Nike's decision to concentrate on pre-production (research and development) and post-production activities (marketing, distribution and sales), while outsourcing all of its shoe manufacturing.

In the management literature it was taken as given that activities like office cleaning would be outsourced, but it was suggested that many other office support functions

such as IT and payroll could also benefit from being outsourced as supplying firms could provide greater expertise in those areas. Whereas decisions on which activities to outsource would depend on a firm's expertise, a seminal management article of the mid-1990s suggested that a leading Australian beer company's "true competencies" lay in "brewing and marketing beer" and that "many of its distribution, transportation, and can production activities, for example, might actually be more effectively contracted out".<sup>20</sup>

Many multinationals took this advice to heart and "sales per employee" became a standard reference in shareholder reports.<sup>21</sup> This further encouraged firms to reduce headcount numbers through outsourcing, with maintenance, cleaning, distribution, IT, payroll and human resources being the first to be contracted out. While many businesses restricted outsourcing to peripheral functions, others came to rely on non-standard work arrangements for what were arguably core functions.<sup>22</sup> In his book *The Fissured Workplace* (2014), David Weil documents the myriad of industries that have "fissured" key functions of their businesses, such as major hotel chains that have outsourced front-desk services and cleaning to third-party management companies, and the telecommunications companies that have subcontracted installation and home-repair services to legions of "self-employed" workers.<sup>23</sup>

Depending on the activity, outsourcing could be to local suppliers or abroad, as in the offshoring of manufacturing and customer service hotlines, for example. Advances in communication, the fall in transport costs and the passage of numerous bilateral and multilateral trade agreements facilitated offshoring, leading to the parcelling out of activities to suppliers throughout the world and the emergence of what came to be known as "global supply chains" or "global value chains". Some industries, such as apparel, electronics and agricultural production, were restructured around this model, with lead firms – typically headquartered in Europe and North America – focusing on higher value added activities of design, marketing and distribution, and suppliers – located throughout the world, though often in developing countries – concentrating on lower value added activities of raw material sourcing and production.

Management experts began to argue that workers in NSE could be beneficial in core areas if they were a potential source of "knowledge relating to occupational and industry best practices", which they could then bring into the firm.<sup>24</sup> Firms were also encouraged to use such workers in non-core areas if they were in a highly competitive business environment and their use would result in direct cost savings.<sup>25</sup> Thus, whether workers on an assembly line or sales staff at a retail store were central to the enterprise's core competencies came to be a highly subjective decision, resulting, as will be shown later in this chapter, in remarkably divergent practices within industries and between countries.

#### 4.1.2. Cost advantages and the influence of regulation

Workers in NSE are often cheaper, either because of lower wages or as a result of savings on social security and other benefits.<sup>26</sup> In some instances, regulations put in place may unintentionally – or deliberately – encourage the use of NSE arrangements, for example when part-time workers fall below the threshold of social security coverage, or when fixed-term workers are excluded from severance pay. As one comparative study of NSE

in the United States, Japan and Europe noted, “each type of non-standard employment exists in its current form because there is either a relative absence of a regulatory environment or a regulatory environment that frames its use”.<sup>27</sup>

Indeed, the increasing use of temporary employment, especially in Europe over the past three decades, has often been attributed to the lower firing costs associated with terminating temporary contracts at their end date, compared to permanent contracts. While workers on FTCs are typically as protected for the period covered by the contract as permanent workers (in some instances, termination of such contracts before their end date may require payment of all wages due until the end of the contract), when it ends, no additional reasons usually need to be provided by the employer to justify the end of the employment relationship. Whereas if an employer terminates an employment relationship with a permanent worker, certain costs, such as severance payment, costs associated with notification procedures and other compensatory payments may need to be made.

From the 1970s onwards, as discussed in earlier chapters, numerous European countries partly deregulated their labour markets with the aim of increasing labour market flexibility and stimulating job growth. The reforms allowed for a wider use of temporary contracts by expanding their scope to jobs that were not necessarily temporary in nature, and by increasing the permitted duration and the number of times a contract could be renewed. At the same time, employment protection for permanent workers remained relatively intact. As a result, the gap between the ease of hiring a temporary worker and dismissing a permanent worker grew, leading many to attribute the growth of temporary employment to these partial reforms.<sup>28</sup> Similar reforms of the use of temporary labour were undertaken in some developing countries in the 1990s, particularly Peru.<sup>29</sup>

While low termination costs for temporary workers (at the end date of the contract) have to be weighed against the expenses associated with the regular search for new workers,<sup>30</sup> the reforms nevertheless created a strong incentive for employers to offer temporary contracts for entry-level jobs more systematically.<sup>31</sup> In Italy, Poland, Portugal, Slovenia, Spain and Sweden, the share of new hires on temporary contracts exceeded 75 per cent during 2000–15.<sup>32</sup> While in theory the proportion of temporary workers would increase with the strictness of employment protection for permanent contracts,<sup>33</sup> the empirical evidence on this assumption is mixed, with some studies finding no or very mild evidence,<sup>34</sup> others finding more robust support,<sup>35</sup> and still others finding that there is an effect, but that it is limited to specific groups, such as youth.<sup>36</sup> Moreover, the influence of specific regulation is likely to be contingent on economic conditions.<sup>37</sup>

Other regulatory differences, such as thresholds on social security and other entitlements for part-time work as well as other forms of NSE, make these arrangements cheaper, unwittingly creating incentives for their use. A telling example is the “mini-jobs” in Germany. Until 2013, employers paid reduced social security contributions on these marginal part-time jobs, up to a 400-euro threshold. The number of mini-jobs expanded from 5.6 per cent of total employment in 2003 to 7.7 per cent in 2015.<sup>38</sup> Similarly, in the Republic of Korea, a study of the use of “irregular workers” (temporary workers with contracts lasting less than one year and day workers with a contractual duration of less than three months) found that one reason employers used these contractual forms was to avoid social security obligations, as these workers are exempt from some forms of social

insurance.<sup>39</sup> In China, state-owned enterprises were more likely to use temporary agency workers, in part so that they could pay the lower social security contribution required of private companies (12 per cent), compared with state-owned enterprises (20 per cent).<sup>40</sup>

In other instances, the lower wages paid to workers in non-standard work arrangements create incentives for their use. As will be shown in Chapter 5, in the vast majority of cases, workers in NSE are paid lower wages than permanent workers. Lower wages can be attributed to the shorter tenure of employment, particularly if the workers are on a temporary contract, or simply unequal treatment of workers in NSE, as when workers in NSE are excluded from corporate benefits, such as annual bonuses or a private pension plan.<sup>41</sup> Some firms offer fringe benefits to their permanent employees and use non-standard work arrangements to offset such costs.<sup>42</sup>

In the United States and Canada, part-time employment is favoured by many employers, especially in retail, mainly to aid flexibility over hours, but also because of the lower hourly wage and reduced benefits that are often provided to part-time workers.<sup>43</sup> In the United States, non-discrimination clauses in US tax law require companies that provide a pension plan or health insurance to offer it to all employees, with the exception of part-time employees working fewer than 35 hours per week, in order to qualify for preferential tax treatment.<sup>44</sup> Thus, by hiring part-time and temporary agency workers, employers are able to give benefits to a more restricted group of workers without losing access to their preferential tax status.<sup>45</sup> In Mexico, in contrast, minimum wages are set daily rather than hourly, the threshold for overtime pay is 48 hours per week, and social insurance is universal. As a result, there are fewer incentives to use part-time workers, and they are not commonly found in the retail sector.<sup>46</sup>

Another influence that is often overlooked is the decline of unionization that has occurred in many – though not all – countries throughout the world. In the Anglo-Saxon countries which have historically leaned towards regulating the labour market through collective agreements rather than through statutory provisions, the decline in unionization over the past 35 years has created opportunities for firms to develop employment practices that do not conflict with prevailing laws, yet run counter to hitherto prevailing practices. For example, the emergence of zero-hours contracts in the United Kingdom, “if and when” contracts in Ireland and “just-in-time scheduling” in the United States is not due to the introduction of new legislation, but rather to the recognition by businesses that it was not necessary to provide guaranteed hours to workers within the employment contract, and that new arrangements could be introduced to increase their scope for employing labour more flexibly.

Beyond debates on costs emanating from regulation, management studies have documented how employers evaluate costs associated with screening, hiring and training when determining the use of NSE. In general, organizations devoting significant resources to hiring workers with highly job-specific profiles, as well as firms providing company-specific training, are less likely to fill vacancies with temporary workers, as they seek to recover their investment in the longer term.<sup>47</sup> However, if temporary contracts can be used for screening,<sup>48</sup> then hiring costs may be reduced by greater use of temporary work,<sup>49</sup> provided that temporary contracts are subsequently converted into open-ended contracts. As the pool of potentially suitable job applicants is greater during a recession, firms have stronger incentives to use temporary contracts for screening

purposes when unemployment is high.<sup>50</sup> As such, the overall effect of hiring costs on the use of temporary workers depends on the type and purpose of temporary contracts. Firm size can also mitigate the demand for temporary labour, as larger firms are better able to spread various costs, including the training of new employees, over a wider base.<sup>51</sup>

### 4.1.3. Standardization and technology

Whereas the economics literature has focused on the use of temporary labour as a response to demand fluctuations, the management literature has emphasized the production model of the firm, particularly the extent to which production is standardized. The simplification of tasks brought about by technology means that tasks can be performed by less skilled workers, who need less training and can thus be brought in at short notice.<sup>52</sup> As a result, turnover is less costly and there is less of an incentive to cultivate long-term employment relationships. Yet while some studies find that firms using computerized technology are also the ones that revert more often to using fixed-term workers,<sup>53</sup> more sophisticated technology may increase firm-specific knowledge and lessen recourse to temporary and outsourced labour, both to save on training costs and to preserve firm know-how.<sup>54</sup> Similarly, complex jobs, either from an interpersonal or a technological viewpoint, are less likely to be performed by temporary workers, and thus firms' "knowledge workers" are most likely to be permanent employees.<sup>55</sup> In addition, even with standardized production models, there may be advantages to having a stable workforce, in which the worker is encouraged to communicate problems and suggest innovations.<sup>56</sup> Still more recent technological developments, such as the growth of platform-based work sites, allow firms to hire workers with a variety of skill levels from around the world. They have further facilitated the outsourcing of tasks that may have previously been done in-house; firms may keep production in-house, but use technology to assemble teams of employees who work around the world in virtual contact with each other.<sup>57</sup>

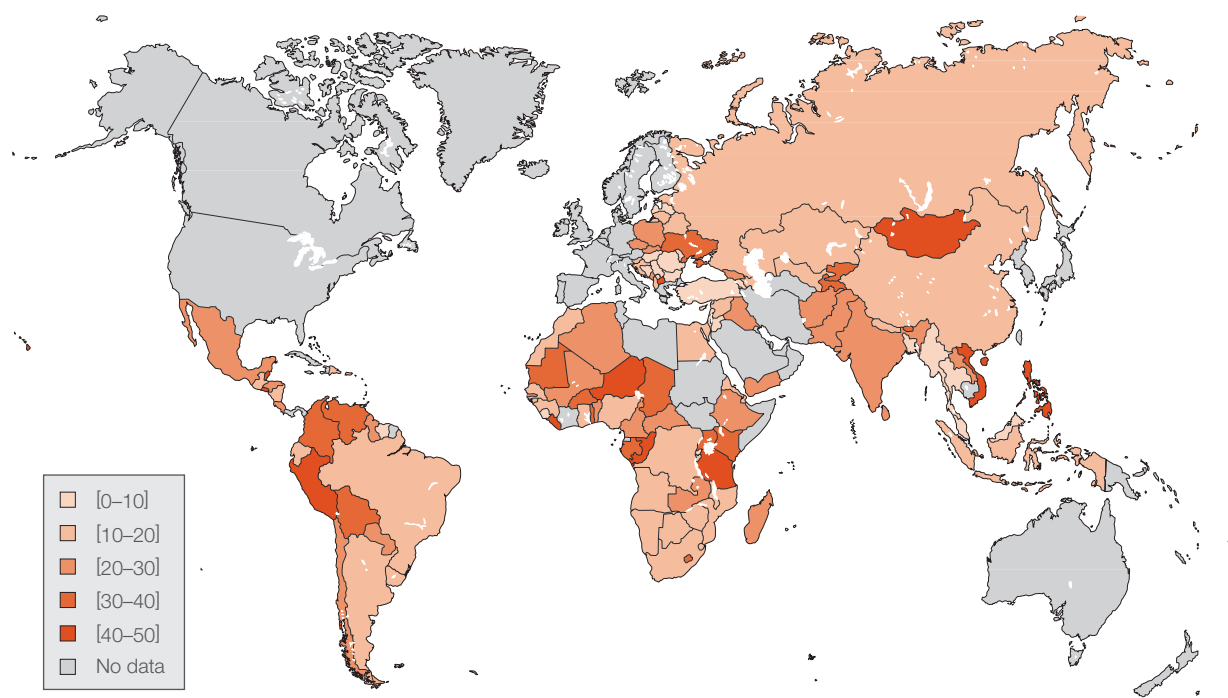
## 4.2. HOW WIDESPREAD IS THE USE OF NON-STANDARD EMPLOYMENT AMONG FIRMS?

While the literature gives the impression that all firms use and benefit from employing workers in non-standard arrangements, in practice recourse to the different forms of NSE is uneven. Available evidence suggests that firms can be broadly classified into three groups: firms that do not rely at all on NSE; firms that employ some workers on these contractual arrangements, but on an occasional basis, to a moderate degree and usually for "traditional" purposes such as the ones outlined above; and firms that use forms of NSE intensively and have made these work arrangements central to their human resource and organizational strategies.

One useful source of information on firms' use of temporary labour is the World Bank Enterprise Survey, an establishment survey of formally registered private manufacturing and service companies with five or more employees in 132 developing and transition countries. The survey includes a question on the number of "temporary or seasonal employees, defined as all paid, short-term (less than one year) employees with no



**Figure 4.2.** Temporary employment as a percentage of total wage employment in private sector firms, developing and transition countries, circa 2010

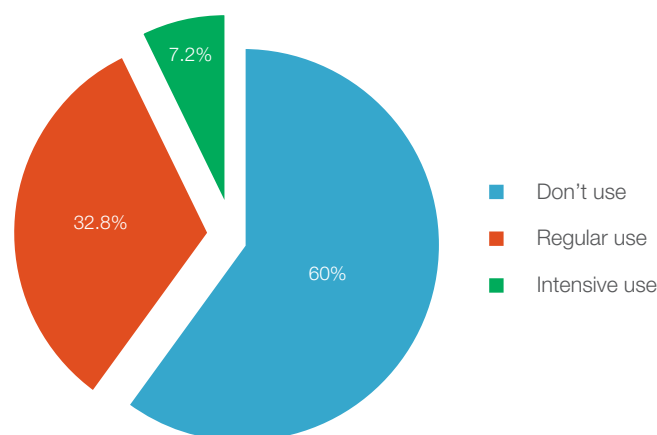


Notes: Data for 132 countries, for the latest available year, ranging from 2005 for Morocco and Egypt to 2014 for Afghanistan and Myanmar. For the majority of countries (67), data refer to 2009 or 2010.

Source: Authors' computations based on the World Bank Enterprise Survey, 2014.

guarantee of renewal of employment contract". This definition is different from the one used in national statistics and is also narrower as it excludes temporary workers employed for more than one year or having been promised that their temporary contract will be renewed. The survey does not cover temporary workers in non-registered companies, either. As a result, the firm-level numbers expanded to the national level represent a lower bound on the number of temporary workers in a given country. The advantage of the data is that the question is uniform across all countries, so that the figures are genuinely comparable.<sup>58</sup> Based on this survey, figure 4.2 shows the world distribution of temporary employment in formal firms around 2010. The share ranged from under 5 per cent in Jordan, Latvia and Sierra Leone, to over 25 per cent in Mongolia and Peru. The findings are broadly consistent with the available data collected from national sources and presented in Chapter 2. The mean share of temporary workers across the 132 countries surveyed was 11 per cent; in about one-third of countries the share of temporary employment was situated around this mean.

These averages, however, also conceal significant disparities across firms. Among the 73,000 firms in the World Bank Enterprise Survey, 60 per cent reported not using temporary employment during the year of the survey (figure 4.3). Of the 40 per cent of

**Figure 4.3.** Firms' use of temporary workers, developing and transition countries, circa 2010 (percentages)

Note: Regular use means between zero and 50 per cent of workers on temporary contract; intensive use means > 50 per cent of workforce on temporary contracts.

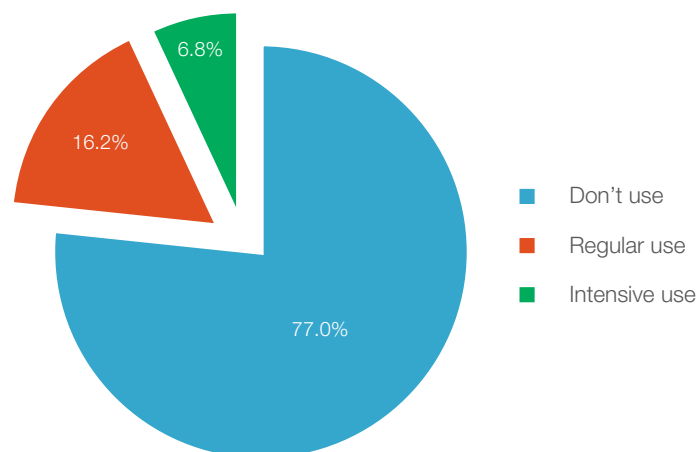
Source: Aleksynska and Berg, 2016; calculations based on World Bank Enterprise Survey, 2014.

firms that did use temporary labour, 18 per cent used it intensively, with half or more of their workforce employed on temporary contracts. These firms accounted for 7.2 per cent of all firms and the average proportion of temporary workers in their workforce was 63 per cent. In fact, 5 per cent of all firms accounted for 57 per cent of all of the temporary labour used among the firms in the survey. The average proportion of temporary labour in “regular using firms” (greater than zero but less than 50 per cent of workers on temporary contracts) was 19 per cent (see figure 4.3).<sup>59</sup>

Moreover, an analysis of the firms that used temporary labour intensively (defined as 50 per cent or more of the workforce employed on temporary contracts) found that they were more labour intensive and invested less in the training of temporary workers, thus supporting the core–periphery hypothesis. They also tended to be older and less productive firms. In contrast, “regular” users of temporary labour appeared to be younger and more efficient and invested in the training of temporary workers, indicating that these contracts were used more for screening purposes.<sup>60</sup> Furthermore, there was considerable variation within individual sectors in the use of NSE, indicating that the demands of the production process were not always the driving force in deciding to what extent to use alternative employment arrangements.

The same study found that the most robust explanation for the use of temporary labour was whether FTCs were prohibited for permanent tasks in national legislation. Amongst the firms using NSE intensively, regulations allowing for an unlimited use of temporary labour and those allowing for longer probationary periods were also important. Yet legislation on the termination of “standard” contracts, which is often put forward in policy debates as a factor for the recourse to NSE, did not seem to have any effect. What mattered was the restrictions on the use of temporary contracts.<sup>61</sup>

Other sources of establishment data reveal a similar pattern of intensive use among a subset of firms. In the United States, the US National Employer Survey found that

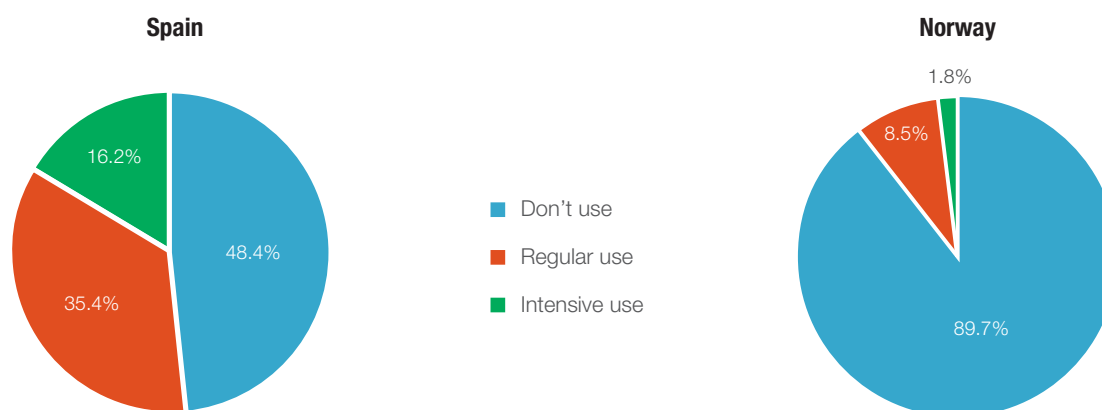
**Figure 4.4.** Firms' use of temporary workers, 22 European countries, 2010 (percentages)

Note: Temporary workers include workers on FTCs and temporary agency workers. Regular use means between zero and 50 per cent of workers on temporary contract; intensive use means > 50 per cent of workforce on temporary contracts.

Source: Authors' calculations based on the EU-SES survey.

43 per cent of all establishments had used at least one temporary agency worker (hence nearly 60 per cent of firms had not used any), and that there was a “small group of establishments [that made] extensive use of these alternative arrangements”.<sup>62</sup> Indeed, among the top 5 per cent of firms using NSE, 66 per cent of the workforce was part time and 39 per cent were temporary workers (of which 10 per cent were hired through a temporary employment agency). A similar study of US businesses found that among firms using part-time and on-call workers, 8 per cent had more than three-quarters of their workers in part-time arrangements and 17 per cent had more than three-quarters of their workers in on-call arrangements.<sup>63</sup>

Data from the European Union Structure of Earnings Survey (SES), an establishment-level survey covering private sector firms with at least ten employees in 22 European countries, provide information on the use of temporary (fixed-term and temporary agency workers) and part-time workers in European enterprises.<sup>64</sup> The survey reveals that in 2002, on average, 9.6 per cent of workers employed in those firms were on temporary contracts, rising to 12.6 per cent in 2006 and then falling to 11.6 per cent in 2012 as a result of the economic crisis. Within the 22 countries and even within enterprises in specific countries, there was wide variation in the use of FTCs, as was the case for the developing and transition countries in the World Bank Enterprise Survey and among enterprises in the United States. Thus, in 2010, 77 per cent of firms in the EU survey did not use any temporary workers, 16 per cent used them regularly (less than 50 per cent of their workers were employed as temporary workers), and 6.8 per cent of firms used them intensively (more than 50 per cent of their workers were either fixed-term or temporary agency workers) (see figure 4.4). Moreover, 5 per cent of enterprises accounted for 76 per cent of all temporary workers employed.

**Figure 4.5. Firms' use of temporary workers, Spain and Norway, 2010 (percentages)**

Note: Temporary workers include workers on FTCs and temporary agency workers.

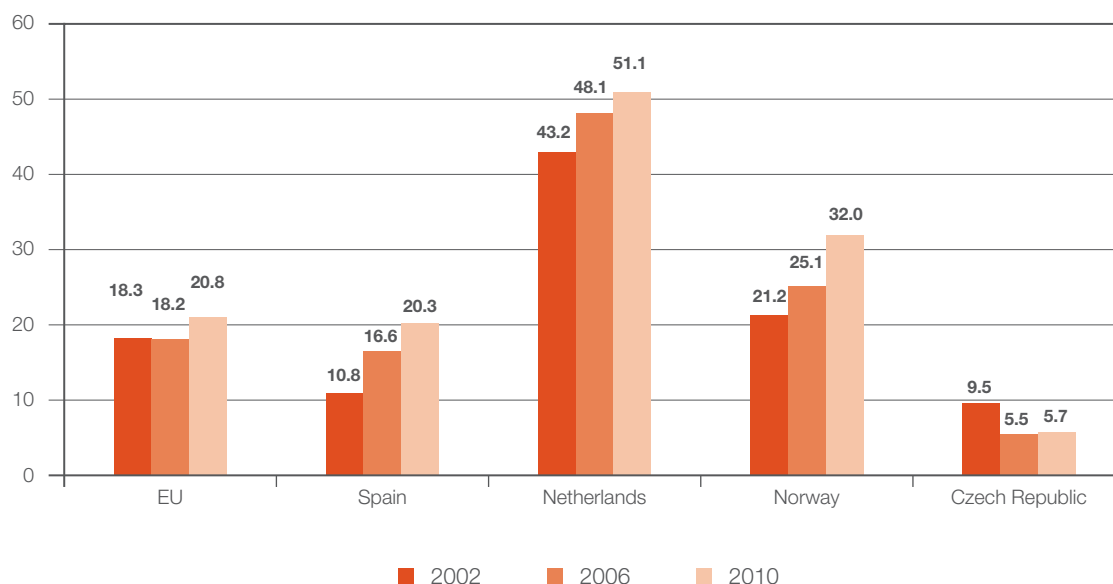
Source: Authors' calculations based on the EU-SES survey.

In Spain, temporary work is much more widespread, with Spanish firms in 2010 employing on average 22.5 per cent of their workers on temporary contracts, down from 28.4 per cent in 2006. Yet there is still wide disparity in the use of temporary workers among firms. As shown in figure 4.5, nearly half of all Spanish firms did not use temporary workers at all in 2010, though 35 per cent used them regularly and 16 per cent relied on them intensively (down from 19.4 per cent in 2006). In contrast, in Norway, where firms' use of temporary employment averaged just 4 per cent in 2010, 90 per cent of firms did not use temporary labour, 8.5 per cent used it regularly and 1.8 per cent used it intensively. As in other countries, there was a concentration of use among Norwegian firms, with 5 per cent of firms accounting for 90 per cent of all temporary workers employed (see figure 4.5).

With respect to part-time workers (where part-time work is defined according to national laws and collective bargaining agreements), there are also significant differences across Europe. Overall, for the 22 European countries surveyed, approximately 20 per cent of workers were employed part time in 2010, a slight increase on 2002 and 2006 figures. The widespread use of part-time work in the Netherlands is also evident in the firm-level data, with enterprises reporting that half of their workers in 2010 worked part time (see figure 4.6).

In the Republic of Korea, a 2009 survey of in-house subcontracting (whereby workers are hired through a subcontractor but work on the premises of the lead firm) in 1,764 firms with more than 300 employees, found that 55 per cent used in-house subcontracting and that in 8 per cent of the firms, more than 50 per cent of the workforce were in such an arrangement. While in-house subcontracting was most common in the steel and automobile industries, where it had originated, it had spread throughout manufacturing and services and was also common among public sector industries.<sup>65</sup>

An analysis of the intensity of use of contract labour in Indian manufacturing found that labour-intensive industries (those where wage costs constituted a high percentage of

**Figure 4.6.** Firms' use of part-time workers, 2002, 2006 and 2010 (percentages)

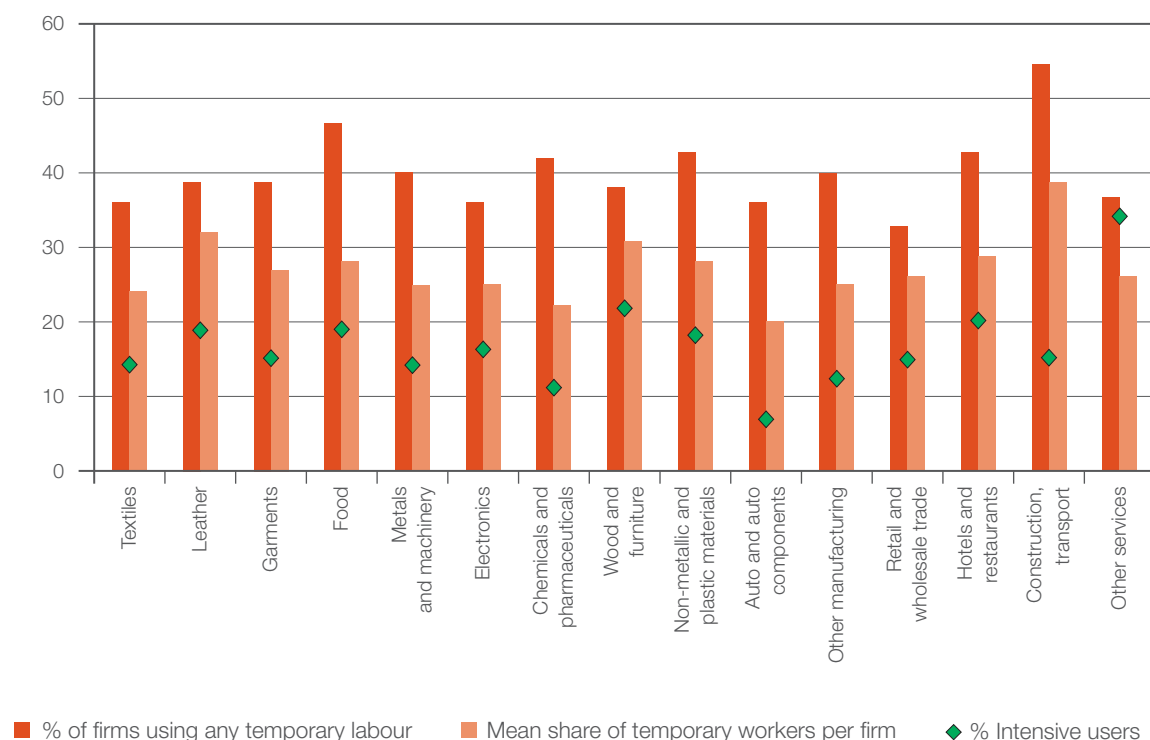
Note: Part-time work is defined according to national laws or the definition used in prevailing collective bargaining agreements. Data for EU are for 22 European countries covered in the SES survey.

Source: Authors' calculations based on the EU-SES survey.

total costs) were more likely to use contract labour and that these firms increased their use between 1998 and 2012. Contract labour intensity was also higher in those firms where the wage ratio between directly engaged and contract workers was low, most likely reflecting the lower skill requirements and greater ease with which the firms could replace the workers. This is further supported by the finding that the skill level of the workforce was negatively correlated with the use of contract labour.<sup>66</sup>

Concentrated use of NSE among firms can also be found in micro-task platforms (or “crowdwork”), where clients post jobs on online platforms to be performed by workers based anywhere in the world. Market demand analysis on the crowdwork platform Amazon Mechanical Turk revealed that a few companies account for the bulk of the business. Indeed, the top 0.1 per cent of requesters accounted for 30 per cent of activity (measured in dollar value of tasks) and 1 per cent of requesters posted more than 50 per cent of dollar-weighted tasks.<sup>67</sup>

As mentioned earlier, use of NSE is higher in certain economic sectors, especially those that are subject to seasonal fluctuations, such as agriculture, construction, transport and tourism. Based on data on the manufacturing and services sectors of 118 developing and transition countries, collected in 2006–14, figure 4.7 shows the percentage of firms using temporary labour by sector, the average share of the workforce that is comprised of temporary labour among user firms, as well as the percentage of firms in which half or more of the workforce is made up of workers on temporary contracts (intensive

**Figure 4.7. Use of temporary labour by economic sector, developing and transition countries (percentages)**

Note: Intensive users are those firms in which half or more of their workforce is comprised of temporary workers. Data for 118 countries, all survey years (2006–14).

Source: Aleksynska and Berg, 2016; calculations based on World Bank Enterprise Survey.

users). Of the sectors for which data are available, construction and transportation firms employed the highest number of temporary workers, with 55 per cent using temporary labour and employing on average 39 per cent of their workforce on temporary contracts. Within manufacturing, it was the leather industry that employed the largest share of temporary workers (average proportion of temporary employees per firm is 32 per cent). Intensive users of temporary workers were found mainly in services, but also in the wood, food and leather industries. Interestingly, the presence of intensive users in sectors such as construction and transport was more limited (15 per cent), suggesting that the motivations of the “intensive” users extended beyond seasonality or other demands of the production process and reflected a specific approach to the organization and management of human resources.

### 4.3. EFFECTS ON FIRMS

With the growing incidence of NSE, it is important to understand the implications for firms in terms of managing the non-standard workforce and its interactions with standard workers, how organizational competences are affected by non-standard work, and what effect NSE has on a firm’s productivity.



### 4.3.1. Recruiting, training and managing workers in non-standard employment<sup>68</sup>

Non-standard work arrangements can change the ways in which firms manage their human resources. From the initial decision on whether to have the work done in-house by standard workers or to hire workers on short-term contracts, or to outsource the work to an external agency, NSE affects basic human resource management practices such as employee selection, training and skills development, career planning and retention of staff.

There are at least four ways in which enterprises must adapt their management and organizational practices in order to successfully accommodate non-standard workers.<sup>69</sup> These include (1) the design of jobs that are suitable for non-standard workers, worker recruitment and retention; (2) managing the terms of exchange between the firm and these workers; (3) managing relationships of non-standard and standard workers in the workplace; and (4) aligning the interests of the organization with those of the non-standard workers.

The use of NSE can have multiple effects on the recruitment and selection functions of firms. When the work is associated with tasks that are not core to the organization,<sup>70</sup> or do not involve valuable and proprietary knowledge or technology,<sup>71</sup> the recruitment and selection of workers do not require quite the same care and precision that would be required for workers who are likely to move into longer-term contracts that are central to the competitiveness of the organization.<sup>72</sup> Nonetheless, businesses must be clear about which jobs are “strategic” and should not be filled by non-standard workers – or at least not on an indefinite basis. Studies of “talent management” argue that strategic jobs are not just managerial jobs but also include diverse, yet core functions; for example, worker performance in such diverse jobs as cashiers at the US big-box retailer Costco, street sweepers at Disneyland or record producers at music studios is central to an organization’s success.<sup>73</sup> Similarly, the Spanish grocery retailer Mercadona made its store employees central to the company’s competitive strategy with great success (see box 4.1); this entailed employing all the workers on permanent contracts and investing heavily in training.

Firms’ use of NSE is sometimes seen as a way to reduce the uncertainty in the selection process by “trying out” workers, who may be provided through third-party temporary work agencies, before moving them into more permanent positions.<sup>74</sup> If firms can try before they hire, they can be sure that the individuals to whom they finally offer standard contracts are indeed the ones who add the most value. Nevertheless, this dependence on third-party agencies to find employees can reduce the organization’s ability to recruit from the external market, and the practice of prolonging the selection process can also make hiring workers more cumbersome.

The use of NSE arrangements has to a large extent shifted the responsibility of training and development from firms to individual workers.<sup>75</sup> As a result, as the proportion of workers in NSE in an enterprise increases, there is a commensurate decrease in the organizational investment in the training of those employees.<sup>76</sup> One of the implications of these work arrangements is that the human resource department must shift its competencies from training and development of employees within the organization to identifying the sets of skills they need to acquire outside the firm and to procuring

**Box 4.1. Mercadona: Employee stability, commitment and success**

In the early 1990s, family-owned Spanish supermarket chain Mercadona was struggling with its market share in the face of new competition from international retailers such as Carrefour. In 1993, the company's CEO decided to make a strategic shift in its business operations away from high–low pricing with promotions to keep “always low prices”, as well as to institute a system of Total Quality Model (TQM) based on nine principles centred on commitment, efficiency, quality, value and continued improvement.

As employee involvement was a core pillar of the TQM, the company changed the way it managed its employees by giving them more stable work schedules, more training, more benefits and more opportunities for advancement. New store employees participate in a four-week training course followed by three weeks of mentoring by a specialist from their assigned area, and throughout their career participate in further training on products and processes. The schedules of store employees alternate each week between four different shifts, and workers know their schedule one month in advance. Salaries were raised, with new full-time employees earning double the minimum wage. And in a country where fixed-term employment is endemic, accounting for nearly one-quarter of employment (and over 30 per cent prior to the global financial crisis), all of Mercadona's 74,000 employees are on permanent contracts.

The company recognizes that store employees are the point of contact with customers and are thus best placed to suggest improvements. Well-trained workers who are on secure employment contracts are committed to the company, motivated and empowered to do their best. Employee satisfaction is indeed high, with turnover in 2012 at a remarkably low 3.4 per cent. The strategy has also paid off for the company as sales per employee went up steadily from EUR 109,500 in 1995 to EUR 257,800 in 2012, with sales per square foot and labour productivity much higher than those of its competitors.

Source: Ton, 2014.

these skills in an efficient and timely manner. This shift requires good human resources systems that facilitate the timely recognition of the need for particular skills or competencies in the organization. At the same time, this dependence on buying in all the skills that the firm needs could affect organizations in two ways. First, it could result in a gradual erosion of firm-specific skills in the organization:<sup>77</sup> businesses that describe their human resources as one of their key assets are not really marking themselves out as distinct from their competitors. A second implication is that the firms' ability to respond to changing markets might be restricted. Since the focus is less on training-for-skills and more on hiring-for-skills, firms could be limited in the extent to which they can change by the availability of skills in the labour market.

Firms can manage their non-standard workforce by carefully designing jobs that are amenable for workers who do not work full time or on an ongoing basis, or who are employees of a third-party firm. Typically these are jobs with less complexity or necessitating fewer or lower levels of skills,<sup>78</sup> or jobs that are linked to seasonal demand. The key competency required of the organization is the ability to match jobs with individuals. For example, part-time work may not be appropriate for individuals new to a task, but may become a better fit when they are comfortable with the tasks and the organization.<sup>79</sup> Similarly, assigning complex tasks that require working interdependently with others may not suit temporary workers who are with the business for a short period of time.<sup>80</sup>



Office workers, Mozambique

© World Bank/Eric Miller

Non-standard workers are often in a tenuous position trying to manage a situation that is both within and outside the organization. One way to accomplish this is by managing their relationships with people in the workplace. There are multiple reasons for non-standard workers being excluded from social networks at work, including their physical distance from others, as is the case for virtual workers,<sup>81</sup> or because they are temporary,<sup>82</sup> or because of organizational practices such as making temporary workers wear distinctive badges or uniforms that highlight the difference between them and standard workers.<sup>83</sup> However, a number of studies have shown that good interpersonal relationships with co-workers<sup>84</sup> or supervisors<sup>85</sup> can help contract workers and temporary workers identify with their client firms. The managerial competency required for the effective management of non-standard workers is to develop processes that facilitate good horizontal and vertical interpersonal relationships. Ironically, the increase in the percentage of non-standard employees in a firm can inadvertently lead to the development of denser management bureaucracies.<sup>86</sup>

Managers are needed to improve the connection that temporary or contract workers have to the firm by helping them see how their identity is aligned with that of the firm.<sup>87</sup> When workers can see how their personal interests, and the ways in which they view themselves, can be facilitated by the organization, they are more committed to the firm and its interests. This can be done more easily with “knowledge” workers, who may be happy to remain outside the firm, or “hired guns”, since they see this liminal position as consistent with their own professional identities.<sup>88</sup> For example, a study of leased

workers in the IT industry showed that they tended to identify with more prestigious firms, since the positive image of the organization facilitated their own positive views of themselves.<sup>89</sup> The managerial competency that this research suggests is that of understanding the core of non-standard workers' identities (and their related motivations) and engaging with the workers in a way that can help them realize, maintain or enhance these identities.

Most of the management literature has focused on the firms seeking workers and the implications for integrating non-standard workers into their labour force, yet there are also more extreme situations, for example when foreign temporary workers are the principal labour source for a firm. This practice, which is widespread in many Asian countries, has become increasingly prevalent in some Central European countries, with implications for both the employers and the procuring agencies. For example, at the factory of a Taiwanese electronics manufacturer in the Czech Republic, between 40 and 60 per cent of the workforce is employed through three temporary work agencies, each of which specializes in recruiting workers from different Eastern European countries who speak a variety of languages.<sup>90</sup> The temporary work agencies not only recruit workers internationally and manage their employment, but also provide transport and housing to foreign workers in order to meet the demand for in-time production. The agencies thus manage both work-related and other issues, including conducting recruitment campaigns locally and internationally, processing paperwork, providing transport from workers' countries of origin as well as to the factories once the workers have arrived, providing training and interpretation services to migrant workers, and organizing workers' lives if they are housed in communal dormitories. Firms which use temporary labour supplied through such agencies then have to manage the diverse workforce, as well as their relationship with several agencies. They also rely on the agencies to supply the right workers on time, and place sufficient trust in the intermediary managers to provide correct instructions to the workers, especially when they speak other languages. All of these responsibilities may result in high costs to the lead firm.

#### **4.3.2. Employees in non-standard employment and their attitude towards the enterprise**

Much of the research on NSE has focused on the attitudes and behaviour of these workers, especially compared to standard workers. For the most part, users of NSE have assumed that non-standard workers – on account of their limited temporal, physical or administrative attachment to organizations – will demonstrate a weaker attachment to the firm. Some have argued that this weaker attachment is likely to be manifested in a reduced attempt to assimilate socially,<sup>91</sup> lower performance,<sup>92</sup> weaker identification with the organization,<sup>93</sup> lower motivation and effort as compared to regular workers, including higher absenteeism,<sup>94</sup> lower job satisfaction,<sup>95</sup> or lower commitment to the organization.<sup>96</sup> While there is some empirical support for these arguments, it is not uniform.

Some studies have found that non-standard workers are less attached to the organization,<sup>97</sup> while others have found no differences between the two categories,<sup>98</sup> and still others have found non-standard workers to be more attached to organizations than their standard colleagues.<sup>99</sup> Most of these studies have been undertaken using samples of



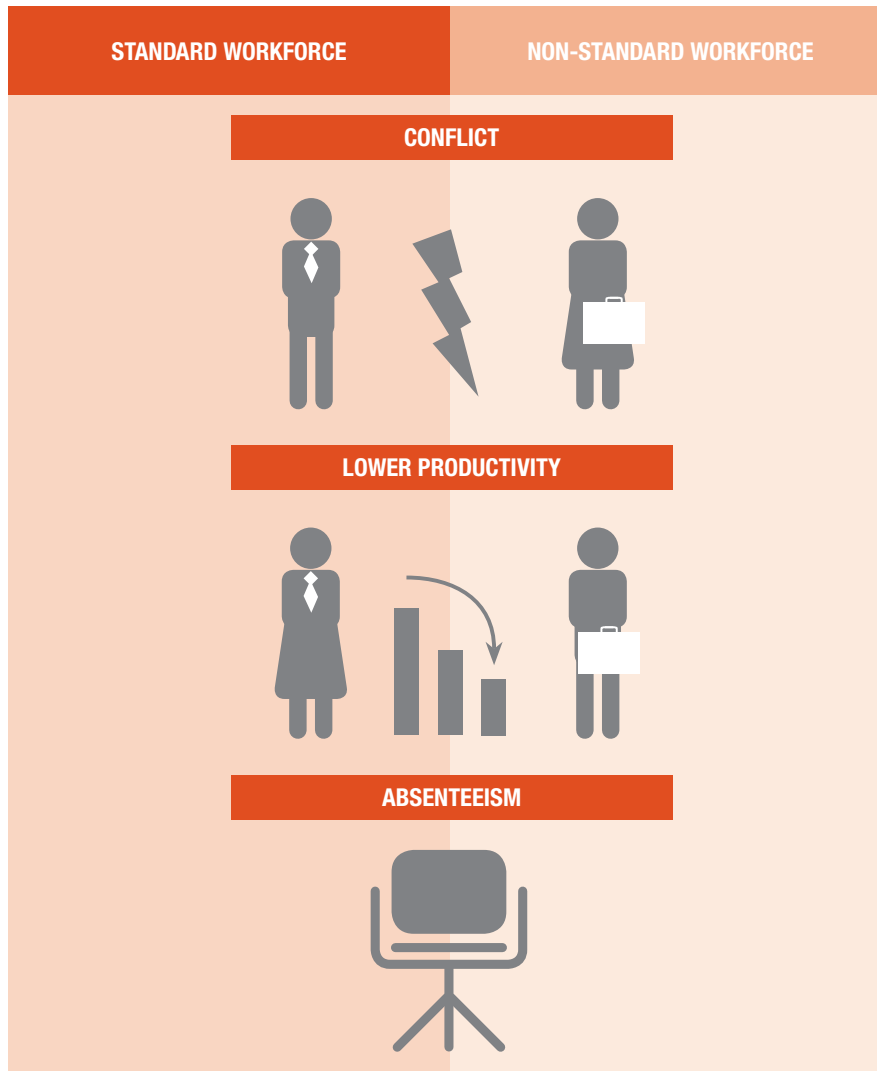
temporary workers who have minimal connections with the organization. Researchers also tested the assumption that limited exposure to the organization would decrease the attachment of remote workers or contract workers. Findings were again mixed as not all those temporary workers questioned responded negatively about the organization, compared with standard workers.<sup>100</sup>

Researchers have tried to understand these mixed results by considering whether the differences in attitudes and behaviour were caused not merely by the work arrangement itself, but also by factors such as whether NSE was a voluntary choice of the individual,<sup>101</sup> or the types of tasks they have undertaken,<sup>102</sup> or indeed the nature of their employment arrangements.<sup>103</sup> For instance, one analysis concluded that individuals who chose to work reduced hours or flexible hours would be more positively inclined towards organizations that facilitated their working in this way.<sup>104</sup> Some individuals actively seek a “boundaryless career” involving movement in and out of organizations, in which case non-standard work might be an ideal arrangement.<sup>105</sup> Yet while the “boundaryless career” may be desirable for highly skilled professionals seeking greater autonomy in their working life, it is rarely sought by lower-skilled workers in basic occupations, where a more tenuous attachment can be a source of insecurity for the worker. Whether NSE translates into greater or lesser commitment by the lower-skilled worker will depend on a variety of factors, including whether there are prospects for staying with the firm in a standard arrangement. For example, two studies in Singapore found that temporary workers were willing to work harder than their standard colleagues in anticipation that their work would be rewarded with permanent contracts.<sup>106</sup>

There is some empirical support for the argument that individuals who work in arrangements that they have chosen are more positively inclined to the organization.<sup>107</sup> Studies in the United States have suggested that contingent workers are more committed to organizations that give them support and treat them fairly,<sup>108</sup> and that the type of job that a person does will affect their attachment to the employer. For example, individuals who have more autonomous jobs are more attached to the organization, even when they are in a temporary position.<sup>109</sup> If organizations provide development opportunities for non-standard workers, this too may motivate the workers and increase their sense of attachment to the firm. A study of Portuguese blue-collar workers from a temporary work agency found that when organizations provided training to these workers they reciprocated by reporting high affective commitment to the firm.<sup>110</sup> Conversely, a study of call-centre workers in China found that when workers had low involvement in workplace practices, commitment was lower and turnover was high.<sup>111</sup>

A second broad stream of research examining the effect of NSE addresses the consequence to workers, and thus to firms, of being in a “blended” workforce or work group in which standard and non-standard workers work side by side. This line of research was prompted by the observation that contrary to the core–periphery hypothesis, standard and non-standard workers have not been segregated from each other in the workplace.<sup>112</sup> Instead, they work alongside each other, often in similar jobs, and this contact is likely to make them more aware of the different terms of employment available – for example in terms of wages, levels of job security and different benefits<sup>113</sup> (figure 4.8). Researchers examined whether the proportion of non-standard workers in a

Figure 4.8. Risks of a blended workforce to the firm



department or work group affected the attitudes of standard workers towards the organization and towards their co-workers.<sup>114</sup> They found that the greater the proportion of non-standard workers, the more negative the standard workers' attitude, and concluded that this was because the presence of non-standard workers signalled management's reluctance to invest in its workforce. As a consequence, standard workers started worrying about the security and value of their own jobs.

More recent studies have found that standard workers who believe that non-standard workers cannot move up the organizational hierarchy (and thus threaten their jobs) perceive their non-standard co-workers as helping hands rather than competitors and respond much more positively to working with them.<sup>115</sup> In general, then, if firms were able to integrate non-standard workers in such a way that they did not threaten the security of standard workers,<sup>116</sup> or enabled standard workers to engage in supervisory tasks,<sup>117</sup> or even reduced the workload of the standard workers,<sup>118</sup> then standard employees were

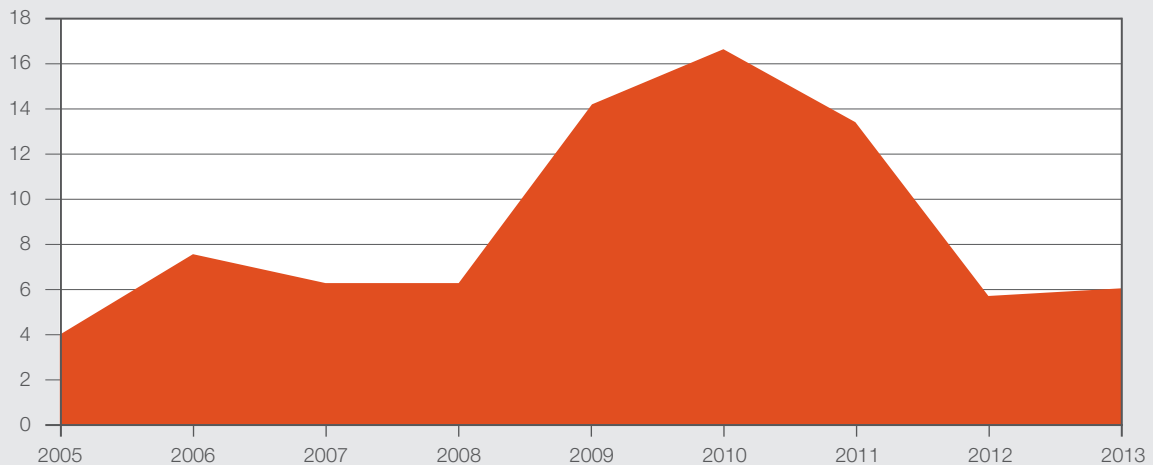


**Box 4.2. Issues of non-standard employment at the heart of industrial incidents and strike actions**

In South Africa, the Department of Labour produces an Annual Industrial Action Report. The report reviews developments in industrial action for a particular year, and highlights key trends. Since 2005, the report has also included a narrative section, providing chronological information on strike incidents. As the report notes, this chronological narrative captures information reported not only by employers, but also by the media, and covers industrial actions that may take place outside working hours.

An analysis of these reports shows that NSE represented an important element in strike action, including wildcat strikes. Nearly 8 per cent of incidents were reported to have some relation to NSE in 2006, peaking at nearly 17 per cent in 2010 (figure 4.9), including demands to regularize contracts of casual or temporary workers and to align their terms and conditions with those of permanent workers, as well as demands to end the use of labour brokers.

**Figure 4.9. Issues related to NSE as a percentage of reported incidents, 2005–13**



Source: Authors' compilation, adapted from South Africa's Annual Industrial Action Reports.

Following the first upsurge in industrial disputes which referenced NSE, the Annual Industrial Action Report of 2006 noted that the sectors in which the lion's share of strikes took place were wholesale and retail trade, community, social and personal services, financial services, and manufacturing, representing almost 92 per cent of workdays lost. These sectors had a "high proportion of their workers in flexible employment relations that were outside the reach of institutional safeguards". The report went on to ask, "Could continuing increase in casualization have played a part in the resurgence [of industrial action]? Could this development have spurred organized labour to flex its muscle in vulnerable sectors?" It concluded that both the vulnerability of these workers and the fact that unions had begun to organize and represent them, seeking "new institutional safeguards" for all workers, including casual and contract workers, were the main reasons for these developments.

Some of these actions took place within the context of the Congress of South African Trade Unions (COSATU) calling for a ban on the use of labour brokers. This received some support from the government, who, following lengthy tripartite dialogue on labour law reforms, introduced a number of amendments over the course of 2010–14, which sought to improve regulation of the use of temporary employment services, FTCs and part-time employment.

Source: Department of Labour, South Africa.

more likely to view the blended workforce positively, with implications for worker morale, output and retention. In addition, when organizations offer employees the opportunity to shift from full-time to part-time employment, the presence of these “retention part-time workers” has a positive spillover effect on standard workers.<sup>119</sup>

Studies examining the blended workforce suggest that a key issue in the retention of both standard and non-standard workers is how the organization manages the social integration of these two groups.<sup>120</sup> Furthermore, the lower the proportion of non-standard workers in the work group, the more positive their attitude.<sup>121</sup> This is because temporary workers view the opportunity to work with standard workers constructively, while if they had more non-standard colleagues they would view their work team as peripheral to the organization.

In summary, the research suggests there is a process of social comparison which influences the way workers perceive their work arrangements. If they feel valued and secure in their jobs, they are more likely to be positively inclined towards their co-workers and the organization. If, however, they feel shortchanged by the firm, they reciprocate by reducing their commitment. Individuals’ perceptions are thus crucial to predicting their responses to non-standard work arrangements. Consequently, how management communicates its intent to all workers is critical for managing expectations related to non-standard work arrangements and their effect on workers.

Most of the studies reviewed in this section contain an implicit assumption that firms making use of temporary labour do not purposefully abuse such practices. It is clear that abuses, whenever they are present, not only render the constructive managerial practices redundant and undermine the positive work attitudes that have been built up, but they can also backfire on abusive employers. For example, use of NSE may become a reason for industrial disputes, either as a direct trigger for a strike or as part of a broader set of demands for striking workers to return to work. Recent evidence from South Africa shows that NSE represented an important element in strike actions, including wildcat strikes (box 4.2). Such strike actions can cause significant disruptions in production and damage firms’ reputation in the longer term. Moreover, the costs of such actions for employers may outweigh the savings accumulated by the use of non-standard work arrangements.

#### **4.3.3. Effects of NSE on organizational performance, productivity and innovation**

The challenges posed by integrating non-standard workers into the workforce ultimately have an effect on organizational performance and innovation. Advocates of temporary and contract work posit that workers who move between firms are a good source of knowledge and learning for the organization on account of their expertise and exposure to practices in different places.<sup>122</sup> Outsourced labour and freelancers, or “IPros” (independent professionals), allow firms to use more specialized labour unavailable in-house which can add creativity and innovation to the work.<sup>123</sup> Moreover, the traditional reasons for using non-standard workers, such as replacing temporarily absent employees, meeting short spikes in demand, screening new hires, or accommodating workers’ scheduling preferences as a retention strategy, perform important functions that can be beneficial for a firm’s productivity. In addition, the literature on voluntary

part-time work stresses positive productivity gains, both for workers and for a country's economy in general. Voluntary part-timers suffer less from fatigue and are usually more focused and productive; those with voluntary flexible working schedules have been found to have approximately 10 percentage points higher productivity than workers with less flexible schedules.<sup>124</sup> Part-time work and flexible working hours may also minimize the interference of family obligations with work.<sup>125</sup>

Nevertheless, the results of most studies on the impact of NSE on firms' overall performance and productivity have not been so sanguine. This is not surprising, given that the research demonstrates the importance of accommodating and managing the integration of non-standard workers into the firm, with implications for workers' attitude and performance, and ultimately the firm's success. Often, the positive short-term cost and flexibility gains from employing non-standard labour are outweighed by longer-term productivity losses as a result of either the lower productivity of non-standard workers, or the negative spillover effects on the productivity of standard workers, or the high transaction costs involved in the management of a blended workforce with high turnover.

Thus, at best, the research shows an inverse U-shaped relationship between the use of temporary workers and firm productivity. For example, one study of a sample of German manufacturing firms found that the use of temporary agency workers initially improved firms' competitiveness (as indicated by unit labour costs), but then led to negative effects.<sup>126</sup> The initial use of temporary workers in this case improved firm productivity because of the facility it provided to screen employees before hiring them, and because of the flexibility in the number of workers it afforded them.<sup>127</sup> Beyond a certain point, however, the use of temporary workers resulted in firms losing human capital and, along with the associated spillover effects, resulted in a loss of productivity. Other studies are more implacable, and warn that firms using higher levels of flexible labour experience lower labour productivity growth. This has clearly been the case in Spain, which is renowned for its high levels of temporary workers and resulting labour market duality.<sup>128</sup> One study there attributed 20 per cent of the slowdown in productivity in manufacturing firms between 1992 and 2005 to the "reduced effort" of temporary workers.<sup>129</sup> Evidence from Italy and the Netherlands also warns that firms using higher proportions of flexible labour experience lower labour productivity growth.<sup>130</sup> Similarly, a study of Member States of the European Union using industry-level panel data found that the use of temporary contracts had a negative effect on labour productivity.<sup>131</sup>

An analysis of the use of temporary workers in firms in 132 developing and transition countries found that the firms that were less productive (measured by sales per employee) were the same firms that used temporary labour "intensively" in their operations (defined as 50 per cent or more of the workforce on temporary contracts).<sup>132</sup> These firms tended to use temporary labour to save on labour costs and did not invest in the training of temporary workers.

The main explanation for the lower productivity of firms that have been using more non-standard labour is that it results in underinvestment in training, both for temporary and permanent employees, reduces incentives to invest in productivity-enhancing technology and patenting,<sup>133</sup> and slows down innovation,<sup>134</sup> not least because less

loyalty on the part of employees raises the likelihood of technological secrets and know-how being leaked to competitors.<sup>135</sup> A firm's performance depends not only on its current investment in research and development, but also on accumulated tacit firm-specific knowledge acquired by employees over time from their own work and from colleagues in previous years or even decades, and how they transmit this information to new employees. Such accumulation of knowledge, however, can only be passed on by ensuring continuity of personnel.<sup>136</sup> Moreover, when workers feel more secure, they are more willing to cooperate with management in developing labour-saving processes and in disclosing their tacit knowledge to the firm.<sup>137</sup>

Non-standard workers, especially those who are in the organization for a limited period of time, might also affect the firms' performance negatively in that they do not have relationships that facilitate the transfer of knowledge within the organization. Some support for this argument was provided by a study of communication patterns among temporary workers, which found that they shared information less often with others than even newly hired standard workers.<sup>138</sup> Lower levels of trust and higher turnover and uncertainty also impede cooperative behaviour and increase tensions among workers.<sup>139</sup>

A study based on a sample of Italian firms found that a higher proportion of temporary workers resulted in higher levels of absenteeism and lower productivity, with the motivation of all workers reduced.<sup>140</sup> On the other hand, a study of the British private sector showed that the presence of temporary agency workers was associated with higher financial performance for the firm, but lower job satisfaction and higher job anxiety among regular workers.<sup>141</sup>

Another problem associated with an over-reliance on temporary workers, especially if they are low skilled, is that they may end up deskilling the organization as a whole and have a detrimental effect on the working environment for all workers.<sup>142</sup> In other words, over time an excessive reliance on temporary workers can erode workers' motivation and lower the level of ability available in the organization to innovate or in other ways contribute to a firm's performance. Nevertheless, one study found that when the relationship between temporary work agencies and client organizations was good, the agency workers felt supported at the client site, and thus developed a more positive attitude towards work. These positive attitudes, over time, resulted in greater unit-level productivity.<sup>143</sup>

An opposing view argued by some management experts is that the risks of engaging non-standard workers (for example, less motivation, loyalty and teamwork) may not matter if the job is routine and highly structured.<sup>144</sup> For some stressful and repetitive tasks, it may even be more productive if "the job is done in short spells by part-timers or temporaries".<sup>145</sup> Moreover, temporary and temporary agency workers may be motivated to work hard in the hope of securing a permanent position.

#### 4.4. SUMMARY

The decision whether to employ workers in NSE arrangements is one taken by individual firms. While this decision is often based on the nature of the work activity, competitive pressures and management trends, regulatory changes and grey areas in such

legislation have influenced some firms to take up NSE arrangements and, in some instances, to make them a central feature of their human resource and organizational strategy.

Traditionally, NSE has been associated with seasonal businesses or other industries that are subject to wide fluctuations in demand, as non-standard workers can provide employers with flexibility in staffing, enabling firms to respond to demand while controlling costs. But firms may also look upon their workforce as divided between a more protected and better-paid “core” group of workers and a “secondary” group of workers who are paid less and perform more peripheral and routine tasks, and can thus be replaced more easily. Regulations can influence the decision to consider a workforce along core–periphery lines if the law sets thresholds for social security or if termination costs for different types of contract differ widely. A related consideration is whether using non-standard workers or subcontracting the peripheral activities of the firm, along the core–periphery divide, can enable firms to concentrate more on those activities that are central to the firm’s competitive advantage.

Though firm-level data on outsourcing are lacking, there are data on the use of temporary workers covering much of the world. The data reveal that the average use of temporary workers by firms worldwide is around 11 per cent, though with significant differences across countries and even within industries. Most firms do not use temporary workers; a smaller, but still substantial group uses them regularly, while a small group of firms account for the bulk of temporary workers employed. While there are larger policy implications of this finding, there are also important consequences for the firms that rely on these employment arrangements.

Thus the decision on whether and how to use NSE arrangements can have far-reaching consequences for the individual firm. To begin with, human resource strategies need to move away from the traditional functions of hiring, training and retaining workers to hiring from the market the skills that are needed. This new model may result in major changes in both the responsibility given to workers and the composition of jobs within an enterprise. Management must also learn how to manage “blended” workforces, so that neither non-standard nor standard workers become disaffected, with negative repercussions on firm performance. Indeed, many studies have found that there are negative consequences for productivity and innovation from using NSE arrangements. Thus while there may be some initial cost savings, there may also be substantial hidden costs for the firm.

## NOTES

- 1 Quinlan, Hampson and Gregson, 2013; Weil, 2014.
- 2 Doeringer and Piore, 1971.
- 3 See, for example, the efficiency-wage model of Bulow and Summers, 1986; also, Shapiro and Stiglitz, 1984 and Saint-Paul's, 1996 model of a dualistic labour market.
- 4 Bentolila and Dolado, 1994.
- 5 Holmlund and Storrie, 2002; Benito and Hernando, 2008.
- 6 Caggese and Cugnat, 2008.
- 7 Ko, 2003.
- 8 Davis-Blake and Uzzi, 1993.
- 9 Abraham and Taylor, 1996.
- 10 Hunt, 2000.
- 11 Saint-Paul, 1996; Bentolila and Dolado, 1994; Abraham and Taylor, 1996.
- 12 Visser, 2002b.
- 13 Heery, 2004.
- 14 Hatton, 2014; Benson and Ieronimo, 1996.
- 15 Eichhorst and Marx, 2011; Devicienti, Naticchioni and Ricci, 2014.
- 16 Tilly, 1991; Carré and Tilly, 2012; Euwals and Hoggerbrugge, 2006.
- 17 Fagan et al., 2014.
- 18 Prahalad and Hamel, 1990.
- 19 Quinn and Hilmer, 1994, p. 45.
- 20 Ibid.
- 21 Berg, 2005, documents this reason as a motivation in her study of multinational practices in the Chilean cosmetics industry.
- 22 See, for example, the discussion in Weil, 2014, and Rubery et al., 2002.
- 23 Weil, 2014.
- 24 Matusik and Hill, 1998, p. 688.
- 25 Ibid.
- 26 Nesheim et al., 2007; von Hippel et al., 1997. See also the review of wage penalties addressed in Chapter 5.
- 27 Gleason, 2006, p. 8.
- 28 See, for example, Bentolila and Dolado, 1994; Blanchard and Landier, 2002; Boeri and Garibaldi, 2007; Faccini, 2014; OECD, 2014.
- 29 Vega-Ruiz, 2005.
- 30 Holmlund and Storrie, 2002.
- 31 Boeri, 2011, based on a Mortensen-Pissarides type model.
- 32 Boeri, 2011; OECD, 2014.
- 33 See Hipp, Bernhardt and Allmendinger, 2015, for a recent literature review of the role of other labour market institutions.
- 34 Aleksynska and Berg, 2016, do not find an effect on the use of temporary labour stemming from the regulation of permanent contracts, but conclude that the regulation of FTCs, whether they can be used for permanent tasks, and the duration of FTCs, do have an influence. Boeri, 2011, finds that in the late 1990s in Italy, the effect of introducing less restrictive regulation for workers on temporary contracts was short-lived.
- 35 Booth, Francesconi and Frank, 2002.
- 36 Kahn, 2007. Note, however, that Kahn, 2007, is based on micro-worker-level data, not on micro-firm-level data; while the theoretical predictions of Boeri, 2011, concern decisions by firms.
- 37 Polavieja, 2006.
- 38 Data from [http://www.sozialpolitik-aktuell.de/tl\\_files/sozialpolitik-aktuell/\\_Politikfelder/Arbeitsmarkt/Datensammlung/PDF-Dateien/abbIV91.pdf](http://www.sozialpolitik-aktuell.de/tl_files/sozialpolitik-aktuell/_Politikfelder/Arbeitsmarkt/Datensammlung/PDF-Dateien/abbIV91.pdf) [accessed 24 June 2016].
- 39 Cho, Kim and Kwon, 2008.
- 40 Liu, 2015.
- 41 Lee and Yoo, 2008.
- 42 Davis-Blake and Uzzi, 1993; Kalleberg, Reynolds and Harsden, 2003; Houseman, 2001.
- 43 Tilly, 1991; Carré and Tilly, 2012.
- 44 See Houseman, 2001, footnote 12, for a more detailed explanation. The Employer Shared Responsibility Provisions of the Affordable Care Act (ACA), which came into effect in 2015, requires that employers with a minimum of 50 full-time "equivalent" employees provide health insurance to at least 95 per cent of their full-time workers, and their dependants. For more information on the ACA, see <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act/#Identification>.
- 45 Houseman, 2001.
- 46 Carré and Tilly, 2012.
- 47 Davis-Blake and Uzzi, 1993.
- 48 Portugal and Varejao, 2009.
- 49 Faccini, 2014.
- 50 Holmlund and Storrie, 2002.
- 51 Knoke and Kalleberg, 1994.
- 52 Nollen and Axel, 1996.
- 53 Uzzi and Barsness, 1998.
- 54 Mayer and Nickerson, 2005.
- 55 Davis-Blake and Uzzi, 1993.
- 56 Ton, 2014; Rubery et al., 2002.
- 57 Brews and Tucci, 2004.
- 58 World Bank, 2011.
- 59 Aleksynska and Berg, 2016.
- 60 Ibid.
- 61 Ibid.
- 62 Data from 2001, which are the latest data available. Cited in Cappelli and Keller, 2013, p. 884.
- 63 Houseman, 2001.
- 64 The countries are Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom.
- 65 Eun, 2012.
- 66 Srivastava, 2016.
- 67 Ipeirotis, 2010.
- 68 This section draws heavily on a background report prepared for the ILO on the organizational implica-



- tions of non-standard employment; see George and Chattopadhyay, 2016.
- 69 Ashford, George and Blatt, 2008.
- 70 Shi, 2007.
- 71 Mayer and Nickerson, 2005.
- 72 Lepak and Snell, 2002.
- 73 Capelli and Keller, 2014.
- 74 Bauer and Truxillo, 2000.
- 75 Barley and Kunda, 2004.
- 76 Davis-Blake and Uzzi, 1993.
- 77 Lepak and Snell, 2002.
- 78 Davis-Blake and Uzzi, 1993.
- 79 Cascio, 2000.
- 80 Sias, Kramer and Jenkins, 1997.
- 81 Wiesenfeld, Raghuram and Garud, 1999.
- 82 Rogers, 2000; Wheeler and Buckley, 2000.
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- 84 Chattopadhyay and George, 2001.
- 85 Benson, 1998.
- 86 Kleinknecht, Kwee and Budyanto, 2016.
- 87 Chattopadhyay and George, 2001; George and Chattopadhyay, 2005.
- 88 Barley and Kunda, 2004.
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- 90 Andrijasevic and Sacchetto, 2014.
- 91 Ang and Slaughter, 2001.
- 92 Belous, 1989.
- 93 Wiesenfeld, Raghuram and Garud, 1999.
- 94 Dolado, García-Serrano and Jimeno, 2002.
- 95 Hall, 2006; Miller and Terborg, 1979.
- 96 Van Dyne and Ang, 1998.
- 97 Ibid.; Forde and Slater, 2006.
- 98 Haden, Caruth and Oyler, 2011; Pearce, 1993.
- 99 De Cuyper and De Witte, 2007; Galup, Saunders, Nelson and Cerveny, 1997; Katz, 1993; McDonald and Makin, 2000; Parker et al., 2002.
- 100 See, for example, Pearce, 1993.
- 101 Ellingson, Gruys and Sackett, 1998.
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- 104 Holtom, Lee and Tidd, 2002.
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- 106 Tan and Tan, 2002; Van Dyne and Ang, 1998.
- 107 Holtom, Lee and Tidd, 2002; Tan and Tan, 2002.
- 108 Liden et al., 2003.
- 109 Ang and Slaughter, 2001; Hundley, 2001.
- 110 Chambel and Castanheira, 2012.
- 111 Van Jaarsveld and Liu, 2015.
- 112 Davis-Blake, Broschak and George, 2003.
- 113 Chattopadhyay and George, 2001.
- 114 George, 2003; Davis-Blake, Broschak and George, 2003.
- 115 George, Chattopadhyay and Zhang, 2012.
- 116 Ibid.; Von Hippel and Kokokimminon, 2012.
- 117 George, 2003.
- 118 Geary, 1992.
- 119 Broschak and Davis-Blake, 2006.
- 120 Davis-Blake, Broschak and George, 2003; George, 2003.
- 121 Chattopadhyay and George, 2001.
- 122 Barley and Kunda, 2004.
- 123 Burke, 2011; Burke and Cowling, 2015.
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- 130 Kleinknecht et al., 2006; Lucidi and Kleinknecht, 2010.
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- 132 Aleksynska and Berg, 2016.
- 133 Pieroni and Pompei, 2008.
- 134 Kleinknecht, van Schaik and Zhou, 2014; Pradhan, 2006.
- 135 Kleinknecht, 2015.
- 136 Ibid.
- 137 Lorenz, 1999.
- 138 Sias, Kramer and Jenkins, 1997.
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- 140 Battisti and Vallanti, 2013.
- 141 Bryson, 2013.
- 142 Håkansson and Isidorsson, 2012.
- 143 Subramony, 2014.
- 144 Nollen and Axel, 1996.
- 145 Ibid., p. 74.



# CHAPTER 5

## Effects on workers, labour markets and society

**B**eing employed in non-standard work can have multiple repercussions on working conditions. This chapter reviews the implications for individual workers and also considers the wider repercussions for the labour market, the economy and society. The effect of non-standard employment (NSE) on workers depends to a large extent on the length of time that they spend engaged in these jobs, on whether these jobs are voluntary, and on the extent to which NSE can enhance the workers' employability rather than increase their insecurity. Examining transitions between non-standard and standard jobs is also crucial. The longer-term consequences of NSE on labour markets, economies and societies are also dependent on the pervasiveness of these forms of employment in a particular country. If the incidence of NSE is high, there are implications for the worker's ability to transition to more secure employment opportunities, as well as broader social consequences.

Working conditions are at the heart of paid work and employment relationships and encompass issues such as working time, wages and other remuneration, occupational safety and health (OSH) conditions, access to social security, as well as numerous other topics, such as work–life balance and opportunities for training. The ILO has a historic mandate to examine and report on these issues, a mandate that dates back to its founding in 1919 as part of the Treaty of Versailles that ended the First World War, when the very first ILO Convention – the Hours of Work (Industry) Convention, 1919 (No. 1) – was adopted. Since then the ILO has developed numerous standards on a range of working conditions considered in this report. These standards provide the framework for regulating the workplace and are designed to balance the needs of workers and employers.

At the core of the ILO's mandate are the fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

This chapter starts by connecting these key issues with the main forms of insecurities – or decent work deficits – identified in Chapter 1, which include concerns over employment, earnings, working hours, OSH, social security coverage, training and career path, as well as representation and other fundamental principles and rights at work. As noted



in Chapter 1, insecurities about any of these issues can affect any job, whether standard or non-standard. The goal of this chapter is to assess the extent to which workers in NSE face these insecurities compared to standard workers. Identifying these insecurities is a first step towards devising policy solutions.

## 5.1. EFFECTS ON WORKERS

Non-standard employment, especially its more traditional forms, such as part-time and temporary employment, has both merits and disadvantages for workers. Thus one of the main challenges is understanding the pros and cons, balancing them and ensuring appropriate responses are implemented to address potential disadvantages.

For workers, NSE may provide opportunities to enter the labour market and gain work experience,<sup>1</sup> as well as offer those who have left the labour market a chance to re-enter it. Temporary employment, including employment mediated through a temporary work agency, can offer opportunities for developing skills, both job-specific and general, getting acclimated to the labour market, developing a work ethic, and expanding social and professional networks. Hiring a worker in a temporary position can allow an employer to assess whether the individual is in tune with the demands of the workplace and thus acceptable for a permanent or full-time position with their firm or organization. Temporary employment agencies also attract a wider pool of potential employees and screen workers using more standardized methods. Thus they often hire individuals who would otherwise have difficulty finding any employment.<sup>2</sup> They may also provide other services, such as transportation to bring workers to the job location.<sup>3</sup>

Temporary employment may be preferred by some workers over permanent contracts. Like part-time work, it represents an alternative form of participation in the labour force for workers with dependants, especially women with children or other care responsibilities,<sup>4</sup> as well as for workers who want to combine work with education or professional training. NSE can therefore contribute to improved employment outcomes and to a better work–life balance, increase overall job performance and life satisfaction, provided that this type of employment is the result of the worker’s choice and the job is of good quality.<sup>5</sup>

Chapter 2 showed, however, that in the majority of countries with available data, temporary employment is an involuntary choice. The case for part time is more subtle, but in numerous countries part-time work is also a second-best option, often in those places where time-related underemployment is widespread. Women are frequently over-represented among workers who would have preferred to have a permanent or a full-time contract. Debates on the merits of non-standard forms of employment have thus centred on two main issues: (1) whether these jobs serve as a stepping stone into the labour market for workers who may otherwise not have been employed, or whether they are dead ends; and (2) whether the working conditions are appropriate and set in a non-discriminatory way as compared to standard jobs.

### 5.1.1. Individual transitions within the labour market and job (in)security

The proliferation of NSE in the last two to three decades has sparked lively academic and political discussions over whether forms of NSE represent stepping stones into

standard employment, or whether they are dead-end jobs in the sense that workers either remain in them for a long time or slip into unemployment or inactivity upon termination of these jobs. Answers to this key question can help inform more general advice on employment creation strategies, social security systems and active labour market policies.

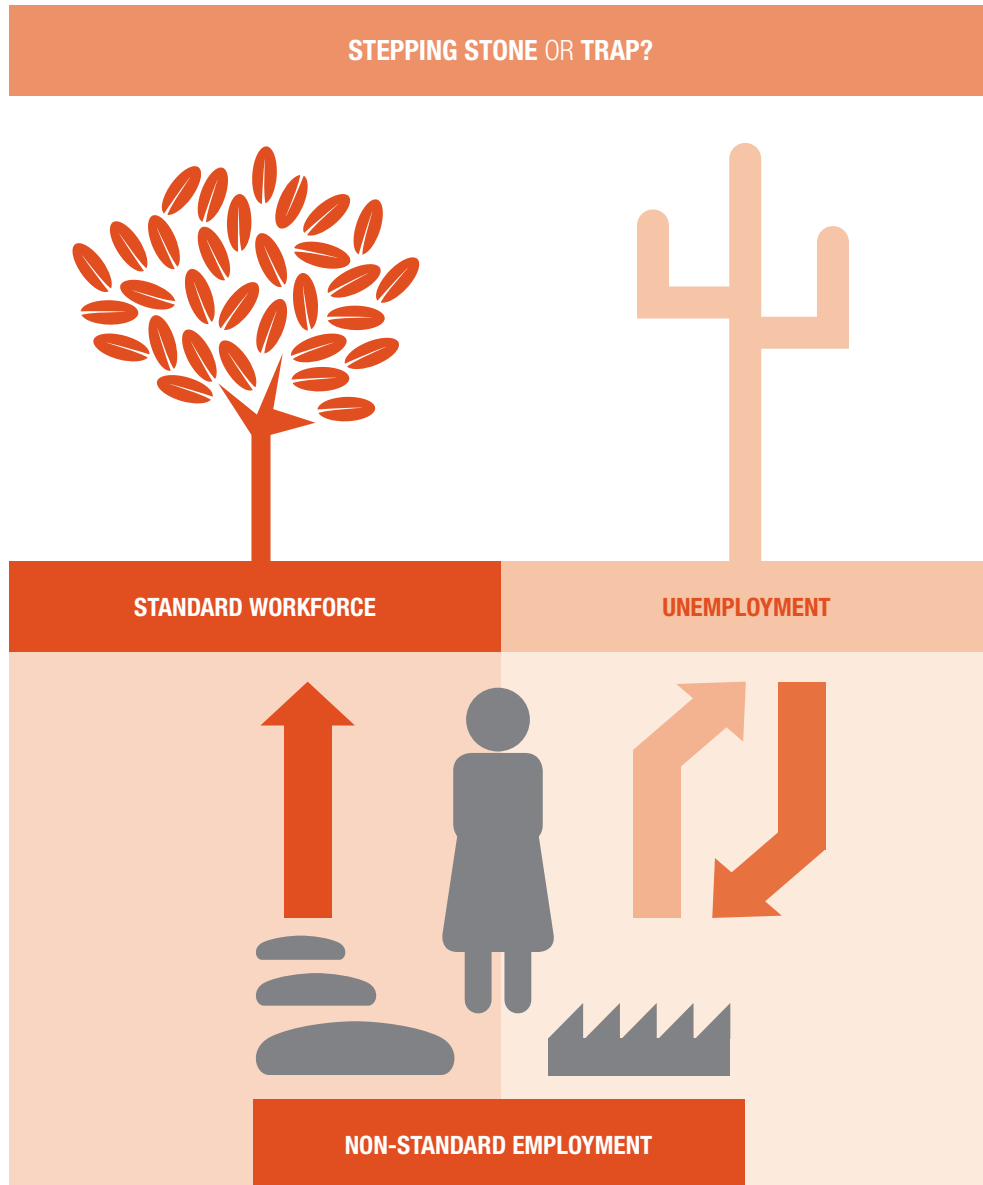
The ease of transiting between non-standard and regular employment is an issue of particular concern for temporary workers, workers in temporary agencies and other multi-party employment relationships, and the dependent self-employed. Although it may be less of an issue for part-time workers if they are working under contracts of unlimited duration, an OECD study has shown that part-time workers are generally in a less favourable situation than their full-time counterparts in terms of job security, measured both objectively and subjectively.<sup>6</sup> Nonetheless, an important question at stake for these workers appears to be that of transiting to full-time work. The model of effective part-time regulation – the Netherlands – explicitly provides in its legislation for the possibility of switching back and forth between full-time and part-time jobs with the same employer (as explained in Chapter 3). Though the Netherlands remains exceptional in this regard, it is nevertheless a good example of how to formalize stepping stones for part-time workers.

For other forms of NSE, the key question of making the transition to regular work is not so much about ensuring full-time hours, but about ensuring that any work – and the income flow associated with it – will be available after the current NSE contract comes to an end. For example, fixed-term contracts (FTCs) typically offer a lower level of protection to workers in terms of termination of their employment, as usually no reasons need to be given by the employer to justify the end of the employment relationship, beyond the fact that the end date of the FTC is reached. There is usually no severance pay at the end of an FTC (except in countries like France or Cambodia, where there may be special compensation for the end of service). In common law countries, case law recognizes that workers may have reasonable expectations for their FTCs to be renewed (United Kingdom, Tanzania). However, in most instances, the end of the FTC means the end of the employment relationship. Casual and day workers in developing countries do not usually have a guarantee that they will remain employed by the same firm either. In India, evidence suggests that the dominant employment pattern with respect to the non-standard worker is to hire and fire the workers at frequent intervals, with pronounced spells of unemployment in between.<sup>7</sup> In these cases, instead of being stepping-stone jobs leading to regular employment, temporary employment may be a dead end, and these workers will slip back into unemployment at the end of the performed task, or become “trapped” in NSE if subsequent employment relationships are also non-standard.

Each form of NSE can provide different levels of access to better jobs. Clearly, FTCs of several months or even years are not equivalent to day labour in terms of creating the feeling of employment security or enhancing the worker’s potential future employability. However, this variability is also attributable to the types of individuals in question, who may have different sets of skills and work in different sectors.

Evidence on the prevalence of “stepping stones” versus “traps” phenomena (figure 5.1) can be examined both through the length and the probability of transitions between various employment statuses for different types of NSE. The evidence on these two

Figure 5.1. Non-standard employment: Stepping stone or trap?



aspects of transitions shows that, in a vast majority of examined countries, yearly transitions from non-standard to standard employment remain below 55 per cent, and even below 10 per cent in some instances (see review of literature given in the Appendix to this chapter, table A5.1). The “stepping-stone” hypothesis is confirmed in some instances (Denmark, Italy, the Netherlands, United States), in that being employed in a temporary job, rather than being unemployed, significantly increases the probability of obtaining a regular job. The effect varies, however, for specific population groups. It seems to be strongest for young graduates, immigrants and workers initially disadvantaged either in terms of education or of pay. These are indeed the workers for whom the benefits of having lower initial screening, obtaining general



rather than specific work experience, and expanding their network through non-standard jobs are high. In some instances, for example in Uganda, men also have a higher likelihood of moving out of part-time and temporary work to full-time permanent employment, compared to women, who seem to be penalized in terms of labour market transitions.<sup>8</sup> However, when temporary work is further liberalized and the pool of temporary workers increases, then longer-term evidence, such as for Spain or Japan, suggests that over a lifetime of working, those workers who started off with a temporary job have a greater chance of switching between non-standard work and unemployment, compared to workers who start with a permanent contract. In these cases, temporary work ceases to be a stepping stone. Most recent evidence from European countries also shows that there is a negative correlation between the share of temporary workers among employees and the share of temporary employees who moved to permanent employment.<sup>9</sup>

The stepping-stone hypothesis is not confirmed in the case of temporary agency workers in Sweden, Germany or some parts of the United States (though it is confirmed in some others), where these workers seem to remain in this specific type of employment relationship for a prolonged period of time, or face increased churning between different temporary agency jobs or unemployment. In Sweden, stronger and more persistent traps were observed for women compared to men. Of course, compared to the alternative of remaining unemployed, remaining in temporary agency work (TAW) rather than transiting to direct-hire jobs can still be a desirable individual and social outcome – provided that such jobs do not crowd out direct hires and do not result in inferior working conditions as compared to standard jobs.

In the majority of countries considered, even where the stepping-stone mechanism is at work, non-standard workers have a significantly higher rate of transition into unemployment or inactivity – sometimes nearly tenfold – compared to standard workers (see table A5.1 in the Appendix). This evidence further confirms the proposition that non-standard and standard workers are unequal with respect to labour market security, mobility and career prospects.

### 5.1.2. Wage differentials

There is a range of legal instruments that embed the principles of equal treatment and equal pay for workers in all forms of contractual arrangements, including ILO standards and EU Directives, as well as the laws and collective agreements of individual countries. They provide that workers in NSE should be guaranteed the same minimum labour standards, and receive the same wages (where appropriate, calculated proportionately on an hourly, performance-related, or piece-rate basis<sup>10</sup>) as comparable standard workers. Despite these regulatory frameworks, available evidence suggests that the earnings of workers in NSE usually differ from those of comparable standard workers.

From the viewpoint of economic theory, non-standard workers may either suffer from a wage penalty or benefit from a wage premium compared to standard workers. Wage penalties arise when two similar workers performing similar work are paid differently, to the extent that firms use NSE strategically for their “peripheral” workforce and may deliberately offer them lower wages. At the same time, according to the theory

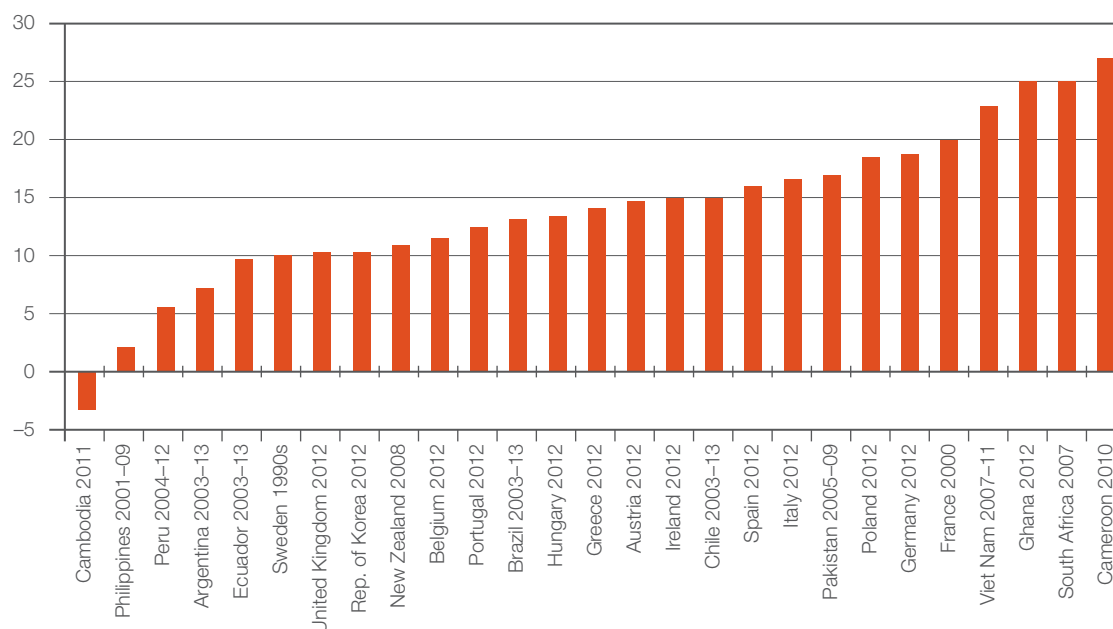
of compensating differentials,<sup>11</sup> temporary workers should be compensated for the temporary nature of their status and its implications for instability and uncertainty about future income flows. Higher wages should also serve as a tool to attract workers to such less desirable jobs. Thus, whether temporary and other non-standard workers receive wage premiums or suffer from wage penalties is an empirical question: it is dependent on both job characteristics and worker characteristics, with worker characteristics (such as age, gender, migrant status and experience) affecting the degree of bargaining power that workers have in negotiating their wages. In addition, the legislative framework and practices in some countries may matter too: for example, in Australia, casual employees receive a special “loading” in exchange for forgoing paid holiday or sick leave;<sup>12</sup> in Cambodia, workers on FTCs receive a 5 per cent payment at the end of their contracts, rendering such contracts more attractive.

Table A5.2 in the Appendix summarizes empirical findings on wage differences (penalties and premiums) between standard and non-standard workers, controlling as far as possible for job and worker characteristics. It shows that the relative earnings of workers in NSE vary across sectors of economic activity, occupations, levels of education, duration of engagement in a specific form of NSE, as well as the extent to which this form of employment is a voluntary choice.

For temporary and temporary agency workers, wage premiums have been found for engineers and technicians, nurses, IT programmers and highly-paid workers in the United States; young workers in TAW in Portugal, compared to their peers; or workers on very long FTCs in Uganda. Cambodia is also an example of a country where wage premiums for FTCs are quite widespread, most likely as a result of the self-selection of workers into these types of contracts as a result of the end-of-contract premium.<sup>13</sup>

However, the evidence in table A5.2 also suggests that wage penalties for temporary and temporary agency workers are more widespread than wage premiums, and are more often the rule rather than the exception. Throughout the world, empirical evidence shows that disadvantages attached to these forms of employment are not systematically compensated by higher earnings. Wage penalties for non-standard workers can vary from a few percentage points difference to 60 per cent of wages of standard workers. While a straightforward comparison of wage penalties often reveals substantial differences in pay between standard and non-standard workers, it is also important to look at the conditional, or adjusted, wage penalties, by comparing workers with similar individual characteristics and in the same sectors and occupations. The studies reviewed indeed show that such conditional penalties are substantially smaller than the unadjusted penalties, but nevertheless they do exist (figure 5.2). The majority of these studies also suggest that while individual worker characteristics matter, most of the difference in earnings is attributable to the characteristics of the job. The latter finding also confirms the existence of occupational and sectoral segregation of non-standard jobs. Such earning differentials may lead to higher income insecurity of workers in NSE. Moreover, as these workers often have difficulty transiting to permanent jobs and have fewer opportunities for promotion, their ability to establish a career path and to command higher earnings over a working life may be further compromised.

Wage premiums and wage penalties for any form of non-standard work may be uneven along the wage distribution. For example, in Italy, wage penalties associated with

**Figure 5.2.** Wage penalties for temporary work, selected empirical findings (percentages)

Note: Findings show wage penalties for being in temporary rather than in permanent work for men only. Partial coefficients from regression analysis, controlling at least for age, education, occupation and sector of activity (other controls vary across studies). Years refer to the years of data on which the analysis was based. “Negative” penalty should be interpreted as a wage premium.

Source: Authors’ computations based on the literature overview; see also Appendix table A5.2.

temporary jobs are substantially more pronounced at the bottom of the wage profile (i.e. among workers with lower salaries) than in high-wage jobs, where they are almost non-existent.<sup>14</sup> The situation is more nuanced in Latin American and Asian countries (see box 5.1 and box 5.2 respectively). In some instances, wage gaps may widen with age, as is the case with fixed-term workers in Japan; or decrease with time spent in the sector, as is the case with temporary agency workers in Germany, who may accumulate knowledge from working in a specific industry.

In developing countries, while workers on FTCs usually suffer from a wage penalty compared to those with permanent contracts, it is instructive to compare their wages with those of workers with no formal or no written contract. Indeed, written FTCs represent a considerable improvement in working conditions as compared to verbal agreements, even if the latter are longer lasting. Wages of workers on FTCs are often situated somewhere between the wages of workers with written permanent contracts and those of workers with verbal agreements. This is the case for Cameroon, for example, where the average monthly wage of a worker with a permanent contract is 27 per cent higher than that of a worker with an FTC, which itself is 53 per cent higher than the wage of a worker with a verbal agreement.<sup>15</sup> In India, regular workers with long-term contracts earn the highest wages, followed by workers with short-term contracts, workers with no contracts, and casual workers.<sup>16</sup> Similarly, in China, workers with permanent contracts enjoy the highest hourly wage, followed

by workers with fixed-term and probationary contracts, and then by workers without contracts.<sup>17</sup> The situation is somewhat more subtle if temporary jobs more generally – rather than temporary contracts – are considered in the formal as opposed to the informal sector. For example, the wage gap of temporary workers is greater in the informal sector in Argentina and Ecuador, while the opposite is true for Brazil and Chile. In Peru, there is no wage gap between temporary and permanent workers in the informal sector, while a narrow gap is observed in the formal sector.<sup>18</sup>

In addition to the possible theoretical reasons for these wage differences, empirical studies also suggest that they are due to (a) unequal treatment of non-standard workers, including the exclusion from bonuses or overtime payments; (b) the probationary nature of some forms of NSE, which means that employers offer lower wages while screening workers' abilities, with workers accepting them in the hope of gaining future stable employment; and (c) the shorter tenure of workers in NSE.<sup>19</sup> For example, in the Indian garment sector, 37.8 per cent of directly engaged workers received double overtime pay, but only 5.3 per cent of workers engaged by contractors.<sup>20</sup> Though regular employees get annual bonuses, usually during festival time, 61.3 per cent of contract employees never received a bonus, and those who did, reported receiving very small ones.<sup>21</sup> In Cameroon, workers on FTCs also have a lower probability of having a payslip altogether, and less likelihood of receiving a raise in their wages,<sup>22</sup> which is likely to contribute further to wage differences. Temporary workers also have a lower probability of being part of a union, which means less bargaining power in pay negotiations and can result in larger wage gaps. In case of temporary agency workers, they are sometimes paid only when they work, in contrast to standard workers who receive a monthly wage.<sup>23</sup>

For part-time workers, wage premiums and wage penalties are substantially more variable than wage differences among temporary workers. There are also other reasons for such penalties and premiums in the case of part-time work. Wage penalties arise mainly in cases where part-time work is associated with lower-paid and low-skilled positions. However, many higher-paid jobs may simply be unavailable on a part-time basis, and moving between the two types of jobs may be problematic.<sup>24</sup> Wage penalties can also arise when workers prefer to work part time to accommodate other activities – hence they will accept lower wages – or because of the fixed administrative costs associated with hiring, training and managing staff that do not vary with the hours worked, so that some firms may compensate for these extra costs through lower wages.<sup>25</sup> In contrast, wage premiums are observed if part-time work is used in sectors with higher seasonality, to compensate for the extra hours required by the firms in question. They can also reflect the higher productivity of part-timers as a result of the lower “fatigue” effect.<sup>26</sup> In general, involuntary part-time work tends to be associated with wage penalties, while voluntary part-time is more likely to result in wage premiums.<sup>27</sup> Whenever wage penalties for part-time work exist, they are usually smaller than those for temporary work or TAW. In contrast, part-time temporary workers tend to be the most penalized group of employees.<sup>28</sup>

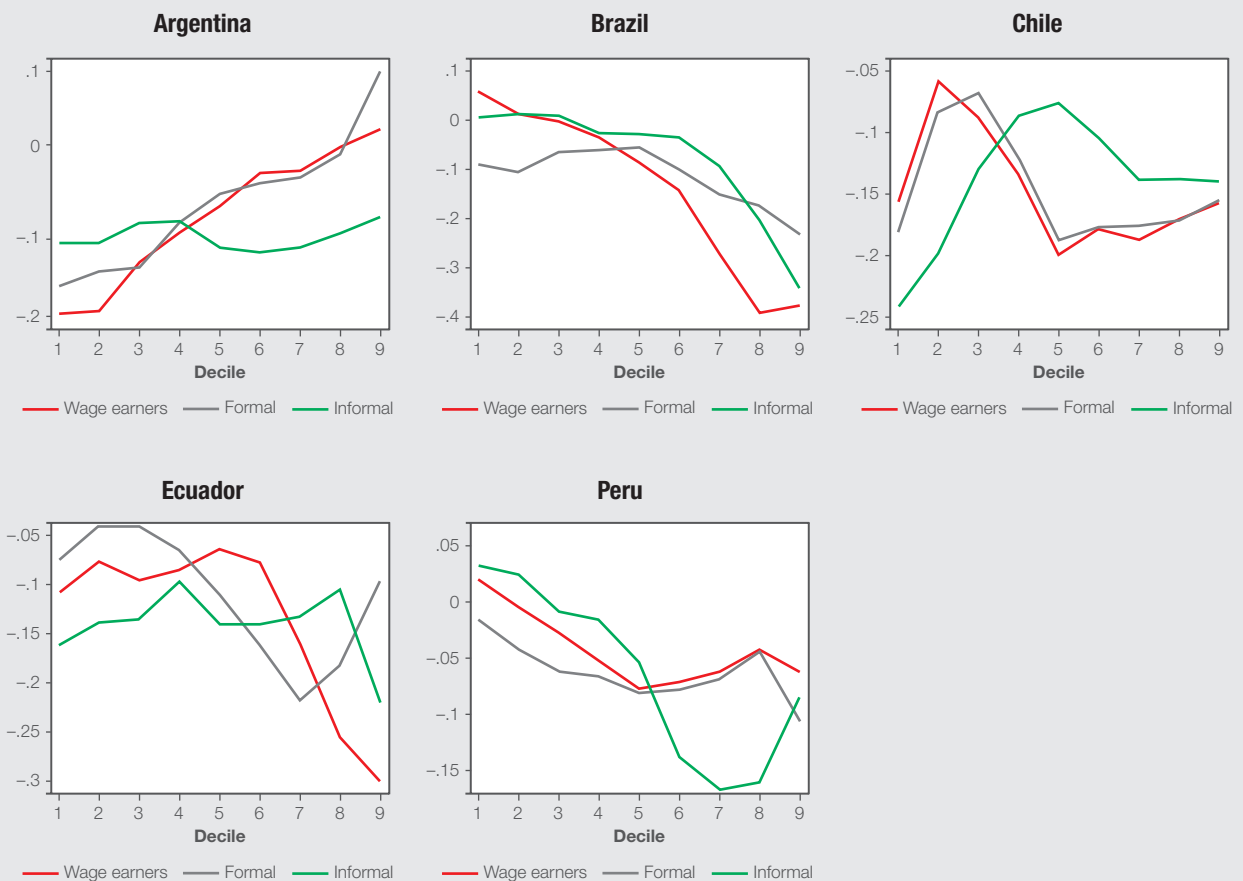
Wage premiums for part-time employees are observed in numerous Latin American countries (box 5.1) and range from 25 per cent in Ecuador to 72 per cent in Chile. The premiums are usually higher for voluntary part-timers and in the formal rather than the

informal sector (with the exception of Peru).<sup>29</sup> Wage premiums are also found in South Africa, where they amount to about 40 per cent for part-time female workers.<sup>30</sup> In Chad or Cameroon, there are neither wage premiums nor wage penalties for part-time work.<sup>31</sup> In contrast, in Europe, part-timers mainly face wage penalties. These penalties tend to be smaller for women than for men,<sup>32</sup> as women, even when working full time, already

### Box 5.1. Wage gaps along the wage distribution, selected Latin American countries

Wage premiums and wage penalties may be uneven along the wage distribution (figure 5.3). Looking at temporary employment in selected Latin American countries, the penalty in Argentina is greater in the lower part of the wage distribution. This finding is true for formal workers, whereas for informal workers the penalty stays relatively stable along the wage distribution. This could indicate a particularly serious situation as labour instability (and, as a consequence, wage instability) is more pronounced among those with the lowest wages. In contrast, in Brazil, Ecuador and Peru, the wage gap is larger at the higher part of the distribution, possibly suggesting the existence of a “glass ceiling” for wage levels, as temporary workers do not achieve the high wage positions that permanent workers do. In Chile, however, no clear pattern is observed: for formal workers, the penalty is similar in the lower and in the higher deciles. For informal workers, much like the findings in Argentina, the penalty is higher among lower-income workers (the left tail of the wage distribution).

Figure 5.3. Wage gaps associated with temporary employment along the wage distribution, latest available year



Box 5.1. continued

In the case of part-time employment, for both formal and informal workers, wage premiums are generally observed (see figure 5.4). They rise with wages (although not necessarily steadily) because part-time employees in the selected countries are also those with better education and hence they have a greater bargaining power over wages. Moreover, there are fewer of these workers at the higher end of the income distribution.

**Figure 5.4.** Wage gaps associated with part-time employment along the wage distribution, latest available year



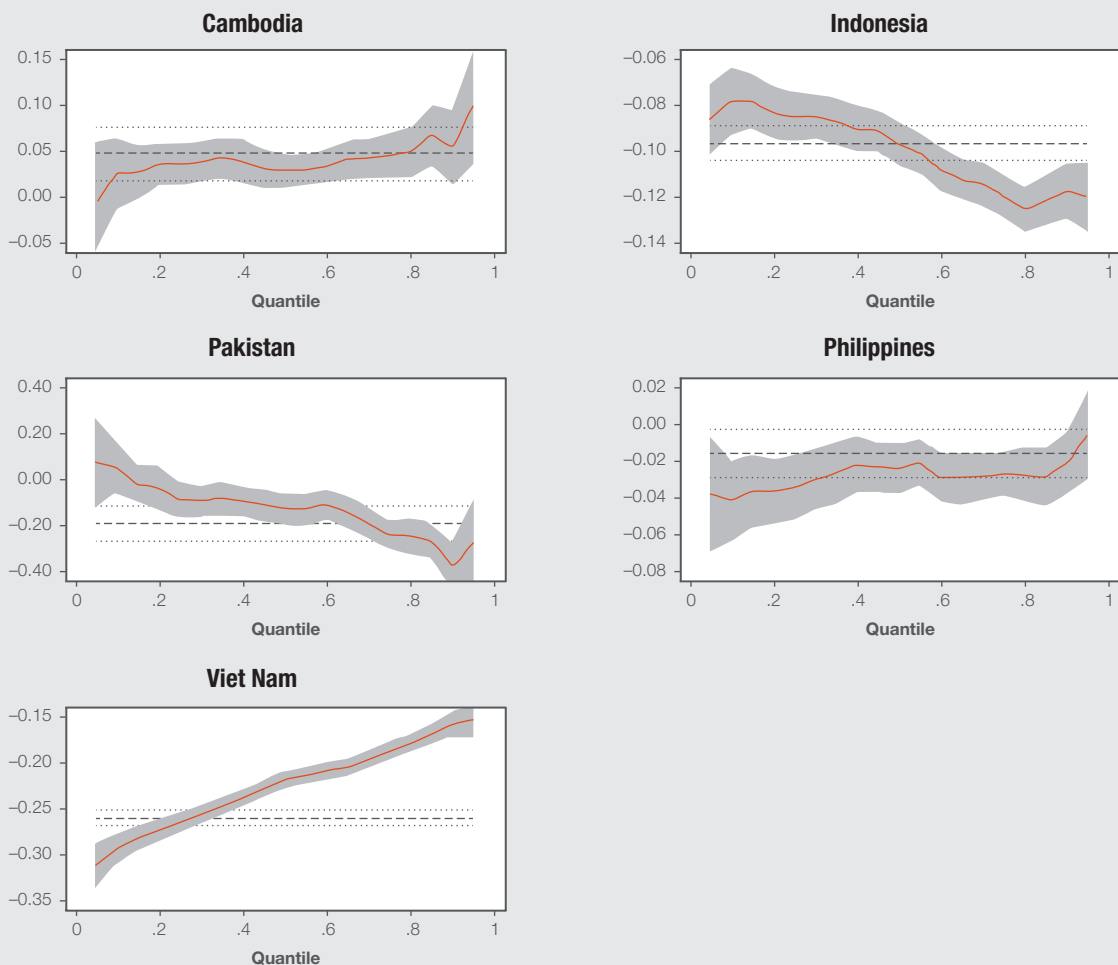
Source: Adapted from Maurizio, 2016.

face substantial penalties due to occupational sex segregation.<sup>33</sup> However, these penalties are also sometimes simply due to the lower hourly wage rate of a part-timer relative to a full-time worker in a comparable situation,<sup>34</sup> as well as reduced access to the same bonuses, including profit-sharing, performance pay, overtime pay and team bonuses.<sup>35</sup> The part-time wage penalty may be underestimated if firms systematically under-report the actual hours worked by their employees.<sup>36</sup>



**Box 5.2. Wage gaps along the wage distribution, selected Asian countries**

In Indonesia, Viet Nam, Pakistan and the Philippines, temporary workers suffer wage penalties at all levels of the wage distribution (figure 5.5). The temporary wage gaps in Pakistan are not significantly different from zero at the bottom of the wage distribution, but increase to over 30 per cent at its upper tier. These results indicate that there is a “glass ceiling” that prevents temporary workers from earning high wages, particularly at the top of the wage distribution. The same, though somewhat milder, effect is observed in Indonesia. The lowest variation of wage penalties is found in the Philippines, where the wage gap varies between 2 and 4 per cent, and no distributional effects of the penalty associated with temporary employment are found along the wage distribution. This indicates that temporary workers in the Philippines suffer similar degrees of penalties at any position in the wage distribution. In contrast, in Viet Nam, the wage gap between temporary and permanent workers is wider at the bottom of the distribution. Thus, it is the poorest workers who suffer the most in terms of wage differences between standard and non-standard jobs. Full-time casual workers suffer the heaviest wage penalties in Indonesia and Pakistan, as compared to all other temporary workers. Cambodia is the only country where wage premiums are observed.

**Figure 5.5. Wage gaps associated with temporary employment at the mean and along the wage distribution**

Note: Indonesia: only casual employees.

Source: Adapted from Nguyen, Nguyen-Huu and Le, 2016.

### 5.1.3. Working hours

Non-standard jobs that are associated with insecurity and low pay are often accompanied by three key outcomes with respect to working hours: (a) longer hours and overtime, increased work intensity and presenteeism at the current job; (b) having to hold multiple jobs, which may or may not result in overall longer hours; and (c) irregular, unpredictable and atypical hours or work schedules.

There is relatively widespread evidence confirming that non-standard workers put in longer hours compared to standard workers. For example, in New Zealand, FTC and temporary agency workers have substantially longer standard weekly working times than permanent workers.<sup>37</sup> In Switzerland, temporary workers are significantly more likely to work unpaid overtime hours than permanent workers.<sup>38</sup> In Asian countries, there is strong evidence on long hours of work from Thailand<sup>39</sup> and Viet Nam.<sup>40</sup>

Excessive working hours and overtime are of particular concern for contract workers in global supply chains. These workers are subject to frequent pressures to be responsive to the demands of just-in-time or lean production systems, volatile sourcing contracts and seasonal demand. As a result, they face frequent overtime, including obligations to work during holiday times, are refused sick leave and denied adequate daily, weekly and annual rest periods.<sup>41</sup> An example of excessive overtime is in Chinese and Thai supply chain factories producing football products: here 48 per cent of the factory workers work over 60 hours per week.<sup>42</sup> Outsourced agency workers in the manufacturing and construction sectors in Malaysia and the Philippines are also reported to suffer from extremely long working hours.<sup>43</sup> In the Indian garment sector, although working hours are long for all workers, contract workers tend to work longer hours.<sup>44</sup> Also of concern are the excessive and irregular working hours of contracted and subcontracted workers in the road transportation sector, much of which operates to accommodate logistics in global supply chains (see box 5.3 for details).

Workers employed through temporary work agencies may be working particularly long hours if they are isolated from their families or live in dormitories specially provided by the agency. This is the case for migrant workers in the electronics sector in the Czech Republic, for example, who work 12-hour shifts, day and night, alongside local permanent workers employed at the same factory who work eight- or 12-hour shifts mainly during the day. Because the agencies and the user firms control both the working and living spaces of the migrant workers, shifts can be changed and overtime forced on workers without proper compensation.<sup>45</sup>

Combined with weaker bargaining power, job insecurity can also lead to “presenteeism” – a situation in which workers work additional unpaid hours because they feel that it is expected of them to do so and they wish to show their seriousness about work, or else they go to work when they are ill.<sup>46</sup> A study of Chinese factory workers found both types of presenteeism were widespread.<sup>47</sup>

The issue of holding multiple jobs is also relevant for various types of non-standard workers. For example, temporary agency workers may work for several agencies in order to provide a steady stream of work and income. Others may use agency work to supplement income from their main job.<sup>48</sup> At the same time, holding multiple jobs tends to be symptomatic of part-time work, especially when it is involuntary. Table 5.1

**Box 5.3. Working hours of dependent self-employed and subcontracted workers in the road transport sector and their consequences for occupational safety and health**

Since the 1990s, in order to make efficiency savings, a growing number of companies within the road transport sector worldwide have altered their employment model from one of directly employed drivers to a new structure in which drivers are contracted as independent service suppliers. Drivers have continued to perform the same work as before, but without the accompanying social and legal protection that being labelled as a direct company employee would provide. These changes have been imposed in parallel with the proliferation of supply chains and the increasing sophistication of logistics services created to accommodate them. Firms and retailers have also been increasingly outsourcing specific logistics functions, including long-distance transport, leading to a significant fragmentation of the sector and making subcontracting in this sector the new norm.

These new arrangements put drivers in a state of constant competition with other drivers. They also imply that drivers should bear the costs and the risks of maintaining their individual vehicle and operating independently. Importantly, the new organizational model has placed new pressures on working conditions in the sector. In particular, it has penalized an already underprivileged group of drivers with respect to their working hours, which have been repeatedly shown to be excessive, with more regular shift work, significantly more permanent and occasional night-work, and more irregular hours and weekend work than in other industries. As owners-drivers are often paid by the distance they drive, they are also increasingly pressured into even longer hours.

These changes have been the subject of a growing number of OSH concerns, including stress, sleep deprivation, obesity, substance abuse and fatigue. They also pose a challenge for the drivers to find an appropriate work–life balance and fight social isolation in their profession. To take fatigue as an example, the European Transport Safety Council stated that truck driver fatigue is a significant factor in at least 20 per cent of heavy goods vehicle accidents.<sup>49</sup> Moreover, over 50 per cent of long-haul drivers have at one point fallen asleep at the wheel.<sup>50</sup> A recent study of road transport subcontracting chains in New Zealand showed that dependent self-employed workers are more likely to disregard essential conventions surrounding safety and excessive working hours.<sup>51</sup> Evidence from the road haulage sector in the Republic of Korea similarly concluded that subcontracted workers face a higher risk of work-related disease than workers employed directly by a firm.<sup>52</sup> Data from Employment and Social Development Canada (ESDC) showed that, in 2011, over 60 per cent of work-related fatalities occurred within the road transport sector alone.<sup>53</sup>

With the ongoing development of an employment model that places market pressures above working regulations that protect drivers from a host of OSH risk factors, there is a strong likelihood that such trends will continue to proliferate within the industry. With them, important security challenges will be posed, not only for individual drivers, but also for society at large.

Source: Adapted from ILO, 2015l.

shows both the incidence of workers with multiple jobs and the percentage of multiple job holders who work part-time in their main job. In developed countries, multiple job holding concerns from 4 to 6 per cent of job holders; in developing countries, it reaches 20 to 30 per cent of the working population. Also, the vast majority of secondary jobs are part time. Low working hours, insufficient income and unstable income are among the principal reasons for holding multiple jobs. In all the countries reviewed, except Indonesia, women are more likely to hold multiple jobs compared to men. Along with

**Table 5.1. Workers holding multiple jobs, and working part time in the main job**

Country	Incidence of multiple job holding	Percentage of multiple job holders who work part time in the main job
Germany	2006: 4% of employees 2012: 5% of employees	39%
Australia	2007: 6% of employees	55%
Canada	Quadrupling between 1976 and 2007 2007: 5.3% of employees	10% of part-time workers are multiple job holders, as opposed to 4.2% of full-time workers
United States	1994: 6.2 % of employed 2015: 5% of employed	26.8 %
Indonesia	1993: 20% of employees 2007: 23% of employees	“substantial”
Ghana	1998/1999: 30% of workers 2005/2006: 18% of workers	1998/1999: 65% 2005/2006: 56%

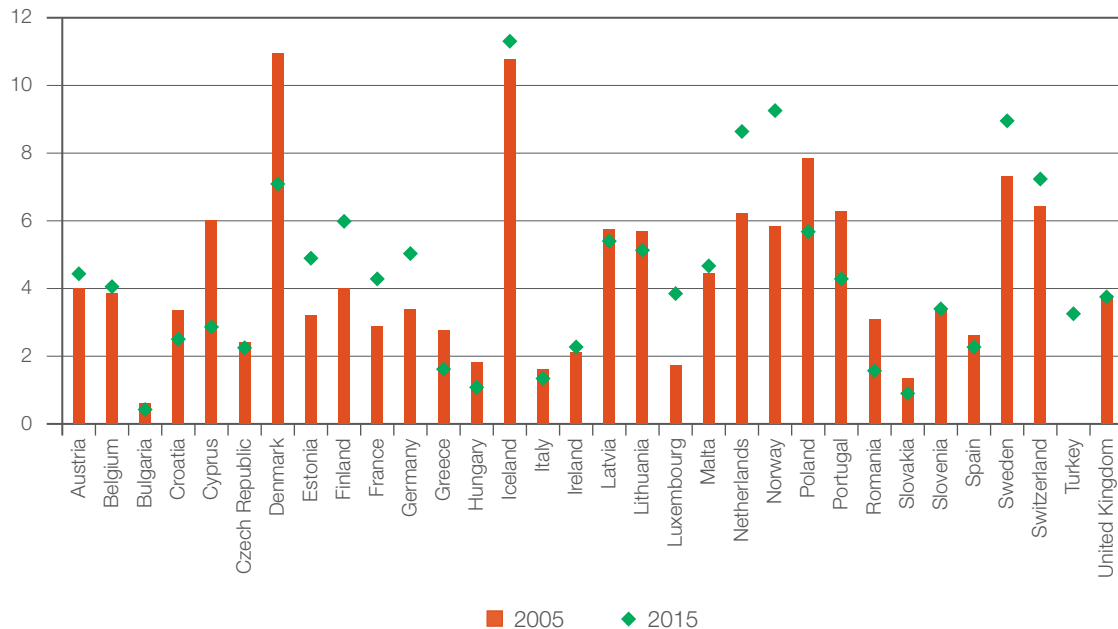
Source: Authors' compilation based on a review of studies. Germany: BIBB/BAuA, 2012; Australia: Bamberry and Campbell, 2012; Canada: Statistics Canada, LFS; United States: BLS; Indonesia: Martinez et al., 2014; Ghana: Baah-Boateng, Adjei and Oduro, 2013.

the fact that they are also over-represented in part-time jobs, this finding questions prevailing assumptions about the extent to which part-time work is a voluntary choice for women. In Canada, men were over-represented as multiple job holders in the 1970s, but women had caught up by 1995, and currently outnumber men substantially in holding multiple jobs, in relative terms. Sectors most prone to multiple job holding vary across countries: they include public and private services, trade, transport, hotels and restaurants and information in Germany; arts, recreation, retail, health care, social assistance, education and training, accommodation and food services and agriculture in Australia; management, professional, and related occupations, and services and sales in the United States.

Interestingly, a connection between holding multiple jobs and the economic crisis is hard to establish. This is because, on the one hand, economic recessions tend to increase volatility in hours and income, which may lead to greater incidence as well as intensity of multiple job holding,<sup>54</sup> but, on the other hand, they also reduce the opportunities for taking on multiple jobs, leading to an overall ambiguous macroeconomic outcome.<sup>55</sup> Figure 5.6 confirms the uneven trends in multiple job holding in European countries over the last decade. In Germany, the increase in multiple job holding can be attributed to greater labour force participation by women and the growth of “mini-jobs”.<sup>56</sup>

Non-standard jobs may also entail working atypical hours or work schedules. For example, a US study found that low-paid, part-time workers were most likely to work unpredictable schedules and unsocial hours.<sup>57</sup> Triangular, temporary agency and

**Figure 5.6.** Incidence and trends in multiple job holding in European countries among total employed, 2005 and 2015 (percentages)



Note: Principal (main) job includes both part-time and full-time jobs.

Source: EUROSTAT.

outsourced work in particular can present problems in terms of managing hours of work, because workers are more likely to be allocated to less desirable working periods and shifts, including weekends and night work.<sup>58</sup>

Whether it consists in working extended or atypical hours or trying to hold down multiple jobs, NSE can result in clashes of schedules, raised stress levels, higher risk of injury, both at work and outside work,<sup>59</sup> and have a substantial negative impact on an individual's work-life balance. Frenetic schedules can also have negative implications for a healthy lifestyle if there is no time to plan food shopping and prepare home-cooked meals, resulting in poorer eating patterns for workers and their families.<sup>60</sup> There can also be other unintended consequences and negative spillover for society at large. For example, a South African study of nurses found that about 40 per cent of those surveyed reported taking a second job with an agency, which increased their levels of fatigue, necessitating additional sick leave, and leading to a lack of focus at work.<sup>61</sup>

#### 5.1.4. Effects on occupational safety and health at work<sup>62</sup>

Long and erratic working hours thus have implications for the occupational safety and health of workers. But workers in NSE have an even higher risk of seeing their health negatively affected by work or work-related conditions compared to standard workers. The literature identifies at least four broad categories of risks associated with





Employees in a plant nursery, Ecuador

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non-standard work: injury-related risks and accidents, mental health and harassment risks, exposure to poorer working conditions and hazards, and fatigue issues.

In terms of injury rates, reviews of international research suggest that occupational injury rates among temporary and temporary agency workers can be significantly higher than those of permanent workers. They are almost twice as high in New Zealand<sup>63</sup> and substantially higher in Italy (including a greater accident severity level)<sup>64</sup> and India<sup>65</sup> – even if many workers work at the same plants side by side with standard workers. Evidence from Asia also confirms that workers in NSE are more vulnerable to occupational injury and health risk.<sup>66</sup> Foreign migrant workers employed in the construction sector in Malaysia on project-based contracts,<sup>67</sup> and dispatch workers in Viet Nam in manufacturing FDI enterprises,<sup>68</sup> are typical examples.

Moreover, there is evidence of higher accident rates among temporary and temporary agency workers. In France, a 1998 inquiry into working conditions by DARES, the French Directorate for Research, Studies and Statistics, revealed that the accident rate involving temporary agency workers was 13.3 per cent, compared with an average of 8.5 per cent for all workers, and that for apprentices the rate was as high as 15.7 per cent. In Spain, the comparative statistics for accidents between 1988 and 1995 indicate that the accident rate per 1,000 workers was 2.5 times higher for temporary workers than for permanent employees, and the rate of fatal accidents 1.8 times higher. In Belgium, in 2002, the accident rate for permanent manual workers, or those with long-term contracts,



stood at 62 per 1,000 workers, compared with 125 per 1,000 for manual workers hired via temporary employment agencies.<sup>69</sup> Outsourcing and subcontracting have also been implicated in several catastrophic accidents, including the sinking of the Brazilian Petrobras 36 oil rig in the South Atlantic in 2001, a number of fatal air crashes in the United States between 1995 and 2009,<sup>70</sup> and the Soma mining disaster in Turkey in 2014.

There are several reasons for these higher injury and accident rates. First, temporary and temporary agency workers are often hired to accomplish difficult and hazardous jobs that other workers at the worksite would not perform. Second, many of these workers are young and inexperienced; they have limited bargaining power and feel more constrained by their status to complain about work hazards. Fear and lack of experience make it more difficult for them to change their working conditions, or to raise and pursue safety issues. Moreover, they are unlikely to be represented on health and safety committees.<sup>71</sup>

As discussed later in the chapter, non-standard workers usually have less access to training, which is vital not just for developing workers' skills and earnings potential, but also in preventing accidents. A temporary worker who does not receive training on basic safety at the workplace runs the risk of having an industrial accident with potentially deleterious consequences for both the worker and the workplace. A 2007 survey conducted by the European Agency for Safety and Health at Work (EU/OSHA) Risk Observatory confirmed that temporary workers were at greater risk of workplace accidents because of lack of training compared to other workers.<sup>72</sup>

In general, temporary agency workers, like other workers on temporary contracts, simply have less knowledge about their work environment<sup>73</sup> and their rights. In Australia for example, almost 40 per cent of temporary workers in the fast-food industry believed they were not covered by workers' compensation in case of injury – when they were; and those aware of the compensation available were often misinformed about their entitlements.

Although temporary agency workers suffer many of the same risks as workers on temporary contracts, because of the triangular employment relationship – with the contracting agency paying the wages, but the user firm giving instructions – there is greater potential for accidents, even if responsibility for safety and health at the workplace lies predominantly with the user firm. For example, a British study found that around half of the recruitment agencies surveyed did not have measures in place to ensure that they were fulfilling their legal obligations; also, there was widespread ignorance as to their shared legal obligations, and agencies were frequently unaware whether host employers were carrying out risk assessments; in addition, the exchange of health and safety information between agencies and host employers was often poor.<sup>74</sup>

Subcontracting and especially multi-level subcontracting, as well as TAW, have the potential for fracturing OSH management. Performing tasks at different worksites and the often informal nature of employment of temporary workers raises further concerns in terms of responsibility in case of accidents and work-related injuries. In road transport, subcontracting chains driven by pressure to reduce costs by powerful freight users with dependent owner-drivers at the bottom of the chain have been found to cut corners with safety (in terms of excessive hours, drug use, speeding and

reduced maintenance) in a number of countries (see box 5.3).<sup>75</sup> Similarly, a study of health-care associated infections in Californian hospitals found that the outsourcing of cleaning (“environmental services”) and the subsequent shortfalls in training and coordination of these workers had contributed to the spread of infection.<sup>76</sup>

In addition to physical health and safety issues, NSE is also associated with psychosocial factors that increase the risk of adverse health outcomes. For example, having an involuntary temporary or part-time job may aggravate subjective perceptions of job insecurity, especially among more vulnerable groups in the labour market, and when opportunities for shifting to open-ended contracts are low.<sup>77</sup> In its turn, job insecurity is associated with a range of other negative outcomes adversely affecting work satisfaction, psychological and mental well-being and overall life satisfaction.<sup>78</sup> Workers exposed to chronic job insecurity are more likely to report minor psychiatric symptoms compared to those with secure jobs, and also have the highest self-reported morbidity, indicating that job insecurity can act as a chronic stressor.<sup>79</sup> Studies undertaken in a range of countries have linked temporary employment to depressive symptoms,<sup>80</sup> even suicide.<sup>81</sup> Particularly unstable jobs and very intermittent work can be especially damaging to a worker’s well-being as a result of the scarring effects of ongoing job insecurity.<sup>82</sup> Even part-timers are not spared, especially if working part time is involuntary. For example, a study based on the European Working Conditions Survey found that part-time work was associated with poorer psychosocial working conditions, especially for men in involuntary part-time jobs in southern Europe.<sup>83</sup> In the Republic of Korea, part-time work was found to be associated with poorer mental health outcomes.<sup>84</sup>

Job insecurity can make temporary workers more vulnerable and susceptible to bullying and harassment, including sexual abuse. For example, in Japan, temporary employees were found to be at significantly higher risk of experiencing bullying;<sup>85</sup> in Australia, temporary and part-time workers and those on FTCs were at significantly greater risk of being subjected to unwanted sexual advances.<sup>86</sup> A large survey conducted in Quebec, Canada, found both temporary workers and part-time workers to be more at risk of sexual harassment and occupational violence than their full-time permanent counterparts – a finding consistent with studies conducted in other countries.<sup>87</sup> As with temporary workers, the economic pressures on part-time workers can place them in a situation where they are especially vulnerable to supervisory abuse.<sup>88</sup>

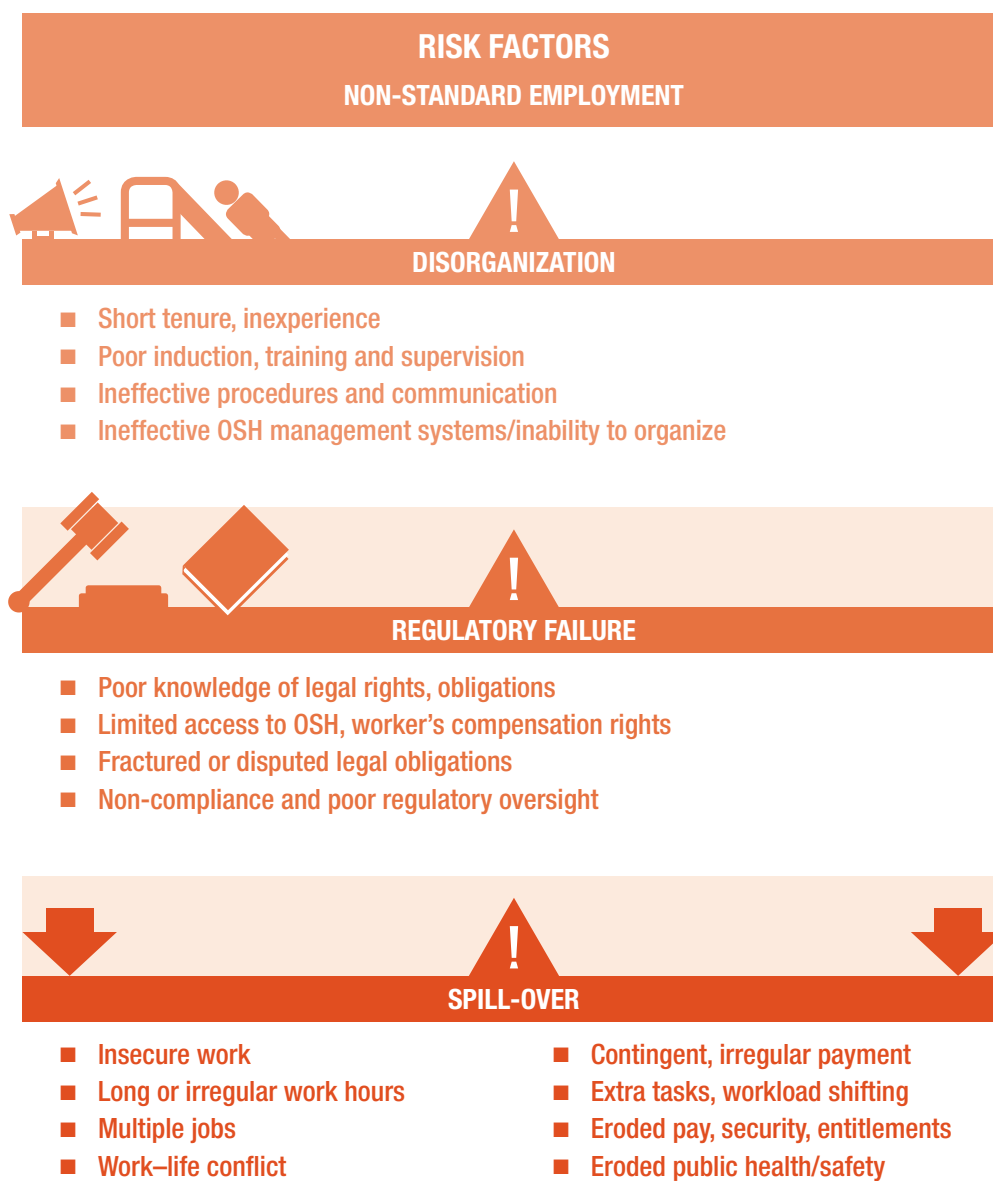
Another possibly serious health consequence of employment in non-standard jobs is related to exposure to various hazards. The evidence on this issue is relatively mixed, and depends on the particular sector and occupation. On the one hand, enterprises tend to outsource more hazardous activities<sup>89</sup> while, on the other, part-time workers for example may be less exposed to hazards such as noise or poor ergonomic conditions just by virtue of their shorter working hours. In agriculture, permanent workers may be more exposed to herbicides than temporary workers purely because of longer contact time with the crops, yet if temporary harvest workers enter the sites shortly after spraying or if they have poorer washing facilities or residual exposure in their accommodation at harvest sites,<sup>90</sup> then their exposure may be as high as that of permanent workers.

Last but not least, non-standard workers often report higher levels of fatigue. While the benefits of part-time work in terms of its “hours-flexibility” and helping workers (especially women) balance work and family commitments are frequently promoted by

policy-makers and others, the evidence paints a more complex picture, suggesting that the perceived benefits differ significantly between occupations and depend on the extent to which workers are able to influence the timing of work.<sup>91</sup>

Figure 5.7 summarizes the OSH risks that may be associated with non-standard forms of employment, including subcontracting.

**Figure 5.7. OSH risk factors in non-standard employment arrangements**



Source: Adapted from Quinlan, Hampson and Gregson, 2013.

### 5.1.5. Access to social security benefits

Workers in NSE typically have inadequate social security coverage (see Appendix table A5.3, and the visual representation of most comparable results in figure 5.8). This can happen either because statutory provisions exclude them from entitlements to social security payments, or because short tenure or low earnings or hours provide limited or no access to such entitlements.

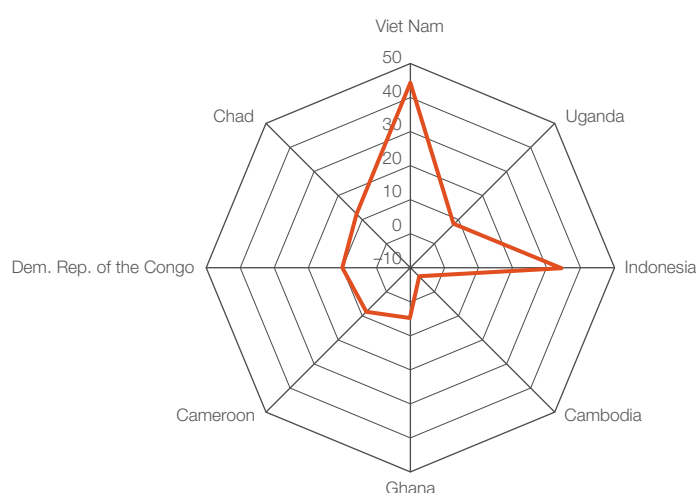
In case of temporary work, some statutory provisions may exclude workers (for example, those in project- or task-based work) from entitlements to social security. They may also not envisage either maternity or sick leave compensation (Italy being a notable exception),<sup>92</sup> and may not entitle workers to unemployment benefits. In India and several other South Asian countries, most labour laws apply to “establishments” with more than a minimum number of employees. These thresholds can often be quite high. As a result, workers in small enterprises and most casual workers remain outside the scope of regulation.<sup>93</sup> In Europe, most temporary workers are legally eligible for unemployment insurance, but the higher rates of job rotation and greater likelihood of periods of unemployment due to non-renewal of temporary contracts make them less likely to be eligible for benefits. Indeed, in Denmark, Germany and Spain, temporary employees who lose their jobs have coverage rates that are 10 percentage points below those of unemployed workers who were previously on permanent contracts.<sup>94</sup>

Part-time workers may also have difficulties in being covered by social security, because of the minimum threshold requirements in terms of hours worked or earnings, and, even if eligible, will receive lower benefits.<sup>95</sup> Some employers may choose to employ workers for fewer hours so they can avoid minimum thresholds, making part-time workers, at first glance, cheaper to employ.<sup>96</sup> For part-time workers, this affects their access to health care as well as to paid maternity leave, unemployment cash benefits and retirement pensions. In countries like Japan, the Republic of Korea and South Africa, eligibility for unemployment benefits among employees is restricted to those working a minimum number of hours, with obvious consequences for part-time workers whose hours are below the minimum threshold.<sup>97</sup>

In Germany, so-called “mini jobs” were introduced in 2003 in the context of a major reform of labour law. Employees holding jobs for which remuneration was below 400 euros a month were exempted from social security contributions and employers paid contributions at a reduced rate. The threshold was raised to 450 euros in 2013 and employees now contribute to the pension system unless they ask in writing to be exempted. In the United States, there were fears that the introduction of the Affordable Care Act in 2010 (the so-called “Obamacare”) would in fact encourage employers to switch employees from full-time to part-time positions. The Act mandates employers with 50 or more full-time equivalent employees to provide health insurance to their full-time employees. An employee is considered to be a full-time employee if he or she works at least 30 hours per week or 130 hours per month. The legislation poses the risk that workers would increasingly be employed below that threshold. Nonetheless, studies have shown that the impact on part-time employment has so far been limited.<sup>98</sup>

In the case of contract work, lower social security contributions by employers on behalf of their employees can also be a means of reducing the overall “costs to company”. For

**Figure 5.8.** Differences in access to social security benefits between temporary and permanent workers, selected developing countries (percentage points)



Note: Percentage point differences in access to social security benefits; raw differences. “Negative” difference should be interpreted as an advantage for being in temporary work.

Source: Authors’ computations, based on the literature overview; for details, see Appendix table A5.3.

example, in the Indian garment industry, the costs to the company are comprised not only of gross wages and social security payments, but also commission to contractors.<sup>99</sup> While the gross wages, including social security contributions, of directly engaged workers are higher than those of contract workers, take-home wages of directly engaged and contract workers are similar. Overall contract labour costs do not seem to be lower for the employers compared to regular labour, but allow for the balancing out of commission and social security payments. In India, while 62 per cent of directly engaged workers in the garment sector made provident fund contributions, only 21 per cent of contract workers did so.<sup>100</sup>

Differences in social security access and coverage also vary across types of social benefit. For example, in the Republic of Korea in 2011, 54.8 per cent of non-standard workers were not covered by a national pension, versus 1.4 per cent of standard workers; 5.3 per cent were not covered by health insurance; and 64 per cent were not covered by unemployment insurance (table 5.2). In South Africa, 48 per cent of temporary agency workers, versus 36 per cent of all other workers in the formal sector indicated that their employer did not contribute to a pension fund. The figures are 85 per cent and 60 per cent respectively for non-contributions to health insurance.<sup>101</sup> In the United States in 2005, around 13 per cent of contingent workers received health insurance through their employer (9 per cent of temporary agency workers; 19 per cent of part-time workers), compared to 72 per cent of standard full-time workers; 38 per cent of them had access to employer-provided pensions (4 per cent of temporary agency workers; 23 per cent of part-time workers), compared to 76 per cent of standard full-time workers.<sup>102</sup>

**Table 5.2.** Percentage of non-standard workers not covered by social security protection in the Republic of Korea, by type of NSE, 2011 (percentages)

	Pension	Health care	Unemployment insurance
Standard workers*	1.4	0.0	2.6
Non-standard workers*	54.8	5.3	64.0
Limited term	54.8	5.4	66.0
Part-time	81.6	2.8	31.3
Daily	27.0	4.5	44.3
Dispatched	76.1	3.3	28.4
Subcontract	36.7	2.6	25.8
Home	85.7	2.9	91.4
Special	64.7	3.6	96.0

\* Worker categories as presented in the original sources.

Source: Shin, 2013, table 7, p. 14 (with reference to Kim, 2011).

Moreover, the increase in misclassified self-employment in the United States has contributed to reducing the percentage of workers eligible for unemployment insurance, potentially harming the financial sustainability of contributory insurance systems.<sup>103</sup>

As is the case with wage penalties, in some countries there is also a certain hierarchy in terms of which types of jobs provide better access to social security protection. For example, in Cameroon, 83.9 per cent of workers with FTCs have access to social security, against 88.1 per cent of workers on permanent contracts; and they are better off than workers with verbal agreements for work of an unspecified duration, who have only a 37.3 per cent rate of access.<sup>104</sup> In China, workers with permanent contracts enjoy the highest participation in medical and endowment insurance schemes, followed by workers on FTCs and dispatched workers, and then by workers without contracts.<sup>105</sup>

In countries with a sizeable informal sector, the whole debate around social security coverage of non-standard workers cannot be separated from discussions of informality, as informality itself is sometimes measured in terms of access and levels of contributions to social security insurance. For example, in Colombia, workers with FTCs, who represent about 30 per cent of all workers, have an informality rate about 10 percentage points higher than workers with open-ended contracts – informality being measured in terms of health and pension contributions.<sup>106</sup>

### 5.1.6. Training

On-the-job training is important for upgrading workers' skills and improving their productivity and that of the firm. It may also improve workers' ability to command higher wages, develop a career and transit to a standard job. The amount of training



and the type of contract offered – whether permanent or temporary, direct or through a temporary work agency – is often decided in parallel.

Indeed, enterprises with a high demand for company-specific skills are also usually those that devote significant resources to both hiring workers with highly job-specific profiles and providing firm-specific training. Thus they are less likely to fill the vacancies requiring such training with temporary workers, because they would hope to recoup their investment in training.<sup>107</sup> In contrast, firms that turn to non-standard labour to satisfy temporary needs, such as assuring just-in-time production, and those that do not seek firm-specific skills, would be less likely to offer training to non-standard workers.

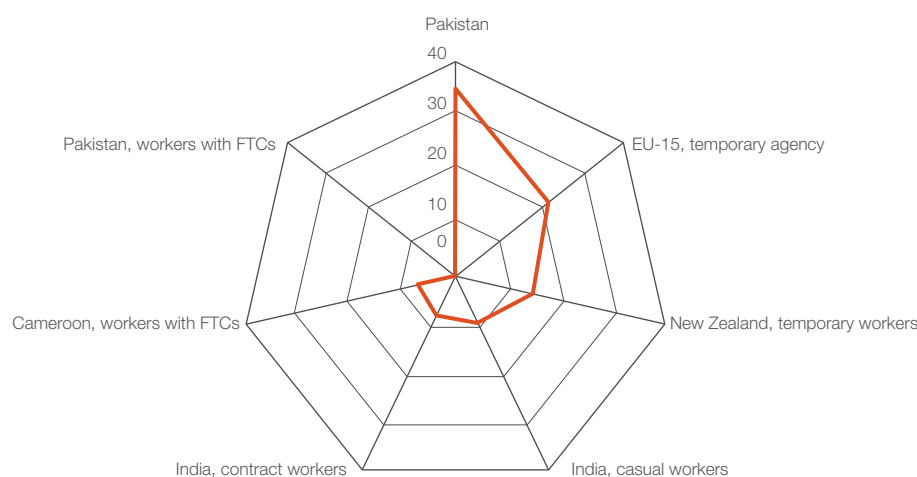
On the other hand, instead of applying extensive screening at the recruitment stage, some firms may offer training to temporary workers, which can also act as a screening tool.<sup>108</sup> In this case, costs associated with hiring and training workers can be reduced by more substantial recourse to temporary work,<sup>109</sup> provided that the temporary workers are subsequently converted into permanent employees. Alternatively, if temporary contracts serve a probationary function, training may be offered only once the probationary period is completed.

The management literature emphasizes the extent to which the production model of the firm, particularly the degree to which production is standardized, can alter both training and the use of temporary employment. The simplification of tasks brought about by technology means that some tasks can be performed by lower-skilled workers, who need less training and at the same time can be brought in at short notice.<sup>110</sup> As a result, turnover costs are reduced for firms, and there is less of an incentive to cultivate long-term employment relationships. On the other hand, sophisticated technology may increase firm-specific knowledge and reduce recourse to temporary and outsourced labour, both to save on training costs and to preserve their know-how.<sup>111</sup>

The findings suggest that overall the amount of training provided to temporary and temporary agency workers, as well as how this compares to training provided to standard employees, is an empirical question – it will clearly vary by type of firm, industry and sector. Available empirical evidence is summarized in Appendix table A5.4 and in figure 5.9. The evidence shows that temporary workers in Germany or France may receive more training compared to full-time permanent employees, but this is mainly because many of them are apprentices. In other instances, having workers on temporary contracts usually decreases an employer's incentive and the necessity to provide training, especially if the conversion rate of FTCs into permanent contracts is low.<sup>112</sup> In Spain, there is evidence that workers on temporary contracts are less likely to be employed in firms providing training: the share of temporary employees over total employees tends to be larger in firms that do not train their workforce. In addition, once workers are employed in firms that provide firm-specific training, holding an FTC also reduces the probability of being chosen to participate in training activities, even once other worker, job and employer characteristics are accounted for.<sup>113</sup> The 2010 European Working Conditions Survey reports that during the year preceding the interview, 26 per cent of temporary agency workers received training, compared with 39 per cent of workers on an indefinite contract.<sup>114</sup>

Part-time workers generally benefit from less training opportunities than their full-time counterparts.<sup>115</sup> These penalties may be linked to perceptions that part-timers are less

**Figure 5.9.** Employer-sponsored training received by standard workers and various non-standard workers, selected countries (percentage point differences)



Note: Percentage point differences in training received; raw differences.

Source: Authors' computations, based on a literature review; for details, see Appendix table A5.4.

career-oriented and thus are offered fewer opportunities for training. This explanation is given, for example, in the case of Japan, where research has shown that full-time workers are more likely to undertake training than non-standard workers, including part-time as well as temporary and contract workers.<sup>116</sup> In the European Union, the share of part-timers receiving training is 5 percentage points lower than that of full-time workers, and the likelihood of part-time workers receiving training declines with the number of hours worked.<sup>117</sup>

### 5.17. Fundamental principles and rights at work

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, commits the Organization's 187 member States to respect, promote and realize principles and rights in four categories, whether or not they have ratified the relevant Conventions.<sup>118</sup> These categories are:

- (a) freedom of association and the effective recognition of the right to collective bargaining
- (b) the elimination of all forms of forced or compulsory labour
- (c) the effective abolition of child labour
- (d) the elimination of discrimination in respect of employment and occupation.

The Declaration makes it clear that these rights are universal and that they apply to all people in all States, regardless of the level of economic development. In 2012, the International Labour Conference reiterated that the fundamental principles and rights at work must be accessible to all and observed that the increase in "non-standard forms

of employment, in cases in which the national legislation does not adequately regulate them, raises questions concerning the full exercise of fundamental principles and rights at work”.<sup>119</sup> This subsection reviews the extent to which being in NSE poses challenges to effective implementation and exercise of these fundamental principles and rights.

### **Freedom of association and the effective recognition of the right to collective bargaining**

The ILO Committee on Freedom of Association (CFA) has repeatedly pointed out that pursuant to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and by virtue of the principles of freedom of association stemming from it, all workers, with the sole possible exception of members of the armed forces and the police, have the right to establish and join organizations of their own choosing. It has also stressed that the entitlement to that right should not be “based on the existence of an employment relationship, which is often non-existent”, for example in the case of self-employed workers in general or those who practise liberal professions, “who should nevertheless enjoy the right to organize”.<sup>120</sup> Temporary workers, apprentices and “persons hired under training agreements” also have the right to organize.<sup>121</sup> With respect to workers from temporary employment agencies, the CFA recalled that “the status under which workers are engaged with the employer should not have any effect on their right to join workers’ organizations and participate in their activities”.<sup>122</sup> The Committee also examined the issue of the right to collective bargaining, explicitly holding that temporary workers “should be able to negotiate collectively”,<sup>123</sup> and addressing this right also for self-employed workers.<sup>124</sup>

Similar views have been expressed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which has stated on numerous occasions that all employees and workers in the private and public sectors, including subcontracted workers, dependent workers and the self-employed, have the right to freedom of association under Convention No. 87.<sup>125</sup> It has also highlighted how, under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), recognition of the right to collective bargaining is general in scope<sup>126</sup> and all organizations of workers in the public and private sectors<sup>127</sup> must benefit from it, including organizations representing categories of workers such as self-employed and temporary workers, outsourced or contract workers, apprentices and part-time workers.

Notwithstanding these principles, both committees examined various cases and circumstances in which non-standard workers were restricted in the exercise of the right to freedom of association and the right to collective bargaining. The CFA addressed various potential or actual violations of freedom of association suffered by fixed-term and temporary agency workers,<sup>128</sup> part-time workers,<sup>129</sup> casual<sup>130</sup> and self-employed workers<sup>131</sup> as well as subcontracted and dispatched workers,<sup>132</sup> whilst the CEACR examined several circumstances in which non-standard workers incurred exclusions from, or legal and practical limitations in, exercising the right to organize and the right to collective bargaining.<sup>133</sup>

In some jurisdictions, non-standard workers may be prevented from joining trade unions or unions of their choice. In Viet Nam, for instance, workers with contracts shorter than six months cannot join unions;<sup>134</sup> in Paraguay, workers are prohibited from joining

more than one union even if they have more than one part-time contract;<sup>135</sup> casual workers are sometimes excluded from the general application of employment and labour regulation, giving rise to uncertainties and potential loopholes in regulation with regard to collective rights and other fundamental principles and rights at work, as pointed out by the CEACR on several occasions.<sup>136</sup>

The self-employed are often excluded from the right to organize or from regulation protecting this right.<sup>137</sup> In Poland, for instance, the Trade Union Act 1991 allowed only employees to join trade unions. In 2012, the CFA called on the Polish Government “to take the necessary measures in order to ensure that all workers, without distinction whatsoever, including self-employed workers [...], enjoy the right to establish and join organizations of their own choosing within the meaning of Convention No. 87”.<sup>138</sup> In 2015, the Constitutional Tribunal declared the limitation provided under the Trade Union Act to be unconstitutional; the Government is now working on a new draft Act to take into account these developments. Other countries, such as Bolivia, Chile, El Salvador and Kenya, have also amended their regulations, on a constitutional level, in order to extend the legal scope of fundamental rights.<sup>139</sup>

Particular issues arise in various jurisdictions with respect to workers in “triangular” arrangements. For instance, in the Philippines, project employees in the construction sector can join the relevant industrial union but cannot constitute a collective bargaining unit.<sup>140</sup> Moreover, outsourced or subcontracted workers may not be part of the unions of regular workers (Indonesia)<sup>141</sup> or are only allowed to collectively negotiate with the subcontractor (Republic of Korea).<sup>142</sup>

In the United States, the National Labor Relations Board (NLRB) decided in 2004 that agency workers and permanent workers had the right to be organized in the same bargaining unit, which in this case was a multi-employer bargaining unit.<sup>143</sup> According to the Board, however, this required the consent of both the user employer and temporary work agency (or agencies). This condition had the effect of nearly always prohibiting collective bargaining, especially when more than one temporary work agency provided workers to a user enterprise.<sup>144</sup> In July 2016, the NLRB reversed this requirement. As a result, subjects “seeking to represent employees in bargaining units that combine both solely and jointly employed employees of a single user employer are no longer required to obtain employer consent”.<sup>145</sup> Already in 2015, the NLRB had redefined the joint employment status, easing the requirements under which workers of subcontractors can be recognized as jointly employed by the principal company and the subcontractor for the purpose of collective rights.<sup>146</sup> A similar case regarding franchising is also pending.<sup>147</sup>

Some non-standard workers are not covered by existing labour regulations or collective bargaining arrangements because they work either in enterprises that are excluded from certain provisions, such as small enterprises in some countries, or in sectors with non-existent or limited labour regulations or collective bargaining arrangements, such as domestic work or agriculture. The erosion of the direct employment relationship also means that some workers are not covered by existing labour regulations or collective bargaining arrangements because they are not considered employees, or because their status is beyond the scope of application of labour laws. For example, under some jurisdictions, forming trade unions and collective bargaining by self-employed workers can be construed as forming a cartel, which violates anti-trust laws, as their concerted

activity can be regarded as “price-fixing”.<sup>148</sup> This is an issue that has recently sparked contention in the European Union<sup>149</sup> (see box 5.4) and in the United States, with regard to businesses in the gig economy. In particular, when the Seattle City Council passed an ordinance granting the right to bargain collectively to drivers of transport network companies classified as independent contractors, business lobby groups filed a lawsuit to challenge the ordinance under anti-trust regulation.<sup>150</sup>

#### **Box 5.4. Self-employed workers and EU competition law**

In the mid-2000s a collective bargaining agreement concerning substitute musicians of an orchestra was negotiated in the Netherlands. The agreement specified compensation not only for substitutes hired under an employment contract but also for those substitute musicians who were considered self-employed workers. A premium compensation rate was also agreed in favour of these self-employed musicians.

In December 2007, however, the Netherlands Competition Authority (NMA) stated that the provisions of collective labour agreements specifying minimum fees for self-employed workers were not excluded from competition law and that such agreements therefore had to be nullified as they were in breach of anti-trust principles. Following the adoption of this position, the employers’ association terminated the collective agreement and declined to enter into negotiations for a new agreement. The workers’ organization representing the musicians brought the issue before the ILO, claiming that the position of the NMA had the effect of discouraging collective bargaining. The CEACR reiterated that Convention No. 98 “establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties” (see *Netherlands – CEACR, Observation, C.98, published 2011; Netherlands – CEACR, Observation, C.98, published 2009*).

The case later reached the Court of Justice of the European Union (CJEU) which, in 2014, held that collective bargaining on behalf of self-employed workers is not exempt from the application of competition law (*FNV Kunsten Informatie en Media v. Staat der Nederlanden, C-413/2013*). According to the CJEU ruling, only when service providers are “false self-employed”, that is to say, in a situation comparable to that of employees, can they have access to collective bargaining. It has been observed, however, that the judgment does not provide unequivocal guidelines on establishing whether self-employed persons are in “false self-employment”.<sup>151</sup> This is because the Court adopts an approach typical of competition law that would exempt any operator that “does not determine independently his own conduct on the market”. By this approach workers in several forms of dependent self-employment across various EU jurisdictions would be excluded from this restriction, and would therefore be admitted to collective bargaining. In a subsequent part of the judgment, however, the Court stated that “employees” – who would be excluded from competition law – should be defined by reference to its case law on employment matters. Specifically, according to CJEU case law, “the essential feature of [the employment] relationship is that for a certain period of time one person performs services for and under the direction of another person in return for which he receives remuneration”. This criterion could be more restrictive than the guideline above focusing on the independent conduct of the operator on the market, and could possibly leave categories of dependent self-employed workers outside the scope of the exemption from anti-trust law.<sup>152</sup>

Having set down these principles, the CJEU judgment also specified that it was for the national court to ascertain whether the workers concerned were actually “false self-employed”. When the case returned to the Dutch national courts, the Hague Court of Appeal found that the substitute musicians could be regarded as “false self-employed” under the CJEU’s decision and were therefore entitled to collective bargaining. The Court of Appeal, however, explicitly stated that it would not “give judgment on the question of whether self-employed other than substitutes (such as self-employed workers without employees in general or working in another sector) must be regarded as ‘false self-employed’ within the meaning referred to here”.

Box 5.4. continued

The matter of restricting access to the right to collective bargaining pursuant to anti-trust regulation, therefore, is not resolved in general terms either at the national or at the EU level. Notably, the decision in *FNV Kunsten* was also recently referred to in an Observation of the CEACR (*Ireland* – CEACR, Observation, C.98, published 2016), on the concerns raised by an Irish trade union with regard to a restriction on collective bargaining for workers within radio, television, cinema and the visual arts established by the national Competition Authority. The union asked the Competition Authority to reconsider this restriction on the basis of the exemption laid down by the CJEU for “false self-employed”, a request that was rejected by the Authority.

This issue was subsequently brought to the ILO, and the CEACR recalled that Convention No. 98 “establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties with respect to all workers and employers covered by the Convention”. It pointed out that the right to collective bargaining should also cover organizations representing the self-employed, being “nevertheless aware that the mechanisms for collective bargaining in traditional workplace relationships may not be adapted to the specific circumstances and conditions in which the self-employed work”. The CEACR thus invited the Irish Government “to hold consultations with all the parties concerned with the aim of limiting the restrictions to collective bargaining that have been created by the Competition Authority’s decision, so as to ensure that self-employed workers may bargain collectively” and suggested that, to this end, “the Government and the social partners concerned may wish to identify the particularities of self-employed workers that have a bearing on collective bargaining, so as to develop specific collective bargaining mechanisms relevant to them”.

This case was also discussed by the Conference Committee on the Application of Standards (CAS) during the 105th Session of the International Labour Conference, held in Geneva in May–June 2016. The CAS examined the comments from the CEACR referred to above and, noting that “this case related to issues of EU and Irish competition law”, suggested “that the Government and the social partners identify the types of contractual arrangements that would have a bearing on collective bargaining mechanisms”.<sup>153</sup>

Source: Authors’ compilation.

But the key challenge in promoting collective bargaining among non-standard workers is that – especially in the case of temporary workers, temporary agency workers and dependent self-employed – they may not be able to exercise their fundamental rights, even if in theory they should be able to do so. This inability is due to several reasons.<sup>154</sup>

First, with the possible exception of part-time workers, non-standard workers often have a limited attachment to the same employer and to the employees of the same enterprise. As such, they often do not spend sufficient time with other workers who may share similar concerns. Second, non-standard workers may be reluctant to organize because of a fear of retaliation from the employer, which could result in losing their job or being blacklisted.<sup>155</sup> Indeed, employers’ discretion to renew short-term contracts can be “used repeatedly as a means of discouraging trade union membership” with “prejudicial effects on the exercise of trade union rights”.<sup>156</sup>

Contract workers are often unaware of their rights at the workplace and may be led to believe that they have no right to join a union of direct hires.<sup>157</sup> Often seen as outsiders, they may also be reluctant to join a union because of reprisals, or may simply not be able to afford union membership because of their unstable income.<sup>158</sup> Unless there is



a specific union for agency workers, they may also need to change unions with each engagement if they work in different sectors.

Standard and non-standard workers may have diverging interests, which are not easily represented collectively. The divergence of interests may weaken workers' solidarity within an enterprise rather than allowing them to join forces in bargaining with a manager or enterprise owner. Moreover, trade union members in standard employment may even perceive workers in NSE as a threat,<sup>159</sup> because employers might employ non-standard workers to avoid unionism. Employers may also threaten to outsource work, revert to non-standard workers when their regular employees go on strike, or apply pressure on unions during negotiations, to an extent that some researchers have labelled non-standard workers as “temporary weapons”.<sup>160</sup> Furthermore, the greater opportunities for employers to take advantage of quick reorganization and relocation can also make employers less dependent on reaching a collective agreement with unions.<sup>161</sup> As a result, tensions between standard and non-standard workers can be so high that in some instances, non-standard workers wanting to join a recognized union would not be welcomed. In addition, unions may exclude contract workers not only from membership and collective negotiations, but also from collective agreements and settlements. In some cases, such as in a Mumbai-based energy company, this has led contract workers to form their own unions.<sup>162</sup>

Another problem concerns TAW and subcontracting, which can be an obstacle to collective bargaining within the enterprise. The presence of multiple subcontractors can impede trade unions' ability to meet the regulatory threshold necessary either to form a union in the first place or to gain recognition as the bargaining agent.<sup>163</sup> Even when the threshold is reached, subcontractors may be too small to have sufficient weight in collective bargaining negotiations. In addition, small and medium-sized subcontractors often operate under very competitive conditions set by principal employers<sup>164</sup> and may have a different contractual status and interests, potentially leading to conflicts that can undermine solidarity in bargaining and weaken trade unions.<sup>165</sup> Moreover, some principal employers may even purposefully prevent unionization or weaken existing unions by using several small contractors.<sup>166</sup> For example, a large Canadian discount retailer has been contracting workers through five different agencies in Canada, stating in its annual report that its greatest financial risk is linked to labour costs and unionization.<sup>167</sup> As small contractors usually face considerable pressure to reduce costs by the principal firm that engages them, it is more important and constructive to negotiate with the lead firm that is responsible for subcontracting. In those cases, non-standard workers face an even greater challenge in identifying the principal employers, and organizing with other workers in order to engage in bargaining.

Temporary agency workers have also faced difficulties when on strike. In a 2012 labour court case in South Africa, workers at the Mogalakwena mine who were employed by labour brokers went on strike, picketing the mine's premises. The Commission for Conciliation, Mediation and Arbitration (CCMA) ruled that the striking employees were permitted to stage pickets at the premises of the temporary employment agency, 30 kilometres from the mine, but not at the mine's premises. However, the labour court set aside the ruling because, in its view, the Commissioner had failed to consider the proper place for picketing.<sup>168</sup> Such difficulties can also be magnified by legal restrictions

that disproportionately affect non-standard workers. An example would be a ban or significant restriction imposed on sympathy strikes. Restrictions such as these could be particularly detrimental in contractual arrangements involving multiple parties as they could, for instance, prevent the workers of the principal firm from taking action in favour of the workers of subcontractors who, as already mentioned, could experience difficulties in organizing and bargaining collectively. Another example is the provision of complex strike ballot procedures, particularly when on-call and casual workers constitute a substantial part of the interested workforce. It could be difficult to involve them in the ballot and to report their participation in the vote correctly on account of the lack of continuity in their presence at the workplace. This then could lead to procedural irregularities that could result in the ballot being declared invalid and would thus obstruct the proposed action.<sup>169</sup>

The challenges outlined above are confirmed by growing statistical evidence that workers in NSE, especially temporary and temporary agency workers, have a lower rate of unionization. For example, in Cameroon, only 24.5 per cent of workers with FTCs are members of workers' unions, against 52.8 per cent of workers with permanent contracts (though only 10.6 per cent of workers with verbal agreements are members of a union).<sup>170</sup> In Cambodia, trade union membership is highest among workers with FTCs (around 30 per cent) but three times lower among other temporary workers, and 15 times lower among part-timers.<sup>171</sup> In India, 63.9 per cent of workers with longer-term contracts employed in organizations with 20 or more employees were members of a union or association around 2012, while only 13.5 per cent of workers with short-term contracts were members. Among casual workers in organized sector establishments of 20 or more employees, only 5 per cent of workers were members of a union or association. There are also differences across industries and sectors, with trade union membership much less significant in industries that are almost exclusively dominated by the private sector or where union membership is restricted by law.<sup>172</sup>

The difficulties of non-standard workers in exercising their fundamental rights to freedom of association and collective bargaining have also been highlighted by the ILO supervisory bodies. In its 2012 Report, for instance, the CEACR noted a significant concern expressed by trade unions about the possibility of organizing non-standard workers, in particular with regard to short-term temporary contracts that are repeatedly renewed, subcontracting and the non-renewal of contracts for anti-union reasons.<sup>173</sup> The Committee noted that some of these modalities often deprive workers of access to freedom of association and collective bargaining rights, particularly when they disguise a real and permanent employment relationship and that "some forms of precariousness can dissuade workers from trade union membership".<sup>174</sup> The CEACR has examined cases of severe anti-union discriminatory use of FTCs,<sup>175</sup> whilst the CFA has stressed that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98.<sup>176</sup> The CFA has also recalled that "fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights".<sup>177</sup>

Lastly, NSE can also undermine the effective exercise of collective bargaining rights of standard workers. Some experts have suggested that the various forms of triangular

employment relationships are effective for “evad[ing] labour laws and worker benefits”,<sup>178</sup> but also weaken trade unions and undermine their ability to challenge these violations. Analyses of employers’ outsourcing decisions in Australia show that rather than being part of a coherent business strategy, outsourcing can be one of the ways used to avoid unions regarded as “unduly militant”, circumvent employment regulations, and lower the number of unions and their influence.<sup>179</sup> Similarly, subcontracting in South Africa’s mines is seen as contributing to the decline in union numbers and strength.<sup>180</sup> In the United States, an analysis of 106 labour–management disputes showed how “temporary agency work is used as a weapon against organized labour” by blocking attempts at union organization (by replacing pro-union workers with temporary workers or using temporary workers to interfere with a union certification election); by weakening or dismantling existing unions by using temporary agency workers to replace union workers; and by forcing concessions at the bargaining table by replacing (or threatening to replace) striking workers with temporary agency workers, or else by locking out union workers and replacing them with temporary agency workers.<sup>181</sup>

### **The elimination of all forms of forced or compulsory labour**

Neither the Forced Labour Convention, 1930 (No. 29), nor the Abolition of Forced Labour Convention, 1957 (No. 105), contain any provisions that exclude categories of workers from their scope. Convention No. 29, in particular, refers to “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”, hence covering “all types of work, service and employment, regardless of the industry”.<sup>182</sup>

The CEACR has examined different cases in which the issues connected with forced labour concerned temporary workers or their recruitment.<sup>183</sup> In 2014, for instance, a Canadian workers’ organization alleged that “work visas issued to temporary foreign workers are imprinted with the name of their employer, with restrictions on working for another employer, and significant restrictions prevent them from leaving a job when their rights are abused” and that “third party recruiters charge illegal fees, and temporary foreign workers are more vulnerable to violations relating to payroll and employment issues”. The CEACR requested the Government to provide information on the measures taken to protect temporary foreign workers from exploitative work amounting to forced labour, including measures to facilitate access to relevant complaint mechanisms, and to take measures to ensure that persons who engage workers in work amounting to forced labour are subject to sufficiently effective and dissuasive penal sanctions.<sup>184</sup>

Migrant workers are indeed often reported to suffer from illegal recruitment practices that can result in forced labour in both developed and developing countries,<sup>185</sup> including in cases of international private employment agencies supplying migrant work.<sup>186</sup> In this context, it should be noted that the ILO Protocol of 2014 to the Forced Labour Convention, 1930, mandates – among the measures to be adopted to prevent forced or compulsory labour – to protect “persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.<sup>187</sup>

Forced labour practices, including trafficking in persons, are often concealed through the use of work arrangements involving multiple parties. In 2007, for instance, in

reporting on the application of Convention No. 29, the Belgian Government referred to “the problem of subcontracting as an element that complicates the battle against the trafficking of persons because of the exploitation of their work”, observing how, “in this area, the existing legal networks are complex and, the longer the chain of subcontractors, the greater the risk of informality and exploitation”.<sup>188</sup>

Forced labour may be associated with global supply chains.<sup>189</sup> It is particularly significant in the lower subcontracted tiers of global supply chains, where labour contractors may engage in human trafficking.<sup>190</sup> Indeed, the Conclusions of the discussion concerning decent work in global supply chains, adopted by the ILC in 2016, explicitly state that “the presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain”.<sup>191</sup> Measures are now being implemented, also on a multi-stakeholder basis, to eradicate forced labour in these contexts, such as the ILO programmes to eradicate forced labour in global supply chains in Bangladesh, Brazil, India and Nepal.<sup>192</sup> For example, the ILO undertakes programmes in Brazil to eradicate forced labour from global supply chains through social dialogue, and in Bangladesh, India and Nepal to prevent the trafficking of women and girls in the garment sectors.<sup>193</sup> The Protocol of 2014 to Convention No. 29 provides that the measures taken for the prevention of forced labour shall include “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour”.

### **The effective abolition of child labour**

The Minimum Age Convention, 1973 (No. 138), applies to all sectors of economic activity and covers all forms of employment or work.<sup>194</sup> Accordingly, the minimum age for admission to employment or work established by ratifying States should apply to all persons engaged in an economic activity, “whether or not there is a contractual employment relationship and whether or not the work is remunerated”, including “self-employed workers”.<sup>195</sup> Particular issues arise with regard to the latter, however, since the self-employed are often not covered by the general application of labour law and, as such, they may also be excluded from the scope of legislation limiting or prohibiting child labour.

The CEACR has addressed these matters on many occasions in both developed and developing countries.<sup>196</sup> In its 2016 Report, for instance, the Committee called upon several governments to adopt measures “to ensure that all children, including self-employed children and children working in the informal economy” be included in the protection against child labour.<sup>197</sup> This issue also arose in connection with the Worst Forms of Child Labour Convention, 1999 (No. 182).<sup>198</sup> The Committee also expressed “deep concern” when a different – lower – statutory minimum age was provided for self-employed children.<sup>199</sup> Child labour is also associated with work arrangements involving multiple parties, and in particular with global supply chains,<sup>200</sup> an issue that, as reported above, was highlighted by the International Labour Conference in 2016.<sup>201</sup>

### **The elimination of discrimination in respect of employment and occupation**

In several jurisdictions, some categories of non-standard workers face problems connected to the application and scope of anti-discrimination law, in that they are

sometimes excluded from the application of labour and employment law. Notwithstanding the fact that the Equal Remuneration Convention, 1951 (No. 100), applies to “all workers”, and that, according to the CEACR, “the rule must be that the principle of equal remuneration for men and women shall apply everywhere”,<sup>202</sup> including workers “in atypical employment relationships”,<sup>203</sup> the Committee examined several circumstances in which some categories of non-standard workers were excluded from this principle, for example, casual workers<sup>204</sup> and part-time workers.<sup>205</sup>

Similar issues arose in connection with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which applies to all employment and occupations, without any exceptions. In the context of this Convention, the general exclusion of some categories of non-standard workers from employment protection is significant: common exclusions, for instance, include casual workers<sup>206</sup> and self-employed persons.<sup>207</sup> In addition, the CEACR noted how non-standard workers such as “fixed-term, part-time and dispatched workers” could be particularly vulnerable to discrimination.<sup>208</sup>

With regard to both Convention No. 100 and No. 111, the CEACR has repeatedly expressed concerns about the potentially discriminatory impact of “atypical” forms of employment, and noted the over-representation of women in these jobs in a number of countries, including Algeria, Finland, Italy, the Republic of Korea, Madagascar and Turkey.<sup>209</sup> With respect to the Republic of Korea, the Committee requested that the government, in consultation with the social partners, “assess the impact of the effectiveness of the legislative reforms regarding non-regular workers to ensure that they do not in practice result in discrimination on the basis of sex and employment status, and to provide information on the results achieved.”<sup>210</sup>

## 5.2. EFFECTS ON LABOUR MARKETS AND ECONOMIES AT LARGE

An employment arrangement inevitably has consequences for the individual’s working conditions, career path and overall well-being. As discussed in Chapter 4, it can also have repercussions on the firms, especially when non-standard arrangements become a central part of their operational and human resource strategies. But the widespread use of NSE can also have consequences at the macroeconomic level. Are such arrangements a panacea for rising unemployment? Or does too much reliance on NSE lead to segmented labour markets, hampering the flow of workers, and their skills, in the labour market? Does movement towards more formality happen at the expense of standard jobs? Moreover, what are the consequences for aggregate productivity growth and innovation? And what are the societal implications of NSE?

The overview of country-specific examples and trends in various forms of NSE suggests that, to a significant degree, the growth of NSE is driven by changes in regulations and other institutions that govern the labour market. Part-time employment has become the norm in some regions such as northern Europe in order to increase the participation of women in the labour force, and policies supporting this effort have largely and successfully achieved their goals. In contrast, reforms liberalizing the use of FTCs with the aim of raising employment levels in Europe throughout the 1980s, and in parts of Latin America and Asia a decade later, had less unequivocal consequences.



The effect of FTCs on employment creation has been the subject of heated academic and policy debates, casting serious doubts on the ability of such reforms to deliver on their promise to create stable jobs. If such reforms, also referred to as “marginal” reforms, are implemented in a good macroeconomic climate, they can indeed lead to employment creation and the reduction of unemployment – the so-called “honeymoon effect”.<sup>211</sup> This is because employers receive incentives to hire extra temporary labour, but still face the same rules for terminating the employment of permanent workers. The problem, however, is that “honeymoons” do not last. In economic downturns, temporary contracts are not renewed, which means that the employment gains from relaxing the rules of using fixed-term contracts are transitory, and can even lead to higher volatility in labour markets. For example, the jump in unemployment in Spain and in Japan during the late 2000s as a result of the economic crisis has been largely the result of non-renewals and the elimination of fixed-term jobs. In the last quarter of 2008 in Spain, 2.5 per cent of permanent workers lost their jobs to unemployment, compared to 15 per cent of workers on FTCs. In Japan in 2009, the number of dispatched workers dropped by 20 per cent in the first quarter. In other countries (Ireland in 2011–12; Bangladesh in 2010; Republic of Korea in 1998, in the aftermath of the financial crisis), economic downturns have led to increased hiring on very short temporary contracts, as a substitute for permanent hires, as a means of keeping labour costs flexible – so as to be able to reduce them quickly if economic distress returns. In the United States, during the Great Recession, temporary and contract employment shrank by 30 per cent up until August 2009, but has increased continuously ever since, faster than overall employment growth.<sup>212</sup>

Moreover, partial, marginal reforms that liberalize the use of temporary contracts can also widen the gap in the costs associated with terminating a permanent worker and hiring a temporary worker. This disparity has been held responsible for the growth of temporary employment in some European countries outside the period of economic crisis.<sup>213</sup> Furthermore, once employers are given the option of hiring temporary workers for permanent tasks, they will have a strong incentive to do so systematically.<sup>214</sup> This tendency is amplified even more by greater economic uncertainty; in other words, a firm’s costs and its flexibility in terms of its workforce tend to reinforce each other.<sup>215</sup> As a result, not only are the employment gains from marginal reforms temporary, but in the long run temporary employment can replace permanent employment rather than have an enduring effect on decreasing unemployment.<sup>216</sup>

The coexistence of standard and non-standard workers may lead to labour market segmentation, or duality, a situation in which one segment of the labour market (temporary workers, or “the less protected fringe”) faces both inferior working conditions and vulnerable employment status, while the other segment enjoys more favourable working conditions and employment security granted by permanent contracts – even if workers in both segments perform the same types of jobs. A key feature of dual labour markets is that the transition from one segment to another is compromised. Labour market segmentation also means that there is unequal risk-sharing between standard and non-standard workers in terms of unemployment and income security – and also between non-regular workers and employers in terms of economic adjustment, because economic adjustment occurs disproportionately at the expense of one segment of the labour market. As a consequence, volatility of both employment and unemployment



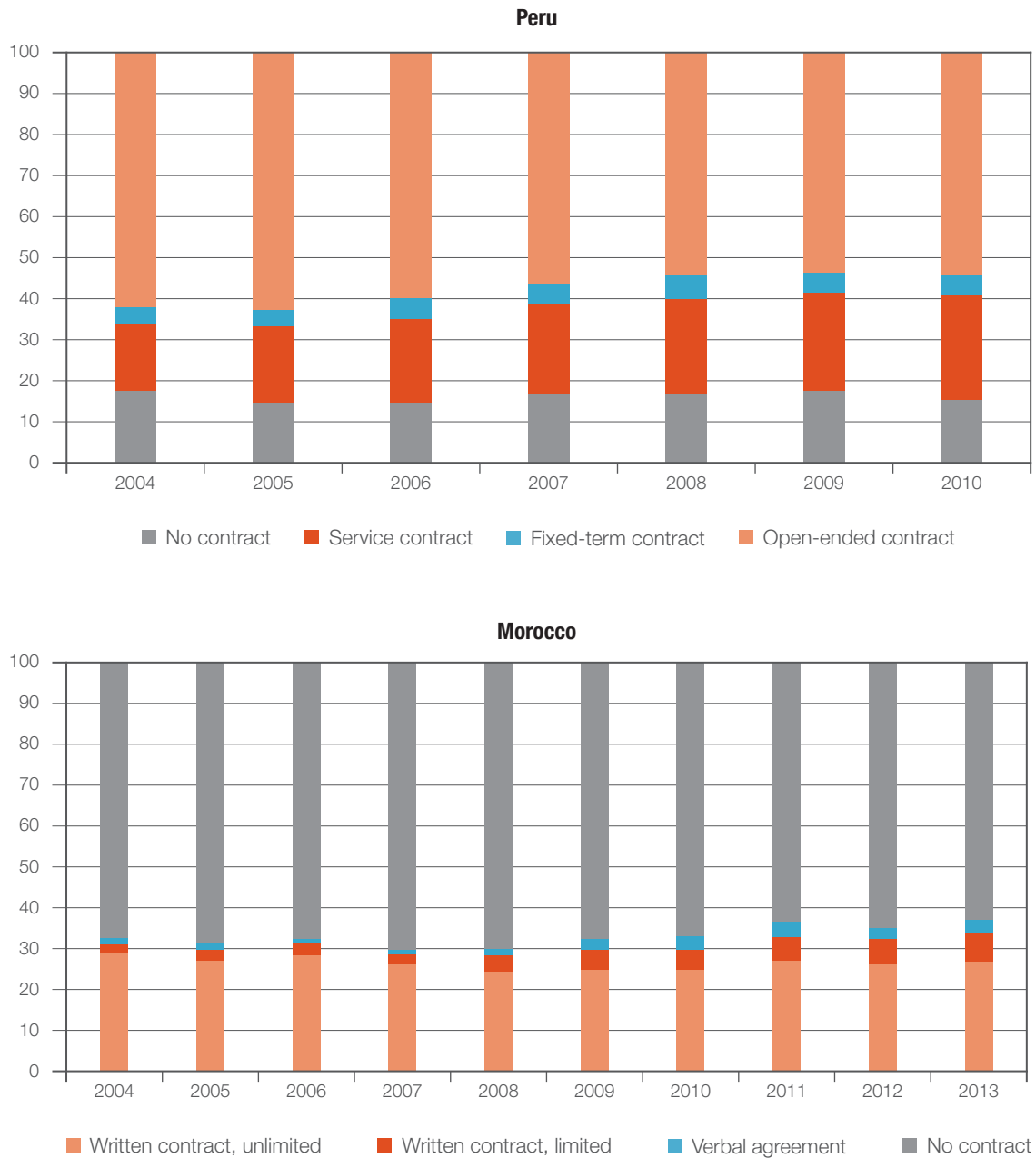
in segmented labour markets is high.<sup>217</sup> In turn, more unstable labour markets also increase the volatility of public budgets because there is more volatility both among employed contributors and among individuals claiming unemployment assistance.<sup>218</sup> The key challenge for policy-makers is thus to minimize the negative consequences of unequal risk-sharing between various labour market actors, both at the micro and at the macro levels.

European countries, especially Spain, experienced not only the reforms liberalizing the use of FTCs, but also a series of subsequent reforms to reverse the growth of temporary contracts. Their experience shows that, while such reforms do have the capacity to harness the use of FTCs, their effects may be limited. This is because in the years when temporary contracts were permitted, firms got used to the idea of using them and adapted their business operations accordingly. For many of these firms, reversing these changes and adjusting their production processes and human resource practices will not happen automatically. However, when the reforms were invoked for a relatively short period only, as they were in Argentina – which experienced a growth in temporary contracts in the 1990s as a result of deregulation, but then re-regulated in the 2000s – businesses were able to revert to their usual human resource practices relatively easily.

Another question that is particularly important in the context of developing countries is the extent to which increased formalization is associated with more stable and decent employment. For example, in Peru, nearly half of all workers have no contract at all. Even though, during the 2004–10 period, the proportion of workers with no employment contract declined by 8 percentage points, the share of workers with fixed-term employment contracts increased by a similar magnitude, while the share of open-ended employment contracts remained almost unchanged (figure 5.10). Although the fall in the proportion of workers with no contract at all is good news, it has resulted in an increase in FTCs rather than in open-ended contracts.<sup>219</sup> A similar situation was observed in Morocco: between 2004 and 2013, the country witnessed a decrease in the proportion of workers with no contracts, but an increase in the share of written contracts with limited duration. The proportion of employees with written permanent contracts, however, remained stable, and even exhibited a small dip immediately following the global economic crisis (figure 5.10). This situation warrants a different policy approach compared to one where informality is replaced by stable formality, and indicates that problems of informality may be gradually replaced by problems of labour market duality that have been observed in some European countries. Moreover, examples in Latin American countries, but also in Asian and African countries, suggest that during economic downturns, employment without any contract and formal employment on non-permanent contracts may serve interchangeably as cushions to formal permanent employment. Attention also needs to be paid to the overlapping double segmentation of the labour markets – along the informality/formality divide and along the contractual issues divide – and to the swings in these segments.

One further possible consequence of labour market segmentation, and of the casualization of employment in general, is growing wage and income inequality. It arises because non-standard workers often earn lower wages compared to standard workers; they have lower training opportunities, which slows down their career advancement and the opportunities for closing the wage gap with standard workers; and they are more likely

Figure 5.10. Shifts from “no contract” to “contract”, Peru (2004–10) and Morocco (2004–13)



Source: Peru: ENAHO, computations by Jaramillo, 2013; Morocco: authors' computations, based on data from Direction Technique chargée des Statistiques de la Population et de l'Emploi.

to rotate between unemployment and non-standard work, which negatively affects their lifetime earnings. Available evidence shows that the widespread use of temporary work contributes to wage inequality in some OECD and Latin American countries, though this effect depends on the existence of other labour market institutions, in particular wage-setting institutions.<sup>220</sup> The effect is particularly pronounced in the Republic of Korea and Japan.<sup>221</sup>

Last but not least, the proliferation of NSE can have unequivocal effects on the adoption of new technologies, efficiency of labour relocation, labour productivity and, as a result, on aggregate productivity and economic growth. As outlined in Chapter 4, voluntary part-time work can be associated with positive productivity gains spilling over from workers to companies and to economies in general. In contrast, the group of non-standard workers whose contribution to aggregate productivity is particularly questionable is that of temporary workers. There are at least three channels through which a negative correlation between productivity and a larger proportion of temporary labour can be identified. As discussed both in this chapter and in Chapter 4, they include less training received by temporary workers compared to permanent ones and a resulting gradual erosion of firm-specific skills in the organization;<sup>222</sup> lower worker motivation and effort induced by strong threats of dismissal and a lower probability of contracts being renewed; and lower rates of innovation<sup>223</sup> and investment in productivity-enhancing technology as a result of lower levels of worker loyalty and firms' fears of technological know-how leakages.<sup>224</sup>

On a macro level, therefore, greater incidence of temporary labour can lead to lower overall productivity. Indeed, a study using industry-level panel data for Member States of the European Union found that the use of temporary contracts has a negative effect on labour productivity.<sup>225</sup> In the case of Spain, 20 per cent of the slowdown in productivity in manufacturing firms between 1992 and 2005 has been attributed to the “reduced effort” of temporary workers.<sup>226</sup> Evidence from Italy and the Netherlands also warns that firms using higher shares of flexible labour experience lower labour productivity growth.<sup>227</sup>

### 5.3. WIDER SOCIAL CONSEQUENCES

Non-standard employment can also have various social consequences, ranging from distorted consumption patterns to altered modes of living.

The two key aspects of NSE – employment insecurity and poorer remuneration – have particularly strong repercussions on the consumption and socialization patterns of workers. Research shows that for temporary workers it is more difficult to get access to credit and housing, because banks and landlords usually prefer workers with stable jobs and regular incomes. Thus in France, young workers are more likely to live separately from their parents if they have stable jobs, compared to young workers on temporary contracts.<sup>228</sup> There is similar evidence that temporary workers in Italy and Spain,<sup>229</sup> as well as in the United States,<sup>230</sup> are less likely to own their home or to be able to accumulate assets. It is easy to see how the disguised self-employed and involuntary part-timers may find themselves in similar situations, and how casual workers and crowdworkers living solely from income earned on internet platforms would have difficulty in obtaining housing and credit (box 5.5). Some research shows that home ownership can contribute positively to community involvement and enrich the social capital of communities, which means that further spread of NSE and associated lower home ownership rates may have adverse consequences for societies in general.<sup>231</sup>

**Box 5.5. Working conditions in the gig economy**

In November and December 2015, the ILO conducted a survey of 1,100 workers on two leading micro-task platforms to learn about their employment patterns, work histories and financial security. Nearly 40 per cent of the workers stated that crowdwork was their main source of income. They generally appreciated the ability to work from home, with one in ten indicating that it was their only option owing to care responsibilities or personal health issues.

Nevertheless, these positive aspects contrasted with dissatisfaction over low pay, insufficient work and unresponsiveness from the platforms in the face of their concerns. Some 90 per cent of respondents said they would like to be doing even more crowdwork – if only more were available and the pay were higher. The survey found that the workers averaged between US\$2 and US\$6 per hour, depending on the micro-task platform and the tasks that they carried out.

Part of the low hourly earnings stemmed from time spent looking for more work on the platform or from taking unpaid qualification tests to qualify for work when it became available. Indeed, for every hour of paid work, workers averaged 18 minutes of unpaid work. Thus, even if a 15-minute task paid relatively well, the time spent looking for the work drove average earnings down.

Worker pay was also compromised by the lack of protections regulating this form of work. As the platforms have, for the most part, classified the workers as independent contractors, the workers are not privy to the protections – on working hours, pay, occupational safety and health, voice and representation, and social protection – that are accorded to employees. This means that earnings are allowed to fall below the minimum wage of many of the countries where the workers lived. Moreover, there are no paid leaves or breaks, and workers bear all the costs of social security payments, or risk not being covered by social security in the event of disability, job loss or retirement. Indeed, the survey found that of the American Amazon Mechanical Turk workers for whom crowdworking was the main source of income, only 9.4 per cent made contributions to social security and only 8 per cent made contributions to a private pension fund.

As employment in the gig economy is likely to expand in the years to come, the concerns over working conditions revealed in the survey will need to be addressed. Policies, including regulatory responses, are needed in order to ensure decent work for “crowdworkers”, but also to minimize any negative societal effects resulting from the lack of employment and income security and social protection.

Source: Berg, 2016.

Workers with temporary contracts who have difficulty transiting to permanent jobs also report having to delay marriage and starting a family until they can find stable employment. In the Republic of Korea, difficult job markets and a generally sluggish transition to stable jobs for graduates have been cited as reasons for changing marriage patterns, including delayed marriage and childbirth.<sup>232</sup> In Spain and Italy,<sup>233</sup> unstable employment, coupled with low levels of welfare, has been shown to lead to reduced fertility rates. Also in Spain, women with temporary contracts are more likely to transit to self-employment after having children.<sup>234</sup> European countries with already low fertility rates may thus see their demographic prospects deteriorating even further as temporary employment flourishes.

Persons employed by temporary agencies that not only dispatch workers to the end-users of their labour but also provide on-site housing may be particularly vulnerable.



Construction workers, Gulf Region

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As housing is usually provided only for the worker and not for the worker's family, those workers with families are separated from their loved ones, while those without a family may find it difficult to establish personal relationships. In an extreme version of "dormitory labour regimes", which were initially documented in China<sup>235</sup> but have now spread to other parts of the world, temporary agency workers are obliged to construct their life around the dorm sites, within which they form their own mini-societies and culture. Little by little, they lose connections with their social networks beyond their employment and, in the case of migrants, with their home towns, while at the same time experiencing difficulties integrating into mainstream society.<sup>236</sup> The long-term consequences of the multiplication of such societies-within-societies are yet to be assessed.

#### 5.4. SUMMARY

Non-standard employment can have a variety of effects on virtually all aspects of working conditions, depending on the type of work arrangement, on the individual worker profile, as well as on the firm, industry and country setting. Importantly, as has been highlighted throughout this chapter, the quality of NSE also depends on whether engagement in it is voluntary, and on the extent to which transitions to standard employment are possible.

Despite these nuances and the importance of context, some generalizations do emerge. Figure 5.11 summarizes the risks and possible insecurities associated with the different



Figure 5.11. Summary of evidence on various insecurities associated with non-standard employment





forms of NSE, when compared to standard employment, based on available empirical evidence. It assesses, for each type of NSE, how widespread the risks are, whether they are found only occasionally, or if they are restricted to specific contexts. Although the quality of the standard employment relationship leaves much to be desired in many parts of the world, as the figure shows, the reason why it remains the “holy grail” is because it presents fewer insecurities, in general terms, when compared with the different forms of NSE. Indeed, each form of NSE carries at least some negative aspects. Even part-time work, considered to be the best form of NSE, is associated with inadequate social security coverage, low levels of training, less worker representation, and potentially discriminatory aspects. At the other end of the spectrum, casual and day work, some forms of agency or subcontracted work, sham or misclassified self-employment are clearly the employment arrangements with the highest level of insecurities and risks, and thus generally offer the poorest job quality. It is the prevalence of these kinds of jobs that, when considered on a national scale, can pose particular macroeconomic challenges.

Looking at figure 5.11 row by row, it can be seen that *fixed-term contracts* present a relatively frequent risk of employment insecurity, as workers usually have a low expectation of continued employment. Moreover, transitions to permanent employment remain quite low in most countries with available data. In terms of earnings, evidence shows that fixed-term workers usually earn lower wages compared to workers with permanent contracts, for the same type of work. Further longer-term income insecurity can arise if there is difficulty in getting employers to convert FTCs into permanent ones, and subsequently with having to switch between jobs as well as cope with repeated spells of unemployment. Workers with FTCs frequently suffer from inadequate social security coverage, mainly because their short tenure prevents them from meeting social security contribution requirements, resulting in lower unemployment and pension benefits. They also have more limited access to on-the-job training, as having workers on temporary contracts decreases the employer’s incentives and necessity to provide training, especially if the conversion rate of FTCs into permanent contracts is low. Lower levels of training, compared to that for permanent workers, can exacerbate OSH risks for them. Lastly, these workers also have a much lower chance of union representation compared to workers with standard contracts, because of the fear that voicing their concerns or joining trade unions may result in their contracts not being renewed – leading to further feelings of insecurity.

In general, workers on *project- or task-based contracts, as well as seasonal workers* are more vulnerable compared to workers on FTCs. Like fixed-term workers, they face significant employment insecurity. They may not necessarily be actively penalized, but they will often suffer from insecurity of earnings in general, linked to the uncertainty of the labour market after the expiration of the project-based contract. Such workers also face insecurity in terms of lack of representation, lower social security protection and reduced levels of training. Indeed, project- or task-based work often implies limited social security contributions, does not envisage maternity or sick-leave compensation, and does not entitle workers to unemployment benefits. Individuals with project-based contracts are usually not covered by a firm’s collective agreements, or represented by a trade union. Moreover, there is little, if any, contact with other employees, which further limits their ability to voice concerns and raise questions of liability in case of accidents or injuries, or regarding working conditions in general.

*Casual and day labour* can be rightfully considered as the most disadvantaged type of temporary employment. Casual and day workers have no guarantee of remaining employed by the same employer from one day to another, and they rarely have the right to any compensation if the work relationship is prematurely ended. For them, rates of transition to standard employment status are also among the lowest. Moreover, in some countries, there are widespread practices of hiring and firing casual workers at frequent intervals to avoid having to provide any kind of social security protection or compensation. As a result, casual and day workers face high levels of insecurity in all aspects of their working conditions. Casual work is characterized by low pay. Unpredictability of employment is further translated into general uncertainty about wages, and into inadequate social security coverage, if any is provided at all. Similarly, training and career path security are lacking in most cases. Occupational safety and health outcomes are particularly worrisome for this category of workers as they often perform tasks that other workers are reluctant to undertake – work that can be unpleasant, hazardous, done at irregular hours, and involve high levels of physical strain and fatigue. Casual and day workers are rarely covered by enterprise collective agreements. Unionization is not easy and the conventional organizational strategies rarely suit casual workers, as they often have no regular place of work. Moreover, tensions between regular unionized employees and casual, non-unionized workers are possible whenever employers resort to casual work during strikes. Casual workers are also more likely to be subject to discrimination.

*Part-time employment* may place workers in a vulnerable position, depending on whether it is voluntary or not, and whether countries abide by the principle of equal treatment relative to comparable full-time workers. In countries whose laws do not adhere to this principle, or where extreme forms of short hours exist, part-time workers can face significant vulnerabilities. Wage premiums and wage penalties for part-timers are substantially more diverse than wage differences for temporary workers. In some parts of the world, such as Latin America and South Africa, part-time work is not widespread, though those that do work part time are usually paid higher hourly rates than full-time workers, a reflection of its use among more professional occupations. In other countries and regions where part-time workers are paid less, this may be as a result of outright discrimination on account of their contractual status, but also because workers in part-time jobs are more likely to work in sectors and occupations where hourly wages are lower; they may also be excluded from premiums and overtime payments. Part-time workers may also be excluded from social security protection, including unemployment benefits if the country's legislation sets high earnings or hours thresholds for coverage. Because of their part-time status and the tendency to view them as peripheral employees, they may also have less access to training and career advancement, as well as fewer opportunities to become unionized. Though part-timers may suffer from less stress and fatigue than full-time workers, such benefits may vanish if they have to take on several part-time jobs or if their work has to be performed during unsocial hours.

*On-call work, including zero-hours contracts*, is often characterized by both variable and unpredictable schedules. Variable schedules have been associated with negative effects on health and well-being. The unpredictability of schedules may imply a lack of

income security, given that pay is uncertain. This is all the more so given that workers in lower-level occupations (and therefore with lower hourly wages) are more likely to have to take on such work. The variability of their working hours from one week to another also makes social security coverage more difficult since applicable thresholds may not be met on a continuous basis. Flexible hours are not always a negative aspect, though, and can be positive if flexibility is chosen or “employee-led”, but workers in lower-level occupations are less likely to have the bargaining power to negotiate their working schedules, or indeed any autonomy and control over their schedules. Collective bargaining can play an important role in determining the conditions of on-call workers and others with variable schedules, as it tends to reduce the use of such arrangements. However, workers on variable and unpredictable schedules are less likely to be connected to unions than other workers.

*Temporary agency workers* are normally recognized as being in an employment relationship with the agency and will thus in principle benefit from labour and social protection. Yet because they carry out their work on the premises of the contracting company, they may not be entitled to any additional benefits that workers of the contracting firm may receive, and their pay, particularly if they perform less-skilled jobs, is likely to be lower. Dispatched workers may find it difficult to join a union at the firm that employs them and they often do not have the right to join the union of the contracting (or lead) firm either, if one exists. Being deprived of representation in this way and unable to voice their concerns aggravates their lack of control over the conditions of their work, especially working schedules or place of work. They are also less likely to have employment protection and often experience high job rotation, making it difficult to receive training, build a career or benefit from enhanced OSH awareness. In addition, these workers sometimes undertake hazardous tasks and work on dangerous sites. Performing tasks at different work sites raises concerns in terms of responsibility for accidents and work-related injuries.

*Subcontracted work* arrangements can exhibit the same risks associated with TAW. Moreover, those that are informal can feature all of these problems in their most extreme forms, including forced labour, child labour and discriminatory practices.

In *dependent self-employment*, the worker is performing services for a business under a contract that is different from a contract of employment, potentially giving rise to a significant number of vulnerabilities. To begin with, they may face income insecurity due to the small number of clients on whom they depend. Also, by not being recognized as employees, dependent self-employed workers may be unable to establish or join a trade union and to engage in collective bargaining, which further weakens their ability to influence their working conditions. In some countries, they may also be excluded from protection against discrimination. Since they are not engaged under an employment contract, dependent self-employed workers do not benefit from employment regulations, including those on working time, rest, paid leave, minimum wages and termination of employment, or enjoy social security protection. Contributions to a social security system are often optional and the worker would contribute as independent self-employed, which in many countries requires a higher level of contributions than if the person were in a recognized employment relationship. As a result, many dependent self-employed workers are not part of the social security system and do not benefit from disability

coverage, either. Thus accident prevention becomes their responsibility, even though in many instances they have no control over their work environment. Moreover, workers not contributing to the social security system lack protection in cases of ill health or job loss, and may not be entitled to a pension upon retirement. They are also unlikely to benefit from employer-sponsored training and therefore find it harder to construct a career path.

*Disguised employment* can take on numerous forms, given that its principal characteristic is a misclassification of the employment relationship, often in the attempt to evade the labour and social protection associated with the employment relationship. Under disguised self-employment, the worker experiences the same vulnerabilities as a dependent self-employed worker, often with the added dimension that the employer's attempt to deliberately conceal the employment relationship can exacerbate the insecurities faced by the worker.

As all these types of insecurity, their frequency and extent vary across the different types of NSE, so too must the responses to these challenges. More generally, as the quest for flexibility and cost saving on the part of firms continues, and as societies and lifestyles continue to evolve, broader questions begin to emerge about the choice of a social model to follow. As the demand for NSE grows, just like the pool of workers ready to take it up, how to ensure that these workers are not overly penalized? How to ensure that all jobs are decent, while also addressing the specific non-standard jobs that involve greater, more pervasive, yet also more identifiable risks? What is the scope for social justice in economies with unequal levels of risks and risk-sharing that are not associated with an individual's characteristics, effort or luck, but with the nature of the employment arrangements they are engaged in? The next chapter attempts to provide some answers to these questions.

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- 168 Benjamin 2013, p. 13.
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- 170 Tatanken Voufo, 2015.
- 171 Nguyen, Nguyen-Huu and Le, 2016.
- 172 Srivastava, 2016.
- 173 See for instance *Greece* – CEACR, observation, C.98, published 2013.
- 174 ILO, 2012a, para. 935.
- 175 See for instance *Peru* – CEACR, observation, C.98, published 2016; *Belarus* – CEACR, observation, published 2012. See also the Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), p. 119.
- 176 ILO, 2006b, para 785.
- 177 See for instance CFA, Case number 3064, Cambodia, 377 report, March 2016.
- 178 Ruckelshaus et al., 2014.
- 179 Benson and Ieronimo, 1996.
- 180 Crush et al., 2001.
- 181 Hatton, 2014.
- 182 ILO, 2012a, para. 262.
- 183 See, for instance: *Guatemala* – CEACR, observation, C.29, published 2005 with regard to temporary recruitment of indigenous people; *Australia* – CEACR, observation, C.29, published 2012 with regard to concerns expressed by trade unions about the situation of temporary overseas skilled workers.
- 184 *Canada* – CEACR, direct request, C.29, published 2015.
- 185 ILO, 2014c.
- 186 Martin, 2006b; ILO, 2014b.
- 187 In addition, the multi-stakeholder Fair Recruitment Initiative, launched by the ILO in 2014 and targeted at migrant workers employed through employment agencies, has prevention of human trafficking and forced labour as one of its main goals. See ILO, 2015k.
- 188 *Belgium* – CEACR, direct request, C.29, published 2008.
- 189 ILO, 2015n.
- 190 Barrientos, 2013.
- 191 ILO, 2016b and 2016l.
- 192 Eurofound, 2016; ILO, 2015n, 2016a; Andrees and Vuong, 2011, ILO, 2016a.
- 193 ILO, 2016a.
- 194 States may, however, make use of a number of exceptions with regard to minimum age, provided that certain conditions are met.
- 195 See ILO, 2012a, para. 332.
- 196 *Haiti* – CEACR, direct request, C.138, published 2013; *Cambodia* – CEACR, direct request, C.138, published 2012; *Thailand* – CEACR, direct request, published 2010; *Ireland* – CEACR, direct request, C.138, published 2009; *Singapore* – CEACR, direct request, C.138, published 2008; *Jordan* – CEACR, direct request, C.138, published 2007; *Tanzania* – CEACR, direct request, C.138, published 2007; *Philippines* – CEACR, direct request, C.138, published 2006; *Sri Lanka* – CEACR, direct request, C.138, published 2004.
- 197 *Lesotho* – CEACR, observation, C. 138, published 2016; see also *Kyrgyzstan* – CEACR, observation, C. 138, published 2016; *Lebanon* – CEACR, observation, C. 138, published 2016; *Mozambique* – CEACR, observation, C. 138, published 2016; *Nigeria* – CEACR, observation, C. 138, published 2016.
- 198 *Slovenia* – CEACR, direct request, C. 182, published 2010; *Burkina Faso* – CEACR, direct request, C. 182, published 2007; *Belgium* – CEACR, direct request, C.182, published 2006; *Switzerland* – CEACR, direct request, C.182, published 2004.
- 199 *Bolivia* – CEACR, observation, C.138, published 2016 with regard to a case in which the competent authority was authorized to approve self-employment of children of ten years of age when the minimum age for employment was fixed at 12 years.
- 200 The Asian Foundation and ILO Regional office for Asia and Pacific, 2015; Bhaskaran et al., 2015; Zutshi, 2009.
- 201 ILO, 2016b.
- 202 ILO, 2012a, para. 658.
- 203 *Turkey* – CEACR, direct request, C.100, published 2005.
- 204 *Angola* – CEACR, direct request, C.100, published 2014; *Yemen* – CEACR, direct request, C.100, published 2013; *Syrian Arab Republic* – CEACR, direct request, C.100, published 2013.
- 205 *Syrian Arab Republic* – CEACR, direct request, C.100, published 2013.
- 206 *Angola* – CEACR, direct request, C.111, published 2013; *Syrian Arab Republic* – CEACR, C.111, direct request, published 2011.
- 207 See, for example, *Malawi* – CEACR, direct request, C.111, published 2008; and *Zimbabwe* – CEACR, direct request, C.111, published 2007.
- 208 *Republic of Korea* – CEACR, observation, C.111, published 2012.
- 209 See for instance, *Republic of Korea* – CEACR, direct request, C.111, published 2016; *Madagascar* – CEACR, direct request, C.111, published 2014; *Turkey* – CEACR, observation, C.111, published 2016; *Finland* – CEACR, direct request, C.100, published 2004; *Italy* – CEACR, direct request, C.111, published 2003; *Algeria* – CEACR, observation, C.111, published 2000. For a detailed

- analysis of sex discrimination in relation to fixed-term and part-time employment in Europe, see Burri and Aune, 2013.
- 210 *Republic of Korea* – CEACR, direct request, C.111, published 2016.
- 211 Boeri and Garibaldi, 2007; Bentolila et al., 2010.
- 212 Poole and Berchem, 2014.
- 213 Bentolila and Dolado, 1994; Blanchard and Landier, 2002; Faccini, 2014; OECD, 2014.
- 214 Boeri, 2011, based on a Mortensen-Pissarides type model.
- 215 Polavieja, 2006.
- 216 Barbieri and Cutuli, 2015.
- 217 Bentolila and Saint-Paul, 1992; Boeri and Garibaldi, 2007.
- 218 OECD, 2014.
- 219 Jaramillo, 2013.
- 220 Cazes and de Laiglesia, 2015.
- 221 Lee and Eyraud, 2008; Lee and Yoo, 2008.
- 222 Lepak and Snell, 2002.
- 223 Kleinknecht, Van Schaik and Zhou, 2014; Pradhan, 2006.
- 224 Kleinknecht, 2015.
- 225 Lisi, 2013.
- 226 Dolado, Ortigueira and Stucchi, 2012.
- 227 Kleinknecht et al., 2006; Lucidi and Kleinknecht, 2010.
- 228 Cahuc and Kramarz, 2004.
- 229 Lepage-Saucier, Schleich and Wasmer, 2013.
- 230 Wiens-Tuers, 2004.
- 231 Ibid.
- 232 Tudor, 2013.
- 233 De La Rica and Iza, 2005; Barbieri et al., 2015.
- 234 Bonet et al., 2013.
- 235 Pun and Smith, 2007.
- 236 Swider, 2015.

## CHAPTER 5 APPENDIX: OVERVIEW OF LITERATURE



*Hotel worker, Nicaragua*



**Table A5.1. Overview of empirical evidence on labour market transitions of workers in non-standard forms of employment**

Country	Period	Source	Comparison group	Findings	
				Yearly transitions to permanent jobs	Yearly transitions to other statuses
Australia	2001–2008	OECD, 2014	Non-standard employees		Both to unemployment and inactivity: estimated difference between non-standard and permanent employees is about 1 percentage point
Austria, Belgium, Italy, Ireland, Greece, Finland, France, Portugal, Spain, United Kingdom	2004	Boeti, 2011	Workers with FTCs	Range from 12% to 13% in Portugal and France, to around 47% in the United Kingdom, Ireland, and Austria	
Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom	1998–1999	OECD, 2006	Temporary workers	Range from 18% in France to 55% in Austria	To unemployment: Transitions of permanent workers never exceed transitions of temporary workers; Temp.: between 4.3% in Belgium and 15.9% in France; Perm.: between 0.7% in Luxembourg and 3% in Germany To inactivity: With the exception of Belgium, transitions of permanent workers never exceed transitions of temporary workers; Temp.: between 1.3% in Belgium and 14% in France; Perm.: between 1.6% in Denmark and 3.9% in Germany
EU Member States	2000–2001			Range from 20% in France to 54% in the Netherlands	
	2007–2013	EC, 2016	Temporary employees	Range from 10% in France to 63% in Estonia	
Denmark	1997–2006	Jahn and Rosholm, 2014	Workers in TAW	Stepping-stone effect is confirmed while being with the agency, but not after: TAW increases transition into permanent jobs by 19% for males and 7% for females; the effect is largest for immigrants	

Country	Period	Source	Comparison group	Findings	
				Yearly transitions to permanent jobs	Yearly transitions to other statuses
France	2010	Le Barbanchon and Malherbet, 2013	Workers with FTC	5.6%	To unemployment: FTC: 9%, permanent workers: 0.9%
					To inactivity: FTC: 8.9%, permanent workers: 1.9%
Germany	2010–2011	Eichhorst and Tobsch, 2013	Workers with FTC	38%	To inactivity and unemployment: 18%
			Workers in TAW	28%	Remain in FTC work: 41%
			Marginal part-time workers	21%	Remain in agency work: 30%
Japan	1994–1996	Kvasnicka, 2009	Temporary help work	No stepping-stone effect, but no increased probability of unemployment either; workers in TAW seem to remain in this specific type of relationship	To inactivity/unemployment: 21%
			Contingent workers*	Stepping-stone hypothesis is not confirmed after ten years of labour market experience starting off in NSE; but the dead-end hypothesis is not confirmed after 20 years, either. “Worker’s welfare for the first 40 years of his life is lower if he begins in a contingent job than if he starts in a regular job, but higher than if he is initially unemployed”	Remain in marginal part-time work: 48%
Indonesia	2004	Lee and Eyraud, 2008	Casual workers	5.8%	Casual to own-account workers: 4.8%
					Most stated reason: unsatisfying income
Italy	2000–2004	Picchio, 2008	Temporary work	3.7%; Stepping-stone effect is confirmed	Employees to own-account workers: 53.6%
			TAW	Stepping-stone effect is confirmed, it is highest in Tuscany, in services, among youth transiting from school to work	Most stated reason: lay-off
Netherlands	1988–2000	De Graaf-Zijl, van den Berg and Heyma, 2011	Workers with FTCs	38%	To unemployment: FTC: 21%, permanent workers: 18%
				Stepping-stone effect is mild; it is strongest for ethnic minorities, men and low-educated workers	To inactivity: FTC: 6%, permanent workers: 3%

Table A5.1 (cont'd)

Country	Period	Source	Comparison group	Findings	
				Yearly transitions to permanent jobs	Yearly transitions to other statuses
Spain	2001–2011	García-Serrano and Malo, 2013	Workers with FTCs	5–7% over the period, with a maximum of 17% in 2005	To unemployment: FTC: 7–17%, permanent workers: 0.8–2% over the period To inactivity: FTC: 4–7%, permanent workers: 1–2%
	2006–2010	García-Pérez, Marínson and Vall-Castello, 2014	Workers with FTCs*		Increased transitions into unemployment; higher incidence of holding FTCs over a working lifetime
	1990–2003	García-Pérez and Muñoz-Bullón, 2011	Workers with FTCs**	6.5% for unskilled workers; 9.7% for skilled workers; transitions slightly rise with FTC tenure	To unemployment: up to 66% for unskilled workers To another FTC: up to 21%
Republic of Korea	2004–2005	Lee and Yoo, 2008	Non-standard workers	7.9%	To unemployment: NSE: 2.4%, permanent workers: 1.5% To inactivity: NSE: 16.4%, permanent workers: 5%
	2006	Nam, 2009	Non-regular	33–38%	To NSE: 48.8%. To inactivity or unemployment: 15.6% versus 15.4% of regular workers.
Sweden	1997–2008	Hveem, 2013	TAW	No stepping-stone effect: “Joining a temporary agency [...] decreases the probability of getting a regular job for years to come in general but not for non-Western immigrants”; “women showed stronger and more persistent negative regular employment effects”	
Uganda	2009–2012	Dumas and Houdré, 2016	Non-standard (part-time, casual, fixed-term)	35.4%, stark differences by gender	To inactivity: 21.7%
United States	1993–2001	Andersson, Holzer and Lane, 2007	TAW	Stepping stone effect confirmed; it is strongest for low-wage earners who improve access to higher-wage employers	To TAW: 36.9%–61.2% over 3 years, for workers for whom temporary work agency is a primary employer



Country	Period	Source	Comparison group	Findings	
				Yearly transitions to permanent jobs	Yearly transitions to other statuses
(United States)	1999–2003	Autor and Houseman, 2010	TAW, Detroit's welfare-to-work programme	No stepping-stone effect; increased rotation; "Rather than helping participants transition to direct hire jobs, temporary-help placements initially lead to more employment in the temporary-help sector, which serves to crowd out direct-hire employment"	
	2000–2001	Cappelli and Keller, 2013 <sup>***</sup>	Part-time work, temporary help, contracting	"Over 90 percent of establishments have converted temp agency workers to permanent employees [...] Hiring may be a very important part of what temp agencies do for their clients"	

\* Studies covering long-term periods, rather than yearly transitions; \*\* Transitions from the first FTC; young workers only. \*\*\* Analysis does not control for various characteristics. References covering earlier periods include Amuedo-Dorante (2000) and Güell and Petrongolo (2007) for Spain, Bockmann and Hagen (2008), and Hagen (2002) for Germany; Berton, Devicienti and Pacelli (2011) for Italy; Booth, Francesconi and Frank (2002) for the United Kingdom; Hotchkiss (1999) for the United States.

Table A5.2. Overview of empirical evidence on wage penalties between standard and non-standard workers

Region	Country	Period	Source	Comparison group, as opposed to standard	Findings
Asia	Bangladesh	2010	ILO, 2013d*	Casual employees	60%**
	Cambodia	2011–2012	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	Wage premium of 3.46 to 7.25 %
	Japan	1980, 2003	Kubo, 2008	Part-time workers	23.8 %**, 34.3%**
		2010	Hamaguchi and Ogino, 2011	Full-time non-standard; Part-time non-standard	36%**; 72%**; gaps increase with age
		2012	OECD, 2015a (figure 4.10)*	Full-time temporary workers; Part-time permanent workers; Part-time temporary workers	32%; 46%; 47% (based on hourly wages)***
	India	2004–2005	Shyam Sundar, 2011*	Casual workers	Regular workers in urban areas earn three times the real wages of casual workers.
		2004–2005	Bhandari and Heshmati, 2008	Contract workers	31%***
		2004–2005	Rani, 2012*	Casual workers	56%
	Indonesia	2006	Central Board of Statistics*	Casual workers	In agriculture: 67%**; not in agriculture: >50%**
	Pakistan	2005–2009	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	17%
	Philippines	1994–2006	Hasan and Jandoc, 2009	Casual workers	31 to 34%, highest in services***
		2001–2009	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	2%
	Republic of Korea	2008	Lee and Eun, 2014	Temporary and day workers	35.6% for males**, 14.8% for females**
		2009	OECD, 2015a (figure 4.10)*	Full-time temporary workers; Part-time temporary workers	44%; 25%***
Viet Nam	2007–2011	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	23%	

Region	Country	Period	Source	Comparison group, as opposed to standard	Findings
Europe	EU-15	1987–2009	Boeri, 2011	Workers with temporary contracts	17–20% for males; ranging from 6% in the United Kingdom to 31% in Sweden <sup>***</sup>
	Austria, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Slovakia, Spain, United Kingdom	Estonia and Slovakia: 2010; All others: 2012	OECD, 2015a (tables 4.1–4.2)	Full-time temporary workers	On average, 11% for men and 13% for women; with highest penalties in Greece
				Part-time permanent workers	On average, 9% for men and 4% for women; with no penalties in Portugal, and highest penalties in Germany and Ireland
				Part-time temporary workers	On average, 13% for men and 12% for women
					Analysis based on hourly wages
	Germany	1999	Hagen, 2002	Workers with FTCs	23%
		2006	Pfeifer, 2012	Workers with FTCs	10%
		1995–2008	Jahn and Pozzoli, 2013	Workers in TAW	22% for males, 14% for females; wage penalty decreases with tenure in TAW
	France	1983–2000	Blanchard and Landier, 2002	Workers with FTCs	20%
	Italy	2000–2002	Picchio, 2006	Workers with FTCs and in TAW	13%, reduced by about 2.3% after 1 year
	Israel	1987	Cohen and Haberfeld, 1993	Part-time workers in temporary help service	Both penalties and premiums exist, depending on the occupation and qualification
	Netherlands	1997–2006	De Graaf-Zijl, 2012	On-call and workers with FTCs	1997–2002: wage premiums existed for on-call workers; they vanished in 2002–2006 period and turned into penalties. FTCs face penalties
	Spain	Early 2000s	García-Serrano and Malo, 2013	Workers with temporary contracts	10%
	Portugal	1995–2000	Böheim and Cardoso, 2009	Workers in TAW	1–9% on average, but young workers earn higher wages in TAW as compared to peers in non-TAW; prime-age and older workers earn less
Sweden	Mid-1980s, mid-1990s	Holmlund and Storrie, 2002	Workers with FTCs and interim workers	10%	

Table A5.2 (cont'd)

Region	Country	Period	Source	Comparison group, as opposed to standard	Findings	
Europe	United Kingdom	1991–1997	Booth, Francesconi and Frank, 2002	Temporary workers	8.9% for males, 6 % for females	
		2000	Forde and Slater, 2005	Workers in TAW	11% for males, 6 % to females	
		1993–2003	Manning and Petrongolo, 2008	Part-time workers	3% for women	
	Africa	Cameroon	2010	Tatankem Voufo, 2015	Workers with FTCs	27%
			2010	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with temporary contracts, part-time workers	“Significant”
		2011	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with temporary contracts, part-time workers	“Significant”	
		2012–2013	Dumas and Houdré, 2016	“Non-durable” and casual arrangements	25–30% for non-durable full-time 25–43% for non-durable part-time Insignificant penalties for casual workers	
		2005	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with temporary contracts, part-time workers	“Significant”	
		1998–1999; 2005–2006	Wambugu and Kabubo-Mariara, 2012	Seasonal and part-time workers	37% for seasonal workers; 34% for part-time workers	
		2001–2007	Bhorat et al., 2013	Employed through labour brokers	17–35 % as compared to those employed in the formal sector	
Americas	South Africa	1995–2004	Posel and Muller, 2007	Part-time workers	–34 to 40% for women (i.e. wage premiums are observed)	
		2009–2012	Dumas and Houdré, 2016	Workers with FTCs over 3 years	–66% (i.e. wage premium is observed)	
	Uganda			Casual workers	30%	
				Part-time workers	40% (for monthly wages), –25% (for daily wages, i.e., wage premiums)	
	Argentina	2003–2013	Maurizio, 2016	Temporary formal and informal employees	9.9% for informal; 7% for formal, based on hourly wages	
				Part-time formal and informal, voluntary and involuntary	–28.5 (formal involuntary), –28.1 (informal voluntary); 28.4 (formal voluntary); –22.6 (informal voluntary) – i.e. wage premiums are observed	

Region	Country	Period	Source	Comparison group, as opposed to standard	Findings
(Americas)	Brazil	2003–2013	Maurizio, 2016	Temporary formal and informal employees	7.7% for informal; 13.3% for formal, based on hourly wages
				Part-time formal and informal, voluntary and involuntary	–35.5 (formal involuntary), –31.8 (informal voluntary); 36.5 (formal voluntary); –32.8 (informal voluntary) – i.e. wage premiums are observed
	Chile	2003–2011	Maurizio, 2016	Temporary formal and informal employees	13.2% for informal; 15.2% for formal, based on hourly wages
				Part-time formal and informal, voluntary and involuntary	–62.6 (formal involuntary), –58.9 (informal voluntary); 98.2 (formal voluntary); –68.7 (informal voluntary) – i.e. wage premiums are observed
	Ecuador	2004–2012	Maurizio, 2016	Temporary formal and informal employees	15.5% for informal; 9.6% for formal, based on hourly wages
				Part-time formal and informal, voluntary and involuntary	–42.3 (formal involuntary), –24.2 (informal voluntary); 27.6 (formal voluntary); –27.0 (informal voluntary) – i.e. wage premiums are observed
	Peru	2004–2012	Maurizio, 2016	Temporary formal and informal employees	0 % for informal; 5.6% for formal, based on hourly wages
				Part-time formal and informal, voluntary and involuntary	–42.2 (formal involuntary), –58.2 (informal voluntary); 47.0 (formal voluntary); –48.1 (informal voluntary) – i.e. wage premiums are observed
	United States	1994	Nollen, 1996 <sup>a</sup>	“Temporaries” – temporary employees in staffing agencies	34%
				Non-standard work	Workers in standard employment arrangements are less likely than those in non-standard work arrangements to have a low-wage job, with the exception of male contract employees
		1995	Houseman, 1997	Temporary workers (including on-call and TAW)	“significant”

Table A5.2 (cont'd)

Region	Country	Period	Source	Comparison group, as opposed to standard	Findings
(Americas)	(United States)	1980–mid-1990	Carey and Hazelbaker, 1986	Temporary workers	“Engineers and technicians frequently can earn more take home pay in temporary jobs than they can in regular jobs”
		2000s	Theodore and Peck, 2013	“Temporary staffing industries”	Wage premiums reported for temporary nurses, IT programmers, and high-paid workers
New Zealand	Canada	2010	OECD, 2015a (figure 4.10)*	Full-time temporary workers; part-time permanent workers; part-time temporary workers	38%, 40%, 42%***
	New Zealand	2008	Dixon, 2011	Temporary workers	Men: 11%, women: 7%

Note: Wage penalties are defined as **wage penalty for non-standard worker = (wage of standard workers – wage of non-standard workers) / wage of standard workers**. \* Analysis does not control for various characteristics, such as individual observable or unobservable characteristics, type of job, company, sector, or region. \*\* The original study reports wage ratio between non-standard and standard workers, not wage penalty for non-standard workers. For comparability, wage ratio is converted into wage penalty for non-standard workers, exploring the definitional relationship between the two: **wage penalty for non-standard worker = 1 – wage ratio**. \*\*\* The original study reports wage premiums for standard workers, not wage penalty for non-standard workers. For comparability, wage premiums for standard workers are converted into wage penalties for non-standard workers, exploring the definitional relationship between the two: **wage penalty for non-standard worker = wage premium for standard worker / (wage premium for standard worker + 1)**.



Table A5.3. Overview of empirical evidence on differences in social security affiliations between standard and non-standard workers

Country	Period	Source	Comparison group	Findings
Cambodia	2011–2012	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	FTC full-time workers are more likely to be covered by social security than standard workers by 2.6–10.5 percentage points; other types of temporary workers suffer from penalties in terms of coverage.
India	2011–2012	Srivastava, 2016	Workers in non-standard employment	“Lower probability of enjoying the benefits of social security as compared to workers in standard employment”, with women having lower probability as compared to men.
Indonesia	2002–2012	Nguyen, Nguyen-Huu and Le, 2016	Casual workers	Temporary employment status curtails individuals’ possibility of receiving social security coverage by 34 percentage points
Viet Nam	2007–2011	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	Temporary employment status curtails individuals’ possibility of receiving social security coverage by 45 percentage points
Cameroon	2010	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with temporary contracts, involuntary part-time workers	“Significant penalties” for all. Raw differences for written FTCs: 17.46 percentage points.
	2010	Tatankem Voufo, 2015	Workers with FTCs	83.9% are affiliated to social security, against 88.1% of workers on permanent contracts
Chad	2011	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with FTCs, with no contract, voluntary and involuntary part-time	“Significant penalties” with respect to social security and paid leave for part-timers and workers without contract. Raw differences for FTCs: 12.93 percentage points.
Democratic Republic of the Congo	2005	Fomba Kanga, Mboutchouang and Nkoumou, 2016	Workers with temporary contracts, involuntary part-time workers	“Significant penalties” with respect to social security and paid leave for FTCs and workers without contracts; no penalties for part-timers. Raw differences for FTCs: 19.28 percentage points.
Ghana	2012–2013	Dumas and Houdré, 2016	“Non-durable” arrangements	This status reduces the probability of having access to pensions by 14.5–19 percentage points, to annual leave by 7–13 percentage points, to health insurance by 5–15 percentage points, to other social benefits by 8–12 percentage points, depending on whether the arrangement is full time or part time.
Uganda	2009–2012	Dumas and Houdré, 2016	Part-time workers	Part-time status reduces by 5% the probability of having access to social security; and by 11% to health insurance. There is no difference in access to paid annual leave.
			Short FTCs	FTC status reduces by 19 percentage points the probability of having health insurance and by 9 percentage points social security affiliation. FTCs over 1 year present advantages.
United States	2005	GAO, 2006 <sup>a</sup>	Contingent, TAW, part-time workers	Receipt of health insurance through employer: 13%, 9%, 19% respectively (72% for standard worker) Receipt of employer-provided pension: 38%, 4%, 23% respectively (76% for standard worker)
Zambia	2005–2008	ILO, 2010d	Casual workers	Generally lack social security coverage

Table A5.4. Overview of empirical evidence on differences in training between standard and non-standard workers

Country	Period	Source	Comparison group	Findings
Cameroon	2010	Tatankem Voufo, 2015	Workers with FTCs	35.7% of workers with FTC benefit from vocational training, against 42.1% of permanent workers; and against 14.9% of workers with verbal agreements.
Chile	2002–2009	Carpio et al., 2011	Temporary workers	Access to training is reduced by 3.5%
India	2004–2005	Bhandari and Heshmati, 2008	Contract workers	20.3% of permanent workers benefit from advanced skill training; against 12.5% of non-standard ones
	2011–2012	Srivastava, 2016	Casual workers	Received training: 1%, as compared to 8.2% of regular workers with written contract for over 1 year, and 10% of regular workers with written contract for less than a year.
European countries (Austria, Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Netherlands, Portugal, Spain, United Kingdom)	1997	OECD, 2002	Temporary workers	Access to training is reduced by 6%
New Zealand	2000	Matiske and Nienhueser, 2006	Workers in TAW	85 % of workers in TAW received no training as compared to 63% of permanent workers, during the preceding year
	2008	Dixon, 2011	Temporary workers	Training probability is 15 percentage points lower for temporary males, and 5.6 percentage points lower for temporary females.
OECD (Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Japan, Republic of Korea, Netherlands, Norway, Poland, Slovakia, Sweden, United Kingdom, United States)	2012	OECD, 2014	Temporary workers	“On average, being on a temporary contract reduces the probability of receiving employer-sponsored training by 14%” (by 27% in Estonia, France, Slovakia). Probability is increased by 5% in the United States, but the estimate is not statistically significant.
Pakistan	2005–2009	Nguyen, Nguyen-Huu and Le, 2016	Temporary workers	Temporary employment status curtails individuals’ probability of receiving training by 2 percentage points. FTCs do not have training penalties, while casual temporary workers suffer the most (35 percentage points).
Spain	2006	Bentolita, Dolado and Jimeno, 2011	Temporary workers	40% of permanent employees received training paid by their firms in 2006, only 23% of temporary employees did.
United Kingdom	1991–1997	Booth, Francesconi and Frank, 2002	FTCs, seasonal and casual workers	Males: Access to training is reduced by 12% for workers with FTC; and by 20% for workers with seasonal-casual contracts. Females: Access to training is reduced by 15% for workers with FTC; and by 7% for workers with seasonal-casual contracts.

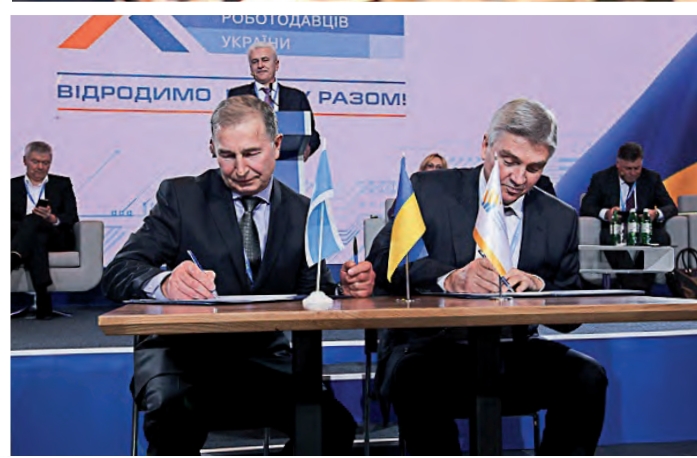


*Seafarer, Singapore*

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# CHAPTER 6

## Addressing decent work deficits in non-standard employment

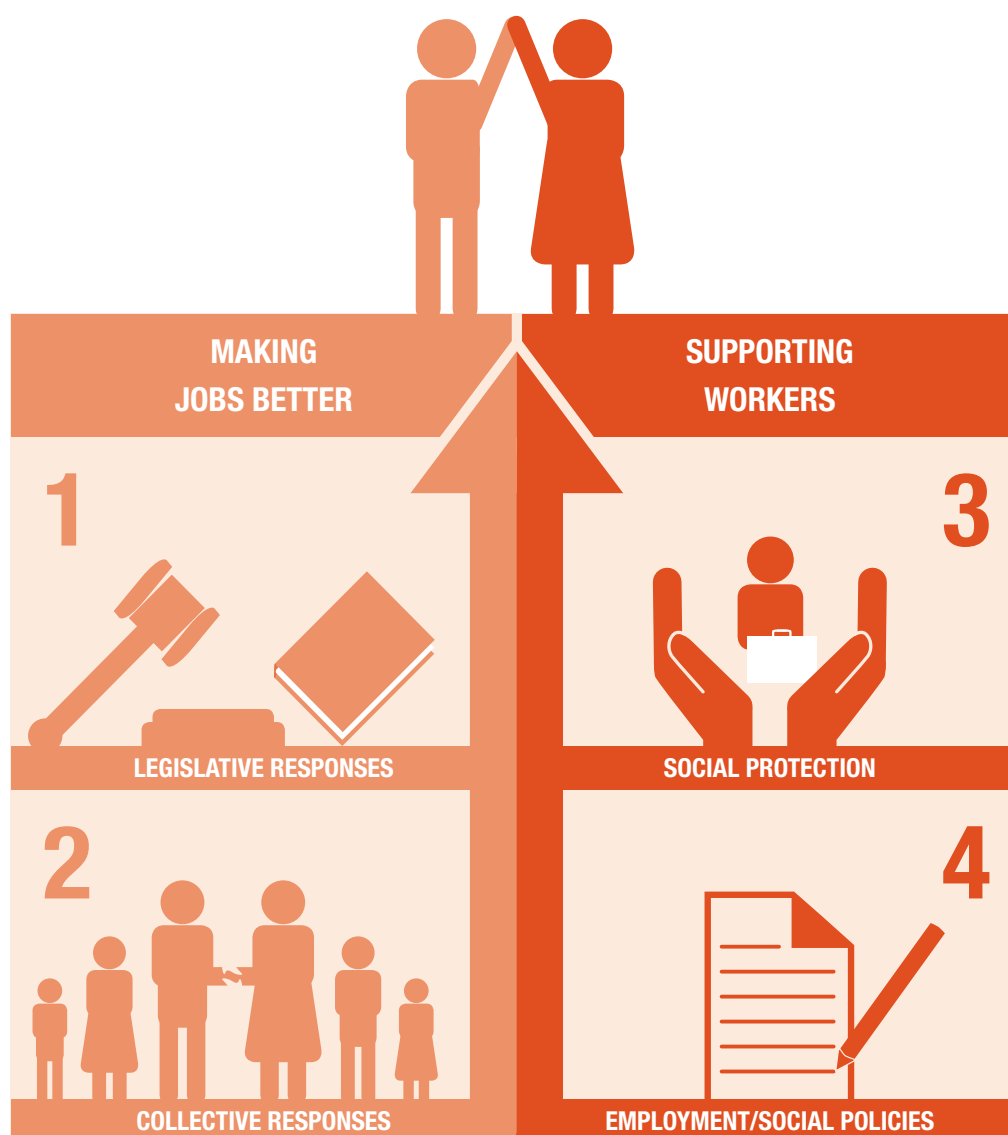
Over the past few decades, non-standard employment (NSE) has become a prominent feature of labour markets throughout the world. Though it can provide businesses and workers with an important means for achieving flexibility, NSE is also associated with lower earnings, reduced social security coverage and poorer working conditions, especially when these working arrangements are used by employers solely with the objective of evading their responsibilities. Indeed, as shown in Chapter 4, some firms have organized their production around the use of non-standard arrangements, undermining fair competition, and contrary to the ILO objective of promoting sustainable enterprises.<sup>1</sup>

While there is a need to be vigilant with all work – non-standard and standard alike – to ensure that it is “decent”, NSE is characterized by a higher degree of decent work deficits. Decent work, as defined by the ILO, is work that is productive and delivers a fair income, with a safe workplace and social protection, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.<sup>2</sup>

Ensuring that these employment arrangements constitute “decent work” requires an array of policy interventions, including legislative reforms as well as strengthening other institutions that govern the labour market. This chapter sets out the different policies that are needed, drawing on guidance from international labour standards and national practices. It explains the role and purpose of the recommended policies and provides examples from different countries around the world.

The policy recommendations consist of two main complementary axes: (1) making non-standard jobs better; and (2) supporting all workers regardless of their contractual status. The recommendations are based on the understanding that income security stems fundamentally from work and that without “decent jobs” there will never be sufficient support to alleviate workers’ insecurities. Nevertheless, it is acknowledged that a worker in an insecure job will feel less insecure if she or he lives in a country with a developed welfare state, where a person’s basic needs are guaranteed through social protection and other social policies.<sup>3</sup> In addition, policies that support a healthy and vibrant economy, that foster an adaptable labour market that recognizes the family and personal commitments

Figure 6.1. Making jobs better and supporting workers



of workers, and that provide public goods and services that support workers, together uphold the objective of decent work and sustainable enterprises (figure 6.1).

This chapter is divided into four sections that cover the different policy recommendations. Section 6.1 contains five subsections covering measures to plug existing regulatory gaps with respect to NSE. The objective of these measures is to align, to the extent possible, the labour protections of NSE with standard employment, so that workers in non-standard arrangements receive the same level of protection, as well as to mitigate abuses by employers in the use of these arrangements in ways that undermine their legitimate purpose.<sup>4</sup> Thus the legislative changes also involve placing limits on the use of non-standard arrangements, such as limits on renewals of temporary contracts



or restrictions on their use in core tasks of the firm. As the classification of the work relationship defines the protections a worker will receive, efforts should concentrate on addressing misclassification in employment status. And for the more complex employment arrangements that involve multiple parties, there is a need to consider assigning some pivotal obligations and liabilities to lead firms, so that workers are not at risk with respect to occupational safety and health (OSH), or non-payment of wages and other entitlements. For many – though not all – of these measures, there are international labour standards that provide guidance.

Section 6.2 addresses collective responses for improving the quality of NSE. Freedom of association and collective bargaining are fundamental worker rights that apply to all workers, regardless of their contractual status. In practice, however, not all workers are able to exercise these rights, thus weakening the regulatory function of collective bargaining. Therefore the first necessary step is to ensure workers in NSE can be organized and effectively represented in collective bargaining. The second step is to ensure that collective bargaining agreements apply and offer workers effective labour protection. Collective agreements are well suited to address shortfalls in the working conditions of workers in NSE as they can be tailored to the particular circumstances of the sector or the enterprise. One way of ensuring the application of collective bargaining agreements to all workers is through extension, the process by which collective agreements are extended to non-member enterprises and workers, typically in the same sector. Finally, alliances between unions and other organizations can be helpful in developing effective responses to some of the issues arising in NSE.

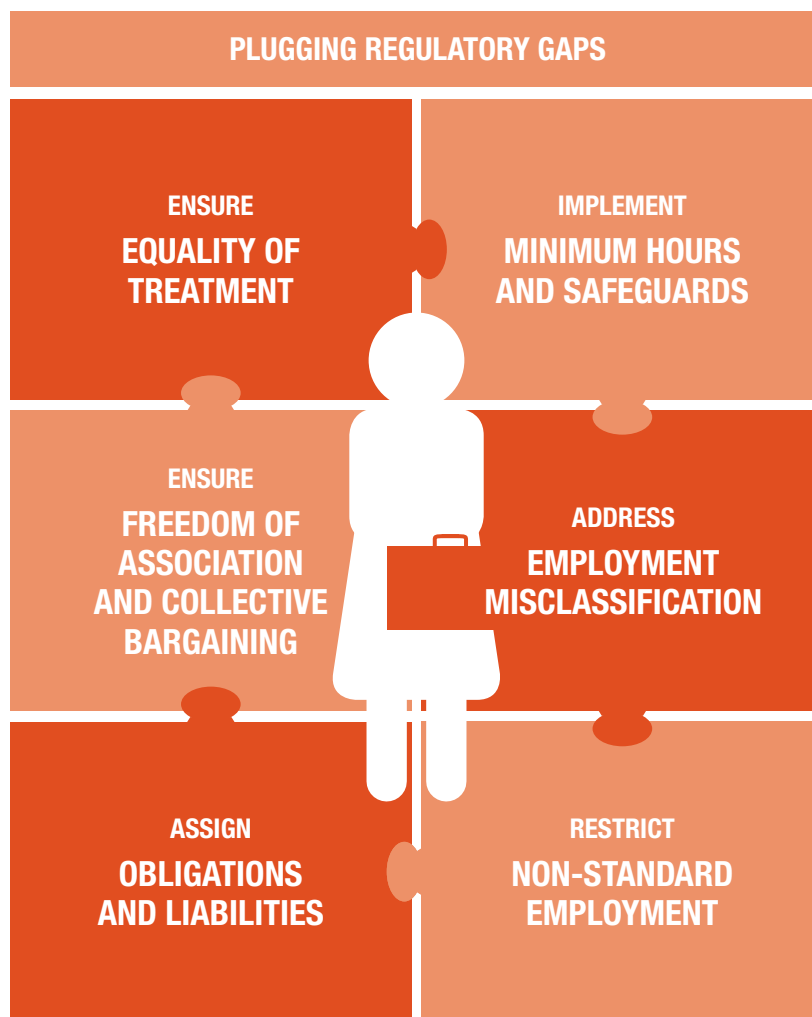
Section 6.3 looks at social protection policies to support workers, though – as will be explained in the section – many of these policies cannot be decoupled from the job. At present, workers in NSE may not be covered at all or may not have adequate coverage under the existing social security system. Addressing these deficits may require a reformulation of existing social insurance programmes, for example, by lowering the thresholds to qualify for benefits, extending contributory periods to allow for breaks in labour market activity, enhancing the portability of entitlements, and simplifying administrative procedures for registration and contribution payments. These efforts should be complemented with policies financed through general taxation that can ensure at least a basic level of coverage for all, thereby guaranteeing a social protection floor. Non-contributory schemes are particularly important in countries where social insurance mechanisms are underdeveloped and apply only to a small part of the labour force.

Section 6.4 focuses on policies to support workers in managing social risk and to accommodate transitions in the labour market. It includes suggested actions to support job creation and to mitigate the risk of unemployment and underemployment through policies to support full employment, public employment programmes and work-sharing initiatives. In addition, there is a need to design and institute workplace policies that can accommodate the many transitions workers will face in the labour market throughout their working lives, including the need for temporary absences to undergo training and study, as well as for parental and elder care leave. Finally, it is important to build public institutions that can provide quality care services, which are essential for women's participation in the labour market and constitute a potential source of decent employment.

## 6.1. LEGISLATIVE RESPONSES: PLUGGING REGULATORY GAPS

This section, which draws on relevant international labour standards, proposes six broad legislative measures to plug regulatory gaps with respect to NSE (figure 6.2). The objective is multifaceted. First, these measures aim to extend to workers in NSE, protections that are enjoyed by workers in “standard” arrangements as well as better aligning the protections available through different employment arrangements. This helps to support equality of treatment, fairer working conditions and inclusive labour market practices in favour of workers in NSE. In addition, they prevent abuses in these arrangements by mitigating incentives for their inappropriate use as simply a cheaper alternative to standard employment, as well as ensuring a level playing field, based on fair and sound competition between enterprises. To this end, greater efforts are needed to address disguised employment relationships, including multi-party employment arrangements, constructed with the express purpose of evading labour protection.

Figure 6.2. Plugging regulatory gaps



### 6.1.1. Equality of treatment

Ensuring equality of treatment for workers in NSE is important not only to avoid discrimination based on occupational status and as a matter of fairness, but also as a way of ensuring that non-standard work is not used solely with the intention of lowering labour costs by offering worse terms and conditions to particular groups of workers. Given the over-representation of women, young people and migrants among non-standard workers, such measures are particularly important for combating discrimination at the workplace and in general.

#### What do international labour standards tell us?<sup>5</sup>

Two fundamental ILO Conventions address discrimination at work. The Equal Remuneration Convention, 1951 (No. 100), aims at ensuring the application of the principle of equal remuneration for men and women workers for work of equal value. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), seeks to eliminate discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin, or any other ground as decided at the national level (e.g. age, migration status, etc.). Although these instruments do not directly protect workers in NSE against discrimination, they offer nonetheless an indirect protection. For instance, as was explained in Chapter 3, women form the vast majority of part-time workers in most countries. The prohibition of gender-based discrimination under Conventions Nos 100 and 111 extends protection against discrimination in employment and occupation to all women engaged in part-time work. In addition to these two Conventions, the protection of part-time workers against discrimination is ensured through the Part-Time Work Convention, 1994 (No. 175) and Recommendation (No. 182).

In respect of certain basic rights (freedom of association and collective bargaining, occupational safety and health, and protection against discrimination in employment and occupation), Convention No. 175 states that part-time workers must receive the same protection as that accorded to comparable full-time workers. In addition, their wages must not be proportionally lower solely because they work part time. In a certain number of areas, part-time workers must enjoy conditions equivalent to those of comparable full-time workers. This is the case for statutory social security schemes based on occupational activity, maternity protection, termination of employment, paid annual leave and paid public holidays, and sick leave. Pecuniary rights may be proportional to hours of work or earnings. With some exceptions, and under certain conditions, the right to enjoy such “equivalent conditions” may be limited to those part-time workers whose hours of work or earnings are above a specified threshold.

The Private Employment Agencies Convention, 1997 (No. 181), requires the adoption of measures to ensure that workers recruited by private employment agencies are not denied the right to freedom of association or the right to collective bargaining, and that the agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

The Employment Relationship Recommendation, 2006 (No. 198), calls on member States to formulate and apply a national policy for reviewing at appropriate intervals and, if necessary, for clarifying and adapting the scope of relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship. In that context, they should “address the gender dimension in that women workers predominate in certain occupations and sectors where there is a high proportion of disguised employment relationships, or where there is a lack of clarity of an employment relationship”.

Apart from the general standards mentioned above, ILO Conventions and Recommendations do not contain provisions on equal treatment for workers with fixed-term contracts (FTCs) or casual workers.

At the national level, a vast number of jurisdictions provide good examples on how equality of treatment can be applied to improve conditions for workers in NSE. This has been done by:

- applying principles of non-discrimination between non-standard workers and standard workers
- supporting equal treatment in courts and adjudicating bodies
- addressing the “margins” through equal treatment and continuity of employment for workers in casual arrangements
- removing legal barriers to equal treatment.

### **Applying principles of non-discrimination between non-standard and standard workers**

Many jurisdictions provide for a principle of non-discrimination between non-standard workers and their standard counterparts.<sup>6</sup> This is the case, for instance, in the EU Directive 1999/70/EC on fixed-term work, examined in Chapter 1, which sets out a general principle of non-discrimination for fixed-term workers. However, it is not the sole instrument setting out such a principle.

In 2014, South Africa amended its Labour Relations Act to provide that fixed-term employees employed for more than three months must not be treated less favourably than an employee employed on a permanent basis who performs the same or similar work, unless there is a justifiable reason for different treatment.<sup>7</sup> In Asia, the Republic of Korea in particular has been concerned about the status of its temporary and part-time workers, where it was found that non-standard workers earned significantly less than their standard counterparts. In response, the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, introduced in 2006 and strengthened in recent years, prohibits discrimination against fixed-term or part-time workers on the grounds of their employment status. Japan also amended its Labour Contract Act in 2012, to prohibit “unreasonable working conditions resulting from the difference in work period of a fixed-term employee compared to an undetermined-term employee.”<sup>8</sup>

The EU Directive 97/81/EC on part-time work was inspired by ILO Convention No. 175. One of its objectives is to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work. Part-time workers’ employment conditions may not be less favourable than those of comparable full-

**Table 6.1. Principles of equal treatment for part-time workers**

Provisions	Countries
General non-discrimination clause	Armenia, Bulgaria, Chile, France, Hungary (direct and indirect discrimination is prohibited), Italy, Latvia, Lithuania, Luxembourg (subject to specific provisions included in collective agreements), FYR of Macedonia, Mali, Moldova, Norway, Romania, Senegal, Slovakia, Slovenia, Spain, Tunisia (subject to particular provisions), Viet Nam (right to equality in opportunities and treatment)
Equal treatment except for objective reasons	Austria, Belgium, Cabo Verde, Cyprus, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Malta, Mozambique, Netherlands, Portugal (objective reasons to be determined by collective agreement), Sweden, Turkey (prohibition of differentiated treatment solely because the worker is employed on a part-time basis and unless there is a justifiable cause), United Kingdom
Pro rata cash benefits	Argentina, Austria, Brazil, Cabo Verde, Cyprus, Ecuador, France, Germany, Greece, Iceland, Islamic Republic of Iran, Ireland, Italy, Republic of Korea, Lithuania, Luxembourg, Mali, Malta, Mauritius (with an increase of at least 5 per cent), Mozambique, Portugal, Romania, Russian Federation, Senegal, Seychelles, Slovakia, Spain, Tunisia, Turkey, Venezuela

time workers solely because they work part time, unless different treatment is justified on objective grounds. Where appropriate, the principle of *pro rata temporis* will be applied, meaning that certain benefits will be granted in proportion to the hours worked or the worker's earnings. Where justified by objective reasons and after consultation of the social partners, Member States of the European Union may make access to particular conditions of employment subject to a period of service, time worked or earnings threshold.

While certain States include a general non-discrimination clause for part-time workers in their legislation, others – mainly European countries – reserve the right to apply differentiated treatment for objective reasons as provided for in the Directive. In addition, some legislation provides explicitly that part-time workers are entitled to cash benefits on a pro rata basis. The types of benefits concerned vary from one country to another. Table 6.1 presents different examples of non-discriminatory clauses.

The application of the non-discrimination principle to employees' entitlements such as annual leave is not uniform. In some countries, such as Malta, the Seychelles and Singapore, part-time workers are entitled to a period of annual leave on a pro rata basis. This is also the case in the Republic of Korea, with the exception of workers whose contractual weekly working hours are below 15 hours on average over a four-week period and who are not entitled to annual leave. The pro rata rule also applies in Dominica. However, employees may opt instead for the payment of an amount corresponding to 4 per cent of the annual wage. In Brazil, the legislation specifies the number

**Table 6.2.** Principles of equal treatment for temporary agency work

Type of limitations	Countries
Basic terms and conditions of employment	Austria,* Belgium, Croatia, Czech Republic, Denmark, Estonia, France, Finland, Germany,* Greece, Iceland, Hungary (six-month qualification period may apply regarding pay), India, Ireland, Israel,* Italy, Republic of Korea,** Latvia, Luxembourg, Mexico, Namibia, Netherlands,* Norway, Peru, Poland, Portugal,** Slovakia, Slovenia, Spain, Sweden,* United Kingdom (three-month qualification period), Uruguay
Partial	Brazil (pay), China (pay), Colombia, Ethiopia, Romania (pay), Russian Federation (pay), Switzerland
No principle of equal treatment	Australia, Canada, Chile, Japan,** New Zealand, Panama, South Africa,** Singapore, United States

\* Derogations from the principle of equal treatment may be provided by collective bargaining agreements. \*\* After 60 days of work, the collective agreement applied to comparable workers in the user firm applies to agency workers. \*\*\* See specific comments in ILO, 2015b, section 4.3.

of days' leave to which part-time employees are entitled, according to the number of hours they work per week. Similarly, in Mauritius, a formula has been established to calculate the annual leave entitlement of part-time workers. In other countries, including Armenia, Estonia, Italy, Kazakhstan, Lithuania, the Russian Federation and Slovenia, part-time workers have the right to a full period of annual leave. In Japan, part-time employees who work at least 30 hours per week are entitled to the same amount of annual leave as full-time workers and the law specifies the number of days of leave for those who work less than 30 hours per week.

Equality of treatment or non-discrimination is also often provided in favour of agency workers. The EU Directive 2008/104/EC on temporary agency work sets out a principle of equal treatment for agency workers, whose basic work and employment conditions during an assignment must be at least the same as if they had been directly recruited by the user firm to perform the same job. The EU Directive is not exceptional in this sense; as shown in table 6.2, the principle of equal treatment is applied in many countries across the world, though the scope may vary significantly across different jurisdictions – in some countries being limited to pay and in others covering all the basic terms and conditions of employment.

Even when the principle of equal treatment is established, some countries may nonetheless have exceptions or legal loopholes that limit its scope and effectiveness. In India, for instance, where the Contract Labour (Regulation and Abolition) Central Rules, 1971, sets out an equality of treatment principle for basic terms and conditions of employment, when non-compliance with this principle is found, “it appears that ... there is no obligation of the principal employer to make up any shortfall in payment”.<sup>9</sup> An effective mechanism to limit non-compliance in this respect would be to set up or strengthen a system of shared liabilities between labour brokers and user firms (see section 6.1.5 below).



In the European Union, exceptions to the principle of equality of treatment are allowed by the Directive, under certain conditions, for workers who are employed by agencies under a permanent contract and are paid between assignments, or when the exception is established by collective agreements. Exceptions may also be granted for other arrangements, such as the provision of qualifying periods in order to be entitled to equal treatment. The implementation of these exceptions has sometimes seriously undermined the principle of equal treatment. This has been the case in the United Kingdom, where trade unions report the repeated adoption of schemes such as the so-called “Swedish derogation” for agency workers employed permanently by the agency, in order to avoid equal treatment in terms of pay.<sup>10</sup> Similarly, in Germany, works councils of the user firm have faced difficulties in enforcing the principle of equal treatment in favour of agency workers.<sup>11</sup>

It should also be noted that while the principle of equal treatment can play an essential role in providing protection, it is not always successful – on its own – in achieving this goal. As some legal experts have noted, it is also necessary to apply specific protections to non-standard workers that address the insecurities particular to these types of employment relations, thereby anchoring NSE “firmly within the principles of ‘decent work’ and ‘adequate protection’”.<sup>12</sup> Securing these principles, however, may require restrictions or prohibitions on the use of NSE in certain cases, as well as the introduction of specific measures aimed at tackling the issue of instability and other gaps in labour and social protection associated with these forms of work. These measures will be addressed in the following sections of this chapter. In addition, where the principle of equal treatment is established, monitoring the effects of existing exceptions and tackling circumvention of their application is pivotal in ensuring that equal treatment is effectively applied in practice. This also requires effective enforcement of this principle by courts and adjudicating bodies.

### **Supporting equal treatment in courts and adjudicating bodies**

Courts and administrative bodies have been key in supporting the equal treatment of non-standard workers relative to their standard counterparts. In Germany, for instance, “the principle of equal treatment was frequently circumvented by questionable collective agreements”.<sup>13</sup> A particular case of circumvention regarded the collective agreements concluded by the Collective Bargaining Association of Christian Trade Unions for Temporary Employment and Personnel Service Agencies, under which agency workers earned approximately 30 per cent less than the standard workers at the user firms. Several labour courts have now declared that this organization did not have the legal capacity to conclude such agreements, and, as a consequence, they were declared void.<sup>14</sup> In 2015, the case reached the Federal Constitutional Court, which upheld these judgments.<sup>15</sup>

In Austria, the Supreme Court has gone beyond the “contractual label” assigned to a working arrangement regarding multiple parties. The parties had purportedly classified a provision of services executed at the principal’s premises as one of subcontracting, attempting to avoid the principle of equal treatment provided in case of temporary agency work (TAW). The Court reclassified this scheme as one of TAW, entitling the workers to the pay provided for in the collective agreement of the user undertaking.<sup>16</sup>

In the Republic of Korea, the law was recently amended to strengthen the powers of the Labor Relations Commission in addressing discrimination against non-standard workers. In the past, “corrective orders” against discriminatory treatment would address only the situation of the non-standard workers raising the complaint. Under the new standard, corrective orders are deemed applicable to all non-standard workers who suffer the relevant discrimination and who are employed by the same employer. In addition, the Labor Relations Commission was granted the authority to award punitive damages up to triple the amount of actual damage suffered, in the case of wilful or repeated discrimination against non-standard workers.<sup>17</sup>

In the United Kingdom, the Employment Appeals Tribunal held that the application of a provision in part-time workers’ contracts which allowed their employer to reduce their working hours by two-thirds, and which was not included in the contracts of comparable full-time workers, was unlawful.<sup>18</sup> In France, in a case concerning an economic lay-off, the Court of Cassation ruled that a part-time worker could not be laid off on the grounds of being part time in preference to a full-time worker of the same occupational category with less seniority.<sup>19</sup> The Court of Cassation also recognized the potential impact of the prohibition of gender-based discrimination for the protection of part-time workers. This was emphasized in a case involving the qualifying conditions for entitlement to a complementary old-age benefit. Only former employees having worked at least 200 hours per quarter over a 15-year period were entitled to receive such benefit. The Court of Cassation held that the relevant provision constituted indirect discrimination against women since it had an impact on part-time workers and more women than men worked part time in the branch of activity concerned (82 per cent of women versus 40 per cent of men).<sup>20</sup>

### **Addressing the “margins”: equal treatment and continuity of employment for workers in casual arrangements**

Some part-time workers in Europe may be excluded from the protection of the EU Directive on part-time work, namely those employed on a casual basis, who can be excluded from this protection when objective reasons for the exclusion exist – and after consultation with social partners. These exceptions could be justified by the need not to overburden employers if the working relationships are very short. Nonetheless, the potential growth in the number of these casual arrangements should prompt reflection on the use of these exclusions. Moreover, the exclusions risk increasing indirect discrimination as persons in vulnerable categories tend to be over-represented among non-standard workers.<sup>21</sup> When exclusions like these are allowed, a good practice could be to re-examine them on a regular basis to verify whether they are still justified. This is the approach mandated by the Directive, which provides that exclusion of casual workers “should be reviewed periodically to establish if the objective reasons for making them remain valid”.

On the other hand, there are countries that explicitly set out an equality of treatment principle for casual workers. For instance, the Labour Act of Ghana provides that casual workers must “be given equal pay for work of equal value for each day worked”. Also, the Labour Law of Cambodia establishes equal treatment of casual workers, subject to some exceptions.

The spread of casual employment arrangements in industrialized countries should prompt reflection on the need to ensure that equality of treatment is, to the maximum extent possible, also guaranteed in these cases. Failing to do so could undermine the provision of equal treatment for other forms of NSE as it could create incentives for using these arrangements in order to evade this principle. To mitigate this risk, Italian law, for instance, provides that during actual periods of work, on-call workers must receive wages and accrue other entitlements (e.g. holidays) in a way that is not less favourable than for comparable full-time workers, on a pro rata basis.

In some cases, it can be the system of regulation itself that specifies lesser rights and protection for non-standard workers, or some of them, relative to standard employees – and this is common for casual workers.<sup>22</sup> Moreover, provision of qualification periods and minimum continuity of employment could deprive some workers, particularly those whose work is intermittent, from accessing important labour protection rights, even when their relationship with the same employer lasts for a considerable time, albeit on an intermittent basis.<sup>23</sup>

This risk can be mitigated through legislation that provides specific criteria to calculate continuity of employment for day workers, or the conversion of a casual arrangement to standard employment after a certain amount of time, even if the work is intermittent. The Labour Code of the Philippines, for instance, provides that “any employee who has rendered at least one year of service, whether continuous or broken, shall be considered a regular employee”. This issue is not only relevant to developing countries. In the United Kingdom, workers in casual arrangements may face significant difficulties in accruing rights that require continuity of employment due to “discontinuities in the provision of work”. Thus, altering the “statutory definition of continuity, so that accrued service is not lost when there is a break in continuity, as is currently the case,”<sup>24</sup> could help fill existing gaps in employment protection. Legislation addressing continuity of employment in developing countries could provide helpful models for addressing similar problems in industrialized countries.

### Removing legal barriers to equal treatment

Besides qualification periods, other significant problems regarding the equal treatment of non-standard workers may arise from regulation that excludes, or fails to include, them in the scope of employment laws and protection or limits their access to labour rights. As noted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), however, several countries have amended their legislation, including at the constitutional level, to ensure that all workers have the right of freedom of association, including Chile, El Salvador and Kenya.<sup>25</sup>

Ensuring full access to freedom of association and collective bargaining for non-standard workers is essential for safeguarding their right to equality of treatment before the law and vis-à-vis their employers. Section 6.2 provides examples in which better treatment, stability and equal working conditions have been negotiated for these workers through collective bargaining.<sup>26</sup> To ensure effective protection of collective rights for non-standard workers, some existing regulations may need to be adapted, in particular regarding solidarity action and collective bargaining, when

more than one firm or employer is involved in determining terms and conditions of employment, such as in the case of TAW or other contractual arrangements involving multiple parties.<sup>27</sup>

In this regard, it is important to consider the Conclusions of the Tripartite Meeting of Experts on Non-Standard Forms of Employment which specifically addressed this issue by stating that “Governments, employers and workers should use social dialogue to develop innovative approaches, including regulatory initiatives that enable workers in non-standard forms of employment to exercise these rights and enjoy the protection afforded to them under the applicable collective agreements. These initiatives should include promotion of effective bargaining systems and mechanisms to determine the relevant employer(s) for the purpose of collective bargaining, in coherence with international standards, national laws and regulations.”<sup>28</sup>

In the United States, for example, the National Labor Relations Board (NLRB) eased requirements under which workers for subcontractors can be regarded as jointly employed by the principal firm for the purpose of collective bargaining.<sup>29</sup> According to the standard in force from 2004 to 2016, agency workers could not be unionized in the same bargaining unit of the user firm’s employees unless both the agency and the user firm agreed.<sup>30</sup> In July 2016, however, the NLRB removed the need for the employer’s consent.<sup>31</sup> In Italy, the law explicitly provides that agency workers can exercise collective rights vis-à-vis both the agency and the user firm (limited to the duration of their assignment, with regard to the latter).<sup>32</sup> Allowing workers in contractual arrangements involving multiple parties to bargain with all the relevant parties – alongside the workers of the principal or user firms – may be an effective approach for ensuring equal treatment in this context.

### **6.1.2. Minimum hours and other safeguards for part-time, on-call, and casual workers**

Part-time workers sometimes work very short hours, as explained in Chapter 2, and may therefore have a reduced income – all the more so if they do not benefit from equal treatment with full-time workers in terms of remuneration. In working arrangements that are on-call or casual, particular problems may arise for the income security and the work–life balance of workers if they are called upon at the employer’s discretion and not guaranteed a minimum number of hours or payment. Moreover, on-call workers may be expected to make themselves available at very short notice and may be afraid of not being offered any more work if they turn down a particular shift, even if they are not contractually required to accept calls.<sup>33</sup> Additional issues arise when they are called and report for work, but their shift is cancelled. Measures to provide workers with a minimum number of guaranteed hours and to give workers a say in their work schedules, including limiting the variability of their working hours, are therefore important protective measures.

#### **What do international labour standards tell us?**

The issue of a minimum number of hours for part-time workers and advance notice of work schedules, in particular for on-call workers, is barely addressed by international

labour standards. The Part-Time Work Convention, 1994 (No. 175), is silent on this subject. Its accompanying Recommendation No. 182 provides only that the number of hours and scheduling of work of part-time workers should be established, and take into account the interests of the worker as well as the needs of the establishment; as far as possible, changes in the agreed work schedule and work over the scheduled hours should be subject to restrictions and to prior notice. In more general terms, the Workers with Family Responsibilities Recommendation, 1981 (No. 165), states that particular attention should be given to general measures for improving working conditions and the quality of working life, including measures aimed at achieving more flexible working schedules.<sup>34</sup>

### Minimum hours

Few countries have established a minimum number of working hours for part-time employees to achieve a minimum level of income. One exception is Algeria, where working hours must be no less than half of the statutory working time. In Denmark, the Part-Time Employment Act authorizes collective agreements to require that part-time work should amount to at least 15 hours a week.

In France, the regulation of part-time work was modified in 2013, 2015 and again in 2016.<sup>35</sup> Part-time workers now benefit from a minimum number of weekly working hours, to be set through an extended industry-wide collective agreement. In the absence of such an agreement, the minimum is set at 24 hours of work per week or their equivalent calculated over a month or the applicable reference period. If the minimum set by a collective agreement is below this threshold, guarantees must be offered regarding the implementation of regular work schedules or to allow workers to combine several activities. Since the amendment of the Labour Code in 2015, the minimum-hour rule no longer applies to employment contracts of a duration of less than seven days nor to FTCs and temporary agency contracts concluded for the replacement of a temporarily absent employee. In addition, reduced working hours may be established under certain conditions at the request of the workers concerned. On the other hand, when the average number of weekly hours worked by a part-time employee over a certain period of time exceeds the number of contractual hours by at least two hours, the contract is modified accordingly, unless the employee disagrees with such a change. In Norway, part-time employees who work regularly in excess of their agreed working hours for a period of 12 months have the right to the corresponding increase in their contractual hours, unless the employer can demonstrate that the workload increase will not continue and that the employees concerned will no longer be regularly asked to work beyond their normal schedule.

### Safeguards for on-call and casual workers

In the United States, eight states, plus the District of Columbia and Puerto Rico, have introduced “reporting time pay” laws requiring employers to pay their employees for a minimum number of hours – often three or four – when they report to work for a scheduled shift, even if the shift is cancelled or its length reduced.<sup>36</sup> At the federal level, the “Schedules that Work” bill would – if adopted – allow employees to request scheduling changes without retaliation, and would require employers to engage in a good-faith interactive process before granting or denying the request. Retail, food



services and cleaning employees would be granted additional protection: advance notice of schedules, supplementary pay if the employer changes a shift with less than 24 hours' notice, on-call shift pay and reporting-time pay. Some collective agreements also include a reporting-time pay clause.<sup>37</sup> Further, the New York State Attorney General, followed by eight other State Attorneys General, requested information from a number of large retail firms about their use of on-call shifts. As a result, several of these brands agreed to put an end to such practices.<sup>38</sup>

A reporting-time pay law also exists in the Netherlands. If contractual hours are below 15 hours per week and work schedules are not fixed, or if the number of working hours is not clearly determined, workers must be paid at least three hours for each shift regardless of the actual hours worked. Moreover, after three months, contractual hours under on-call contracts are normally deemed to correspond to average hours effectively worked during the three preceding months. On-call workers – just like other workers – are also entitled to request flexible working.<sup>39</sup>

The key issue of minimum notice was also addressed recently in New Zealand. Major changes were introduced in the Employment Relations Act in 2016, leading to the prohibition of certain forms of zero-hours contracts (see section 6.1.4 “Restricting the use of non-standard employment”). In addition, the employer cannot cancel shifts unless the contract contains a provision specifying a reasonable notice period and reasonable compensation to be paid in the event of cancellation, if notice is not given.

Ireland regulates “zero-hours working practices” whereby workers undertake to make themselves available to work for an employer either for a certain number of hours or when required, or both. Workers have no minimum guaranteed working hours but are entitled to be paid for at least 25 per cent of the contract hours or for 15 hours, whichever is less, even if they have not performed any work during a given week.<sup>40</sup> However, these provisions do not apply to casual employees or to workers who are not contractually required to remain available for work (the so-called “if and when” contracts).

In the United Kingdom, following a broad consultation launched by the Government in response to the controversies surrounding the widespread use of zero-hours contracts, the Employment Rights Act was amended in 2015 to render unenforceable any exclusivity clauses preventing zero-hours workers from working for another employer without their employer's consent. Implementing regulations were adopted later that year to protect zero-hours workers against unfair dismissal or detrimental measures for a reason relating to a breach of an exclusivity clause.

In Germany, on-call contracts must specify the number of daily and weekly hours of work. In the absence of such provisions, a working week of ten hours will be implied to have been agreed and three hours must be paid per shift, irrespective of the number of hours actually worked. Employees are required to respond to a call only if it is made with a minimum of four days' notice. Collective agreements may modify these rules, even to the detriment of employees, on condition that they regulate daily and weekly hours of work, as well as the notice period.<sup>41</sup>

In Italy, even when intermittent workers (*lavoratori intermittenti*) undertake to accept all calls from the employer, they still are not guaranteed a minimum amount of working days or hours. For periods in which they do not work, however, employers pay them a



so-called “availability indemnity”. Payment of the indemnity is suspended during any period in which workers might not be able to accept work (e.g. sickness), and workers must report any reason that would prevent them from working. Unjustified refusals to accept calls may constitute grounds for dismissal. Employers need to give notice of any call at least one working day in advance. For other types of contract, though, intermittent workers do not undertake to accept the employer’s calls and are therefore not entitled to the “availability indemnity”.<sup>42</sup>

In Turkey, if parties to a “part-time employment contract based on work on-call” do not agree otherwise, the weekly working time is considered to have been fixed at 20 hours. A notice of at least four days is required for each call unless otherwise provided, and a minimum of four hours of work is to be provided per call unless different daily hours are set out in the employment contract.<sup>43</sup>

Legislation aimed at mitigating losses for casual workers when work is cancelled, or when the worker is discharged during the day, is also in place in developing countries. In Papua New Guinea, parties can terminate casual employment without notice. However, where no just cause of termination exists, the casual employee is entitled to be paid for a full day’s work on the day the contract is terminated, “notwithstanding that he may have worked less than eight hours on that day”.<sup>44</sup> The Labour Act of Ghana, instead, establishes the entitlement of casual workers to “be paid full minimum remuneration for each day on which the worker attends work, whether or not the weather prevents the worker from carrying on his or her normal work and whether it is possible or not, to arrange alternative work for the worker on such a day”.<sup>45</sup>

### 6.1.3. Addressing employment misclassification

The classification of work relationships is the “central, defining operation of any labour law system ... without classification, the law cannot be mobilized”.<sup>46</sup> As noted in Chapter 1, in the vast majority of legal systems across the world, a “binary divide” between employment and self-employment exists, with “employment” serving as the basis for labour regulation. This makes the definition of employment and the classification of the work relationship as an “employment relationship” a central element in the provision of labour protection. For this reason, it is fundamental to clarify the scope of the employment relationship, ensuring that criteria and tests used in the classification are sufficiently comprehensive and up to date to keep pace with the changing reality of the world of work.

In 2006, the International Labour Conference passed the Employment Relationship Recommendation, 2006 (No. 198), after many years of debate.<sup>47</sup> In the Preamble to this Recommendation, the Conference considered, among other matters, “the difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application”. It also noted that “situations exist where contractual arrangements can have the effect of depriving workers of the protection they are due” and stated that “protection should be

accessible to all, particularly vulnerable workers, and should be based on law that is efficient, effective and comprehensive, with expeditious outcomes, and that encourages voluntary compliance”.

Recommendation No. 198, therefore, is the chief instrument for devising policies to regulate the scope of the employment relationship and avoid circumvention of the labour and social protection attached to it. Based on the rich experience of member States, the instrument contains a far-reaching series of principles that can guide countries on devising policies to address employment misclassification. Moreover, as the classification and recognition of the employment relationship are the cornerstone to labour protection, there are many national examples of how countries have implemented policies to address misclassification. This section presents some of these examples, which also correspond to the measures suggested in Recommendation No. 198.<sup>48</sup>

### The principle of the “primacy of facts”

Recommendation No. 198 establishes the principle of the “primacy of facts”, whereby the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of work and not on the basis of how the parties describe the relationship.

Many jurisdictions in the world provide for such a principle either statutorily or via case law. It can be found in civil law and common law systems and can be expressly stated in laws (e.g. Argentina, Mexico, Panama, Poland), even at the constitutional level (e.g. Colombia, Venezuela), in some cases as a general principle of contract law (e.g. Bulgaria, Italy), or set out by the courts (e.g. Ireland).<sup>49</sup>

Despite a traditional reluctance of common law systems to interfere with the contractual purpose declared by the parties, the “primacy of facts” principle is either present in courts’ reasoning (e.g. United Kingdom)<sup>50</sup> or enforced via statutory measures in various common law jurisdictions. An interesting example is the Australian Fair Work Act 2009, which prohibits misrepresenting an employment relationship as an independent contracting arrangement; dismissing or threatening to dismiss an employee for the purpose of re-engaging them as an independent contractor; or making a knowingly false statement to persuade or influence an employee to become an independent contractor. The Act sets out sanctions in the event of a breach of the relevant provisions.<sup>51</sup>

In the application of the primacy of fact principle, consideration can be given to the relative bargaining power of the parties when drafting the terms and conditions of their arrangement and characterizing the work relationship. This approach has been adopted, for instance, by the Supreme Court of the United Kingdom in the *Autoclenz* case in 2011. In its ruling, the court observed that “the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part”.<sup>52</sup> This approach aims to avoid a party trying, by virtue of its stronger relative bargaining power, to evade or circumvent labour protection simply by inserting into the work agreement “boilerplate” clauses that are typical of self-employment relationships (such as, for instance, the right to substitute workers, or the lack of any obligation on the

parties to offer or receive work) and do not reflect the reality of the work relationship between the parties.

Needless to say, efficient labour administration and inspection systems and policies aimed at raising awareness of employment rights among workers, as well as ensuring effective access of workers to courts or other adjudicatory bodies, are fundamental for ensuring enforcement of such a principle and of any other determination of the scope of the employment relationship or labour protection.<sup>53</sup>

### Means for determining the existence of an employment relationship

Part II of Recommendation No. 198 calls for “allowing a broad range of means for determining the existence of an employment relationship” and offers guidance in determining factors and indicators that may be used when determining the scope of the employment relationship. According to Paragraph 13 of the Recommendation:

Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:

- (a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker’s availability; or involves the provision of tools, materials and machinery by the party requesting the work;
- (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker’s sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.

The definition of the contract of employment or the employment relationship is generally based on the legal subordination of the worker to the managerial prerogatives of the employer, including its hierarchical, control and disciplinary powers.<sup>54</sup> Nonetheless, in a vast number of countries, lawmakers and courts have adopted other tests based on the “economic reality” of the relationship that go beyond the mere exercise of the power to control the working activity and also look at the economic dependence of the worker upon the employer.<sup>55</sup>

In the United States, for instance, the US Department of Labor clarified the criteria under the Fair Labor Standards Act (FLSA) that should be taken into account in determining whether a person should be regarded as an employee under the Act – and therefore be entitled to minimum wage and working-hour protection. These criteria are based on a “multi-factor ‘economic realities’ test”. These factors typically include: “(A) the extent to which the work performed is an integral part of the employer’s business; (B) the worker’s opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed

requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer.”

In carrying out this analysis, “each factor is examined and analyzed in relation to one another, and no single factor is determinative. The ‘control’ factor, for example, should not be given undue weight. The factors should be considered in totality to determine whether a worker is economically dependent on the employer, and thus an employee.” In addition, “[t]he application of the economic realities factors is guided by the overarching principle that the FLSA should be liberally construed to provide broad coverage for workers, as evidenced by the Act’s defining ‘employ’ as ‘to suffer or permit to work’”.<sup>56</sup>

Multi-factor tests are adopted by courts in other common law countries. Examining the approach of courts in determining the scope or definition of the employment relationship in several of these countries, it was found that multi-factor approaches are followed in a variety of ways, for instance, in Australia, India and the United Kingdom.<sup>57</sup> In the United Kingdom, however, the multi-factor approach does not inevitably lead to broadening the scope of the employment relationship or employment protection since, as reported in Chapter 1, the factor of “mutuality of obligations” may play a role in excluding casual and intermittent workers.<sup>58</sup> Multi-factor analysis, however, is not exclusive to common law systems. Similar approaches are also followed in some civil law countries, including France and Greece.<sup>59</sup>

In addition, the control test can also be interpreted in a flexible way and considered to be met even when direction and control with regard to all the details of the work are not exerted by the employer, taking into account the features of the working activity. In Italy, for instance, the Supreme Court found in several cases that the legal test of subordination was also met when the employer did not continuously provide the worker with detailed instructions and directives, when the nature of the activity did not require this for the employer to maintain overall control over the working activity or organization, particularly when the workers carried out very high-skilled and professional activities, or, on the other hand, when the work was quite simple and repetitive.<sup>60</sup> This flexible approach to the control test can also be found in common law jurisdictions. For instance, citing the relevant case law, the State of California Department of Industrial Relations observes that: “[e]ven where there is an absence of control over work details, an employer–employee relationship will be found if (1) the principal retains pervasive control over the operation as a whole, (2) the worker’s duties are an integral part of the operation, and (3) the nature of the work makes detailed control unnecessary”.<sup>61</sup>

A flexible approach to the control test can be pivotal in ensuring that the criteria for determining the existence of an employment relationship keep pace with changes in business organizations dictated or facilitated by technological change. In particular, this test could still be satisfied in cases in which control over the workers’ performance is mediated by the use of customers’ reviews and rating systems, a practice common in the gig economy.<sup>62</sup>

**“Providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present”**

Still another policy approach mentioned in Recommendation No. 198 that is helpful in combating misclassification of employment relationships is “providing for a legal

presumption that an employment relationship exists where one or more relevant indicators is present”. Indicators that may trigger such a presumption can vary between countries, and include the fact that equipment and working tools used belong to the employer receiving the work, the periodic payment of a fixed compensation for the work, the fact that the working hours are determined by the firm receiving the work, and the worker’s economic dependence on this entity.

Such a legal instrument is present in jurisdictions across the world and may take the form of a broad presumption under which working relationships are presumed to be employment relationships (e.g. Colombia, Dominican Republic, Netherlands, Panama, Venezuela). Examples along these lines can be found in both developing and industrialized countries. In Venezuela, for instance, the Labour Law (*Ley Orgánica del Trabajo*) establishes that “an employment relationship shall be presumed between who renders a personal service and who receives it”. The Labor Code of California, United States, sets out a rebuttable presumption by which “[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee”.<sup>63</sup>

Alternatively, the law may specify some indicators that may trigger a presumption or a reclassification under an employment relationship (e.g. Malta, South Africa, Tanzania). An example can be found in Malta, where the presumption of an employment relationship operates where

at least five of the following criteria are satisfied in relation to the [persons] performing the work:

- (a) [they depend] on one single person for whom the service is provided for at least 75 per cent of their income over a period of one year;
- (b) [they depend] on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- (c) [they perform] the work using equipment, tools or materials provided by the person for whom the service is provided;
- (d) [they are] subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
- (e) [they] cannot sub-contract [their] work to other individuals to substitute [themselves] when carrying out work;
- (f) [they are] integrated in the structure of the production process, the work organisation or the company’s or other organization’s hierarchy;
- (g) [the persons’] activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and
- (h) [they carry out] similar tasks to existing employees, or, in the case when work is outsourced, [they perform] tasks similar to those formerly undertaken by employees.<sup>64</sup>

The Portuguese Labour Code, 2009, similarly classifies “formally” self-employed workers as having an employment contract, with the worker considered as a wage earner when certain characteristics are found in the working arrangements (“*forma aparentemente autónoma*”).<sup>65</sup> Another rebuttable presumption is provided in the Netherlands, where “if an employee works for an employer on a regular basis for a period of three months (weekly or at least 20 hours a month), then the law automatically presumes that a contract of employment exists.”<sup>66</sup>

Presumptions of employment are also found in the legislation of developing countries. In 2012, for instance, Namibia amended its Labour Act to introduce a rebuttable presumption of employment

- if any one or more of the following factors is present:
- (a) the manner in which the individual works is subject to the control or direction of that other person;
  - (b) the individual's hours of work are subject to the control or direction of that other person;
  - (c) in the case of an individual who works for an organization, the individual's work forms an integral part of the organization;
  - (d) the individual has worked for that other person for an average of at least 20 hours per month over the past three months;
  - (e) the individual is economically dependent on that person for whom he or she works or renders services;
  - (f) the individual is provided with tools of trade or work equipment by that other person;
  - (g) the individual only works for or renders services to that other person; or
  - (h) any other prescribed factor.<sup>67</sup>

Presumptions can therefore be valuable tools to ease the burden of proof for workers and also to prevent misclassification, in addition to providing guidance for parties entering into working arrangements, by pointing out the correct classification of the relationship. Depending on how the presumptions are devised and other elements, including national conditions and the relevant legal tradition, rebuttable presumptions can be useful for combating misclassification, as suggested by Recommendation No. 198.

**“Determining that workers with certain characteristics must be deemed to be either employed or self-employed”**

This is a policy that has been adopted in Europe. In France, the Labour Code provides for the application of the provisions of the Labour Code to workers other than those with an employment contract. For professional journalists, certain performing artists, fashion models or sales representatives, the law explicitly defines any agreement under which they provide their services as within the scope of a contract of employment. Thus, agreements between sales representatives (freelance workers) and their clients are considered contracts of employment, subject to certain conditions being met. Moreover, this applies to each contract between a sales representative and one or more organizations and there is no room for reversing this presumption by proving that there was no subordination.<sup>68</sup>

**6.1.4. Restricting the use of non-standard employment**

In addition to improving the conditions of non-standard workers, there are other reasons to restrict or limit the use of NSE. For example, employers and workers could be offered options to use NSE and enjoy the flexibility that these forms of work afford whilst at the same time limiting the unnecessary replacement of standard employment



jobs by non-standard ones. In other cases, setting limits on the use of NSE can help to avoid abuses or particular risks associated with its use, for instance by restricting use in some sectors or occupations or when industrial disputes are ongoing.

### **What do international labour standards tell us?**

Existing international labour standards may require, recommend or allow certain forms of restriction to the use of NSE. The Termination of Employment Convention, 1982 (No. 158), for instance, mandates that “adequate safeguards [...] be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention”. This provision is supplemented by the Termination of Employment Recommendation, 1982 (No. 166), which recommends limiting recourse to FTCs to situations in which open-ended contracts cannot be envisaged and identifying cases where FTCs are deemed to be open-ended contracts.

The Private Employment Agencies Convention, 1997 (No. 181), allows ratifying States to prohibit, under certain conditions, private employment agencies from operating in respect of certain categories of workers or branches of economic activity. In addition, the Private Employment Agencies Recommendation, 1997 (No. 188), provides that private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

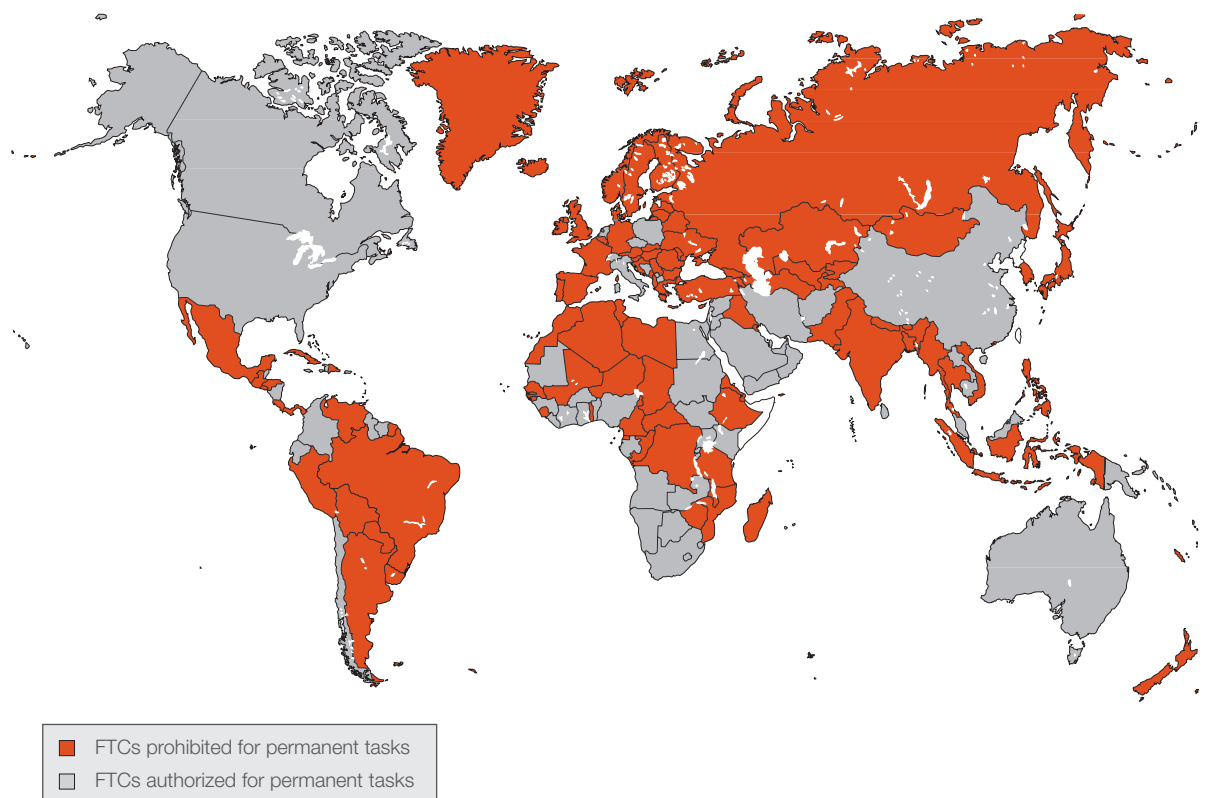
### **Restrictions adopted by countries on recourse to non-standard employment**

Many countries have restricted or prohibited the use of certain types of NSE in an effort to avoid abuse, including:

- Prohibition of using fixed-term work for permanent needs of the enterprise
- Limitations on the use of temporary agency work
- Limitation on renewals or overall duration of fixed-term work, casual work and TAW
- Restricting or prohibiting the use of on-call employment contracts
- Limiting the percentage of non-standard workers in overall staff of an enterprise
- Limiting NSE to non-core activities

### **Prohibitions on fixed-term work for permanent needs**

More than half of the countries for which information is available limit recourse to fixed-term work to tasks of a temporary nature, as suggested by Recommendation No. 166. Limiting the number of renewals of successive FTCs is another common tool to prevent abuse, as is limiting their cumulative duration. The EU Directive 1999/70/EC on fixed-term work recognizes that “employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance”, and requires the adoption of measures “to prevent abuse arising from the use of successive fixed-term employment contracts or relationships”. Figure 6.3 is a map illustrating the geographical spread of authorized

**Figure 6.3.** Legal prohibition of the use of fixed-term contracts for permanent tasks

Source: Aleksynska and Muller, 2015, based on data from ILO, World Bank and national labour laws.

and prohibited use of fixed-term contracts for permanent tasks. The Directive has been shown to be effective in reducing the use of FTCs.<sup>69</sup>

### Limitations on the use of temporary agency work

Recourse to TAW may be prohibited or restricted by national regulations for several reasons. For instance, it may be allowed only if an objective reason exists; in various countries this reason must be temporary in nature, such as the need to replace an absent worker or to execute an activity that is not ordinarily carried out within the business (see table 6.3 for examples).

A common limitation to TAW is its prohibition on replacing workers on strike, as suggested by Recommendation No. 188. Under EU Directive 2008/104/EC on temporary agency work, EU Member States are allowed to restrict the use of TAW during industrial action. This restriction is established in a vast number of countries worldwide, either by statutory measures (e.g. Argentina, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, France, Greece, Hungary, Israel, Italy, Lithuania, Morocco, Namibia, New Zealand, Peru, Poland, Portugal, Romania, Slovenia, Spain) or via collective bargaining (e.g. Denmark, Norway, Sweden) or codes of conduct (Finland). It is also worth noting that the World Employment Confederation (formerly

**Table 6.3. Objective or temporary reason for recourse to temporary agency work**

Type of reason	Countries
Temporary reason	Argentina, Belgium, Brazil, Chile, China,* Colombia, Estonia, Finland, France, Luxembourg, Morocco, Peru, Poland, Portugal, Russian Federation, South Africa**
Objective reason	Austria, Indonesia, Norway, Slovakia, Spain**
No limitation	Australia, Canada, Denmark, Ghana, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Malaysia, Namibia, Netherlands, New Zealand, Singapore, Slovenia, Sweden, Switzerland, United Kingdom, United States, Zimbabwe

\* TAW is, however, also allowed in China for “auxiliary activities” ancillary to the user firm’s core business; see Cooke and Brown, 2015. \*\* See specific comments in ILO, 2015b, section 4.3.

known as CIETT) sets out a similar provision in its code of conduct. A number of other jurisdictions, however, do not provide for such a limitation (e.g. Latvia, Ireland, United States). Very recently, the ILO Committee of Experts on the Application of Conventions and Recommendations expressed its concern about a legislative proposal aimed at removing such a limitation in the United Kingdom and asked the Government to review this proposal with the social partners concerned.<sup>70</sup> As reported in Chapter 5, the use of temporary agency workers to replace striking workers may have very detrimental effects on fundamental principles and rights at work. It could also create conflict amongst different groups of workers. Prohibiting such action could therefore be pivotal in avoiding unnecessary tensions during industrial disputes.<sup>71</sup>

Several countries, moreover, limit or prohibit TAW in specific sectors (e.g. Argentina, Germany, Republic of Korea, Japan, Spain)<sup>72</sup> or with regard to certain activities within the user firm such as core or managerial activities (e.g. Chile, India, Indonesia, Mexico) and/or for hazardous work (e.g. France, Greece, Lithuania, Poland, Portugal, Spain, Slovenia).<sup>73</sup>

Recourse to TAW may also be prohibited in the aftermath of dismissals for business reasons and/or collective dismissals. Such a measure, adopted in a number of countries including Croatia, France, Greece, Hungary, Italy, Lithuania, Portugal, Slovenia and Spain, is clearly aimed at preventing standard jobs from being lost in favour of temporary agency work.

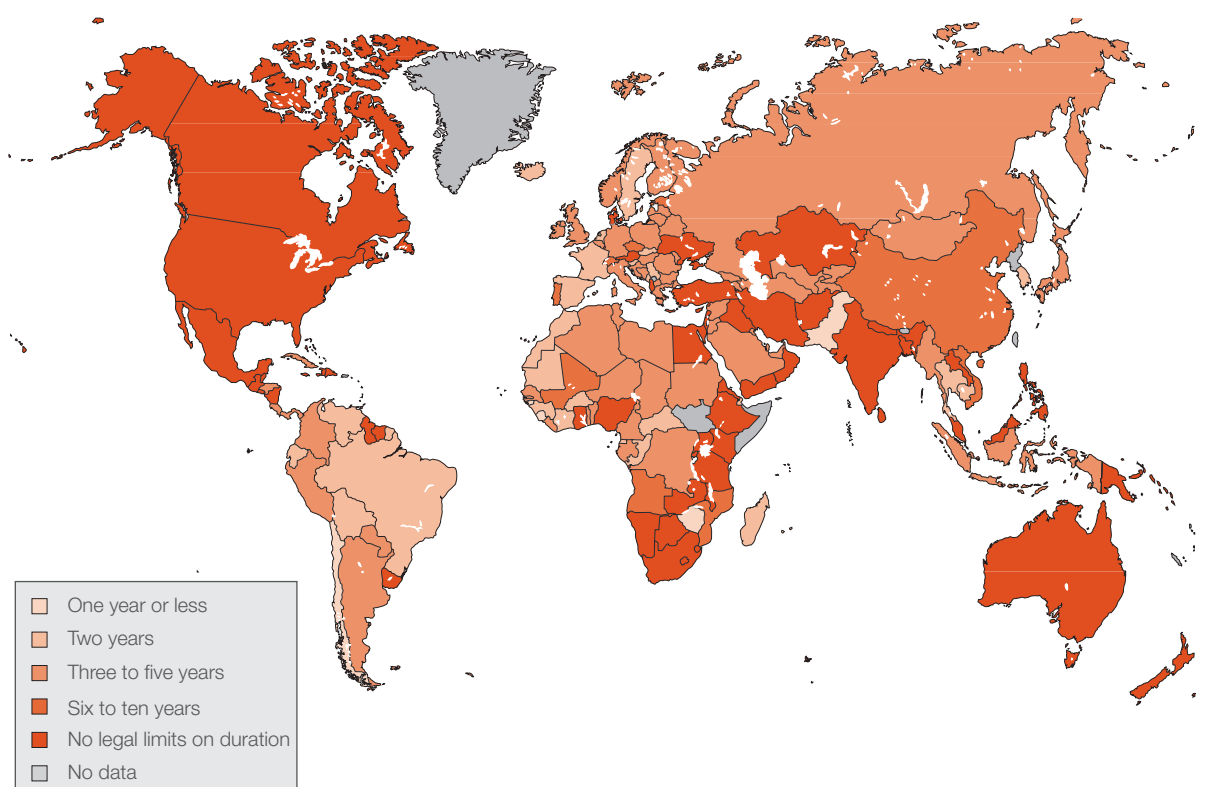
### **Limiting renewals or overall duration of fixed-term work, casual work and temporary agency work**

In a large number of jurisdictions, measures are taken to ensure that recourse to fixed-term work, casual work or TAW is only temporary. In these cases, it is common to specify a maximum overall duration for these contracts or to limit the number or the renewal of successive contracts or assignments. Table 6.4 provides an example of countries that impose limits on the number of FTC renewals.

**Table 6.4.** Number of successive fixed-term contracts authorized by law

Number of successive FTCs authorized by law	Examples of countries
1 FTC	Bulgaria
2 FTCs	Brazil, Cameroon, Chile, China, Comoros, Democratic Republic of the Congo, Estonia, Gabon, Indonesia, Madagascar, Niger, Senegal, Spain, Venezuela, Viet Nam
3 FTCs	Czech Republic, France, Greece, Luxembourg, Netherlands, Poland, Romania, Saudi Arabia
4 FTCs	Belgium, Germany, Portugal, Slovakia

Source: Adapted from Aleksynska and Muller, 2015.

**Figure 6.4.** Maximum legal duration of fixed-term contracts, including renewals

Source: Adapted from Aleksynska and Muller, 2015, based on data from ILO, World Bank and national labour laws.

The most frequent provision used to regulate FTCs is a limitation on their cumulative duration. A comparative analysis of this provision shows that around half of the 193 countries for which information is available limit the maximum cumulative duration to two to five years (figure 6.4).

**Table 6.5. Examples of maximum duration of casual work**

Region	Less than 3 months	3 to 6 months	6 months	More than 6 months	Reference period
Africa	Sudan (15 days)		Ghana	Botswana (12 months)	Seychelles (21 consecutive days in any month) Zimbabwe (6 weeks in any 4 consecutive months)
Asia and the Pacific				Philippines (1 year)	Papua New Guinea (6 days in one month)*
Europe					Romania (90 days in one year)**
Americas	Colombia (1 month)	Paraguay (90 days)			Ecuador (1 month in one year)
Middle East	Qatar (4 weeks)	Jordan (3 months) Saudi Arabia (90 days) Yemen (4 months)	Egypt, Libya, Oman, Syrian Arab Republic		

\* In Papua New Guinea, subject to some exceptions, a casual worker who is employed by the same employer for more than six days in any month is deemed an “oral contract employee” with a different regulation applying under the Employment Act. \*\* For details, see De Stefano, 2016a.

As explained in Chapter 1, the maximum duration of casual work often features as a criterion in definitions of this form of NSE or in regulations, either independently or combined with other criteria. A maximum duration of six months is quite common, especially in the Middle East, but several shorter or longer durations can be found across jurisdictions. In some cases, the law fixes a maximum duration over a reference period: in Zimbabwe, for instance, casual workers are considered to have become permanent employees when the period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months. In the Seychelles, this limitation applies to the use of “casual work” per se, rather than to individual workers, as employers are not allowed to hire a casual worker, whether it be the same or another worker, for a period of more than 21 consecutive days in any month or a longer period authorized by a competent officer (see table 6.5).

Limitations regarding the number of assignments, their renewal or extension are also often provided for TAW (table 6.6). In some cases these limits are set out specifically for TAW, whilst in other cases the general regulation governing FTCs applies, with regard to either the number of assignments or the relationship between the agency and the worker. In some countries, the maximum duration is variable, depending on the type of task to be completed, the nature of assignment or the grounds for its use (e.g. Belgium, Republic of Korea, Portugal).

**Table 6.6. Limitations on the number of temporary agency assignments and the maximum duration of assignments**

Type of limitation	Countries
Limitation on number of assignments/renewals	Switzerland
Provision for a maximum duration of assignment (also cumulative): (number of months)	Belgium (variable: 3–18), Brazil (variable: 3-9), Colombia (variable 1–12), Chile (variable 3–6), Czech Republic (12), Greece (36), Hungary (60), Israel (9–15), Italy (36), ** Republic of Korea (variable 3–24), Norway (48),* Panama (2), Poland (variable 18–36), Portugal (variable 6–24), Romania (36), South Africa (3)***
Cumulative limits: (number of renewals/number of months)	Estonia (2/120), Luxembourg (2/12)
No limitation	Australia, Austria,* Canada, China,**** Denmark, Finland,* Germany,* Iceland, India, Indonesia, Ireland, Latvia,* New Zealand,* Slovakia,* Slovenia,* Spain,* Sweden,* United Kingdom, United States

\* Countries where a fixed-term contract between a temporary agency worker and an agency is subject, entirely or partially, to the limits applicable to direct fixed-term employment between a worker and a firm. \*\* The 36-month limit in Italy refers to the duration of a single assignment; it is debatable whether a series of assignments would be subject to the 36-month limit. \*\*\* See specific comments in ILO, 2015b, section 4.3. \*\*\*\* On the situation in China, in particular with regard to the definition and duration of “auxiliary activities” in relation to which use of TAW is allowed, see Cooke and Brown, 2015.

Source: Authors' compilation.

### Restricting or prohibiting the use of on-call employment contracts

On-call work and, more specifically, zero-hours contracts, have been the subject of heavy criticism in a number of countries, including the United Kingdom, the United States and New Zealand. A number of regulatory measures have been developed in response to these demands for better protection of the workers concerned.

In 2015, the Unite union of New Zealand launched a major campaign for the abolition of zero-hours contracts and managed to conclude with the main fast-food companies new collective agreements which included a minimum number of guaranteed hours. In addition, the Employment Relations Act 2000 was amended in 2016 and now provides that employment contracts or collective agreements must specify, inter alia, the number of guaranteed hours of work – if any. If a number of guaranteed hours has not been set, the worker cannot be required to remain at the employer's disposal and can refuse hours of work that are offered. Moreover, an availability provision cannot be included in an employment contract unless the employer has genuine reasons for including it, based on reasonable grounds, and the employee is entitled to payment of reasonable compensation for making himself or herself available to perform work. Employees are entitled to refuse to perform work in addition to any guaranteed hours if the employment contract does not provide for the payment of reasonable compensation, and an employer must not retaliate against an employee for refusing to perform work on that ground. Some media sources have stated that zero-hours contracts are now banned in New Zealand.<sup>74</sup> This is not exactly the case: these provisions amount to a prohibition on



zero-hours contracts that require workers to remain at the disposal of their employer – but contracts that do not include such a requirement still remain legal under certain conditions.

In the Netherlands, there are zero-hours contracts as well as “min-max contracts”. Min-max contracts set a minimum number of guaranteed hours beyond which the worker agrees to respond to an employer’s calls up to a maximum number of hours as specified in the contract. Under Dutch labour legislation, employees, regardless of their contract, must normally be remunerated even for hours that are not worked – if it is for reasons linked wholly or in part to the employer’s actions. The parties can nevertheless exclude this obligation for the first six months of the employment contract and on-call contracts typically contain such an exclusion clause. Whereas such an exclusion could previously be extended indefinitely by collective agreements, legislation was amended in 2014 to prevent abusive practices. Collective agreements that entered into force after 1 January 2015 can provide for such an extension only for specific jobs that are non-recurrent and do not have a fixed scope. The Ministry of Social Affairs and Employment can also prohibit this practice for certain branches of activity.

In the United Kingdom, legislation was amended in 2015 to render exclusivity clauses in zero-hours contracts unenforceable. The Government did not seek to prohibit these contracts; instead, it published guidance for employers that identifies cases where the use of such contracts is either appropriate or inappropriate.<sup>75</sup> Appropriate cases include situations where a new business starts up, seasonal work or peaks in demand for short periods of time, the need to cover periods of unexpected staff sickness, special events, as well as enterprises that are testing a new service.

### **Limiting the percentage of non-standard workers**

A limitation on the total amount of workers in certain forms of NSE can also be a way of avoiding abuses. Italy and Norway, for example, have adopted this approach, albeit in the context of reforms that relaxed other requirements for employing workers in non-standard arrangements. In Norway, a limit was set for FTCs, which cannot exceed 15 per cent of the workforce.<sup>76</sup> In Italy, with some exceptions, fixed-term and temporary agency workers cannot exceed 20 per cent of the number of standard workers employed by the firm. Setting limits in this way has also been done outside Europe. In China, the Labor Contract Law establishes that dispatch work cannot exceed a certain percentage of the workforce fixed by administrative regulation: as from 2014, the maximum share of dispatched workers must not exceed 10 per cent.<sup>77</sup>

### **Limiting non-standard employment to non-core activities**

Another method to avoid abuses in the recourse to NSE consists in limiting the use of non-standard workers to non-core business activities of the employer. This is one of the most common restrictions to be found in national regulations in definitions of casual work. It requires casual work to be restricted to those working activities which are outside the normal activities of the employer, in circumstances where unpredictable and incidental business needs may arise.

Some countries also limit or even prohibit recourse to subcontracting for core business activities. This limitation can be useful to ensure that subcontracting is limited to autonomous services of a specialized nature that are not ordinarily or primarily performed by the principal firm. The subcontractor, therefore, may have a comparative advantage over the principal in performing this activity that consists of more than merely offering reduced terms and conditions of employment to its employees. Countries that adopt this approach include Brazil and Ecuador. In Ecuador, this limitation is set out in the Constitution, which explicitly provides that “all forms of job insecurity and instability are forbidden, such as labour brokerage and outsourcing for the company’s or employer’s core and usual activities”.<sup>78</sup> In Brazil, the Superior Labour Court (*Tribunal Superior do Trabalho*) has banned the outsourcing of activities related to the principal firm’s core business. If these activities are outsourced, the principal will be held jointly liable with the subcontractor vis-à-vis the subcontracted workers, who in some cases may also obtain reclassification as employees of the principal. In instances where outsourcing is allowed, the principal has instead a subsidiary liability vis-à-vis the workers of the subcontractor. A draft bill approved by the Chamber of Deputies in 2015, and pending before the Senate in 2016, aims at liberalizing the outsourcing of core business activities and at the same time introducing joint liability in all cases of subcontracting in the private sector.<sup>79</sup>

In Asia, the regulatory system of Indonesia sets out several conditions in which a business outsourcing process can be lawful, especially that “the work must be supporting activities: i.e. it is necessary to support and facilitate the implementation of the main activities according to the flow chart of the work implementation process stipulated by the relevant sectoral business association” and that “the work must not directly hinder the production process: i.e. it must be an additional activity and if not performed, the production process will still continue as normal”. The principal firm must also submit a flowchart “describing which activities are ‘core’ and ‘non-core’ in the specified sector, prepared by the relevant industry association”. If these conditions are not met, the workers are entitled to obtain reclassification as employees of the principal firm.<sup>80</sup>

#### **6.1.5. Assigning obligations and liabilities in contractual arrangements involving multiple parties**

Chapter 4 reported how outsourcing vast parts of business activities has become a widespread practice in the last three decades, and that this has not been limited to peripheral business functions but has also involved “core” activities of firms. This process, which has been described as a “fissurization” of the workplace,<sup>81</sup> occurs through a vast array of contractual arrangements, including TAW, subcontracting, franchising, but also through supply chains, corporate groups,<sup>82</sup> outsourcing to self-employed workers and, in some cases, misclassification of these workers.<sup>83</sup>

In most cases, the work arrangements do not entirely correspond to the traditional “bilateral” structure of the standard employment relationship, since the functions and managerial prerogatives traditionally concentrated into one single employer are distributed among several entities, as is the case in most TAW arrangements, where

agency workers are employed and paid by the agency but their work is directed by the user firms.<sup>84</sup> When this happens – and in other contractual relations involving multiple parties, such as subcontracting or franchising – there may be situations where it is difficult for workers to effectively exercise their rights because of the multi-layered structure of their work arrangements. When more than one party has a role in determining working conditions, workers may even find it difficult to identify the party responsible for their rights.<sup>85</sup>

In some cases, multiple-party arrangements may be set up with the specific aim of shedding responsibilities and circumventing regulation. Many jurisdictions put in place remedies against these “sham” arrangements, for example where subcontractors not registered as private employment agencies merely hire out labour instead of providing a particular kind of work or service.

Beyond protection against these “sham” arrangements, however, specific measures are needed to mitigate the risks for workers in a contractual relationship involving multiple parties, including the risk that they will not know who should be considered as the “employer” for some specific purposes. This risk is not confined to subcontracting and may also affect temporary agency workers and other contractual relations involving multiple parties. This section details some of the measures that can be taken to address these issues.

### **Awareness of rights and obligations**

In the case of temporary agency work, the Private Employment Agencies Convention, 1997 (No. 181), for instance, mandates that ratifying States

determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies [...] and of user enterprises in relation to: (a) freedom of association; (b) collective bargaining; (c) minimum wages; (d) working time and other working conditions; (e) statutory social security benefits; (f) access to training; (g) occupational safety and health; (h) compensation in case of occupational accidents or diseases; (i) compensation in case of insolvency and protection of workers claims; (j) maternity protection and benefits, and parental protection and benefits.

To ensure awareness of rights and obligations, the Private Employment Agencies Recommendation, 1997 (No. 188), provides that temporary agency workers should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, moreover, these workers “should be informed of their conditions of employment before the effective beginning of their assignment”. Also, some countries provide for a duty of information in favour of the agency worker concerning his or her rights and obligations and the chief provisions of the contract between the agency and the user firm. In China, for instance, the Labour Contract Law specifies that the agency must provide the dispatched workers with information on the content of its agreement with the user firm and the agreement will need to cover, inter alia, “the period for dispatch, the amounts and methods of payment of labor remuneration and social insurance premiums, and the liability for breach of the agreement”.

Providing information, particularly in writing, about rights and obligations of the different parties, as well liabilities in case of breach of those obligations, can be a step to establishing transparency and accountability in relationships with multiple parties. Besides the duty to provide information, however, other measures can be put in place that foster accountability in these relationships.

### **The concept of shared liabilities**

An important measure to foster accountability is to distribute the liabilities for labour and employment duties and obligations among the different parties involved in multiple-party arrangements by providing for joint and several liability between them.

Under a joint and several liability rule applied to TAW, a worker could claim the labour entitlements normally due from the agency from the user firm as well and could recover the full entitlements (for which the shared liability exists) from either of them. This measure is found in the regulation governing TAW in both developing and industrialized countries, in particular with regard to wages and social security entitlements. Joint liability rules between the user firm and the agency are provided, for instance, in Argentina, France, India, Italy, the Netherlands, Namibia, Ontario (Canada) and South Africa.<sup>86</sup>

The joint liability rule can also be pivotal in ensuring compliance with labour obligations in TAW. Exposing the user firm to a potential claim by the agency workers creates a strong incentive for the user firm to select reliable private employment agencies. In addition, coupling the joint liability rule with a non-discrimination principle for agency workers employed by the user firm can be an effective measure for preventing TAW from being used solely as a tool for shedding labour responsibilities and gaining access to cheaper pools of workers.

Systems of shared liabilities, including joint liability rules, are also found in the regulation of other contractual arrangements involving multiple parties, including subcontracting. Establishing a form of shared liability for subcontracting arrangements can be as important as for TAW, for several reasons. First, the relationship between a principal entity and a subcontractor's workers can be more at arm's length than for agency work because, at least in principle, the subcontractor directly manages its workforce. Nonetheless, depending on circumstances, including the size of the subcontractor firm and the number of its clients, the work or service it renders and the location where these are rendered (whether at the principal firm's premises or somewhere else), the principal may have a strong direct or indirect influence over the working conditions of the subcontractor's workers. Second, private employment agencies are often subject to licence or registration duties<sup>87</sup> that do not normally affect subcontractors. For these reasons, providing a strong incentive for principal firms to select reliable counterparts and to take action to ensure that they comply with existing standards can be essential in securing the rights of the workers involved.

Several countries in the world provide for shared liability of principal firms for the workers of contractors and subcontractors with regard to aspects of labour protection. In addition, public procurement policies can be a useful tool for ensuring respect for labour rights in subcontracting (see box 6.1).

**Box 6.1. Public procurement as an enforcement tool for labour rights**

Public procurement can be a powerful tool to ensure the effective protection of workers in NSE, and in particular those involved in subcontracting arrangements, as is recognized by the ILO, the European Union and a number of countries.

The ILO's Labour Clauses (Public Contracts) Convention, 1949 (No. 94), requires the inclusion of labour clauses in all public procurement contracts within its scope of application. Such clauses should ensure that workers employed for the execution of the contract benefit from wages, hours of work and other working conditions that are at least as favourable as those that apply for similar work performed in the same industry and the same region, as determined by law, collective agreement or arbitration award – whichever sets the highest level of protection. An important feature of the Convention is that it also applies to work carried out by subcontractors, and requires that appropriate measures be taken by national authorities to ensure such application. In this respect, the application of the Convention is of particular relevance for public procurement operations involving construction works, since the construction industry is characterized by frequent recourse to specialized subcontractors. As noted by the CEACR, “[t]oday, general provisions for subcontracting are often found in public contracts, as well as laws and regulations governing public procurement. Sometimes subcontracting is prohibited, sometimes permitted but with the permission of the contracting authority, other times permitted but with the requirement that obligations binding on the contractor flow through any and all subcontractors”.<sup>88</sup>

The strength of Convention No. 94 is its requirement to apply adequate sanctions, which may take the form of temporary or permanent exclusion from tendering procedures for failure to apply the required labour clauses. In addition, ratifying States must take appropriate measures, which may include the suspension of any payment due under the terms of the contract, to enable the workers concerned to recover unpaid wages.

The public procurement regime of the European Union was recently modified and gives greater space to social considerations. Pursuant to the Directive 2014/24/EU of the European Parliament and of the Council of 26 December 2014 on Public Procurement, EU Member States must take appropriate measures to ensure that, in the performance of public contracts, economic operators comply with applicable obligations in the fields of environmental, social and labour law established by European Union law, national law, collective agreements or by the international instruments listed in Annex to the Directive, including the eight ILO fundamental Conventions. The obligations to be complied with are those that apply at the place where the works are executed or the services are provided. Such measures must be applied in a way that ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other EU Member States. These obligations also extend to subcontractors. Competent national authorities must take appropriate measures to ensure compliance, including a system of joint liability between subcontractors and the main contractor, where one exists.

In addition, the Directive leaves EU Member States a certain degree of flexibility for the inclusion of other social considerations in the selection process, including “the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to perform the contract” or “the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life”.

Public procurement can also be used at the national level to further workers' rights. In the United States, for instance, in the absence of a majority in Congress to agree to raise the federal minimum wage, President Obama issued Executive Order 13658 (“Establishing a Minimum Wage for Contractors”) in February 2014 to increase the hourly minimum wage to be paid by federal contractors and subcontractors to workers involved in the performance of federal construction and service contracts.

Source: Authors' compilation based on ILO, 2008 and other legal sources.

### Shared liabilities in occupational safety and health

A fundamental area in which shared liability can be established is occupational safety and health (OSH). The Occupational Safety and Health Convention, 1981 (No. 155), provides that “whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying the requirements of this Convention”. This cooperation is essential for multi-party contractual arrangements because when workers in these arrangements work at the principal firm’s premises, the subcontractor does not control the workplace and is thus not in a position to provide for OSH and ensure compliance with relevant obligations. Many countries provide for systems of shared liabilities and exchange of information, and for cooperation between the principals and contractors and subcontractors on OSH issues. This is common, for example, in the European Union.<sup>89</sup> A particularly interesting example of regulation is the Australian Model Work Health and Safety Act, which forms the basis of the Work Health and Safety Acts adopted across Australia to harmonize OSH regulation.<sup>90</sup> The Model Act places a “primary” duty of care not upon an “employer”, but rather on “a person conducting a business or undertaking” (PCBU), a broader concept that also includes lead contractors. The primary duty of care extends to all workers “engaged, or caused to be engaged” by the PCBU and to those whose work is “influenced or directed” by the PCBU, while they are “at work in the business or undertaking”. The term “worker” is defined as any person who “carries out work in any capacity” for a PCBU. This broad definition includes, *inter alia*, employees, subcontractors and their employees, as well as employees of labour hire companies. A PCBU can be a worker at the same time if he or she is “an individual who carries out work in that business or undertaking” (for instance a self-employed subcontractor who hires a sub-subcontractor).<sup>91</sup>

Under the Act, therefore, “a worker at the bottom of a chain of contractual arrangements will be owed the primary duty by all parties above them – the retailer at the head of the chain (provided the retailer can be shown to have engaged, caused the engagement of, influenced or directed the worker), and all head contractors, contractors and subcontractors further down the chain, each of which clearly engages, influences, and/or directs the worker”.<sup>92</sup> Temporary agency workers are also owed a primary duty of care by both the user firm and the agency.

The Australian Act adopts a far-reaching scope of OSH duties and obligation, one that goes beyond contracting and subcontracting and embraces a vast array of arrangements involving multiple parties. It is a good model for looking beyond the direct employment relationships to ensure the broadest application possible of principles of accountability and cooperation in a vital area of work protection.

### Shared liabilities beyond occupational safety and health

Joint and several liabilities in subcontracting can also encompass obligations that extend beyond OSH. In Peru, for instance, principal firms are jointly and severally liable with contractors for the statutory wage and social security rights of contractors’ employees.<sup>93</sup> In Chile, the Labour Code provides for joint and several liability of principal firms for the labour obligations of contractors to their workers. Several European countries provide for a joint and several liability in the case of subcontracting that operates at the general or sectoral level.<sup>94</sup> In Italy, for instance, the law provides



for joint and several liability regarding salaries and social security contributions.<sup>95</sup> The German Minimum Wage Act specifically provides that the workers of subcontractors have a direct recourse against the principal if the subcontractors fail to pay the minimum wage.

In some countries, the liability may depend on the features of the subcontracting process. In Colombia, for instance, a joint and several liability is established in the Labour Code for activities that are part of the ordinary business of the principal firm. A similar rule is provided in the Labour Law (*Ley Orgánica del Trabajo*) of Venezuela. This law also establishes a rebuttable presumption that the activities form part of the ordinary business of the principal when the work or services provided to the principal constitute the major source of business for the contractor.

In other countries, the law provides for liability only when the subcontractor is insolvent. This is common in some African countries in the case of *tâcheronnat*. Moreover, in these instances the law may distinguish between cases where the work is executed at the principal's premises and the principal would be responsible for all labour and social security obligations, and cases where the principal firms would only accept liability for the wages.<sup>96</sup>

#### **Exemptions from liability in cases of action in favour of subcontractors' workers**

Systems of shared liability can also work in tandem with incentives for principal firms to ensure that contractors comply with existing labour standards and thereby reduce their exposure to full joint and several liability. For instance, in Israel, the 2011 Act to Improve the Enforcement of Labor Laws helped to secure the rights of cleaning and security workers employed by contractors. Under the Act, clients are held directly responsible (not as employers but as guarantors) if the contractor infringes on workers' labour rights. There are, however, some conditions under which the client can be exempted from this responsibility. First, it must take "reasonable steps" to ensure that workers' rights are not violated. This includes establishing a complaint mechanism and informing workers of its existence. Second, the client must hire a "certified wage-checker" and take action swiftly in cases of non-compliance. Third, the hourly rate that it pays to the contractor must exceed a minimum set by law, which corresponds to the minimum wage plus mandatory employment benefits, as well as a profit margin for the contractor. The first obligation is intended to eliminate the negative incentive that clients may have regarding inquiring about the workers' situation, as they may otherwise avoid direct contact with the worker out of fear that judges will use it as an indicator of the existence of an employment relationship.<sup>97</sup>

Other jurisdictions provide for the possible mitigation of the joint and several liability by accomplishing a duty of care towards the subcontractors' workers. For instance, in Uruguay the principal has the right to be informed by the subcontractors about the fulfilment of their labour and social security obligations and to require the relevant documentation. If the subcontractor fails to provide this information, the principal can retain the compensation due to the subcontractor and use it to fulfil the relevant labour and social security obligations. A principal firm that exercises its right to be informed will be exempted from the joint and several liability and will only have a subsidiary

liability to the subcontractors' workers, if the subcontractor becomes insolvent.<sup>97</sup> Similar principles are provided by the Chilean Labour Code. Duties to provide information can also be imposed in other ways. For instance, in Finland, a principal who does not fulfil its duty to obtain information, both with respect to TAW and subcontracting, can be subject to a "negligence fee".<sup>99</sup>

### Supply and distribution chains of contracts and "hot-good" provisions

Outsourcing may involve not just one contractor or subcontractor, but rather a chain of subcontractors. To mitigate the risk of infringement of labour rights and circumvention of shared liabilities of principal firms in cases where outsourcing is executed via "chains of contracts", some countries extend the shared liabilities of the principal firm towards the workers to every contractor and subcontractor in the chain. In Italy, for instance, the joint and several liability of principals expressly extends to wage and social security obligations vis-à-vis workers of all the contractors and subcontractors in a chain of contracts.<sup>100</sup> In Belgium, in the construction sector, the principal is ultimately liable for social security and tax obligations of every contractor and subcontractor in the chain.<sup>101</sup> The majority of states in the United States reportedly have "a form of 'contractor-under' statute that imposes compensation liability on general construction contractors in relation to the employees of subcontractors working under them". Models of regulation vary between states: in some cases they operate "as a kind of strict liability standard" and "apply whenever the general contractor would have been liable had the employee been its own direct employee, and they apply to subcontractors, sub-sub-contractors, and so on down the chain. An example of these is in the Idaho Code, § 72-216."<sup>102</sup> In Chile, the principal is jointly and severally liable with any contractor, and contractors, in turn, are jointly liable with their subcontractors. Principals will share the subcontractors' liabilities should the joint liability of the contractors be ineffective.<sup>103</sup>

Responsibilities in chains of contracts can also apply to different measures. In Australia, the Fair Work Act provides for various forms of civil liability, including fines, in case of employment law breaches. Under the so-called "accessorial liability", the Act allows the sanctioning of parties "involved" in the commitment of the breach, beyond those who actually committed it. In 2012, the Fair Work Ombudsman initiated proceedings against three contractors of a major supermarket company for underpayment of trolley collectors, and used the accessorial liability procedure to take action against the supermarket company as well. This action led that company to settle the dispute and enter into an agreement with the Ombudsman. It agreed, *inter alia*, to make *ex gratia* payments to compensate for the wages due, to operate a hotline allowing trolley collectors to denounce wage underpayment directly to its head office, and to carry out regular audits of its subcontractors. The supermarket company is now progressively in-sourcing its trolley collection services in order to minimize underpayment risks. In March 2016, the Ombudsman made it clear that she would pursue her efforts, underlining that "if we find a business underpaying workers and that business is part of a franchise or supply chain, we will look up to the business at the top, the franchisor, principal or purchaser; because they are the price-makers and they control the settings".<sup>104</sup>

Another important area of legislation in Australia regards the supply chain legislation adopted both at the federal and state level in order to protect outworkers in the country's

textile, clothing and footwear industry.<sup>105</sup> At the federal level, since the amendment of the Fair Work Act in 2012, most of its provisions apply, under certain conditions, to contract outworkers. In addition, outworkers are allowed to recover unpaid amounts not only from their counterparty, but also from any “indirectly responsible entity” up in the supply chain that benefits from their work. An exception applies nonetheless for retailers that do not have any right to supervise or otherwise control the performance of the work before the goods are delivered to them.<sup>106</sup>

In the United States, the Department of Labor can bring a “hot-good” action before a federal court to seek an injunction under the Fair Labor Standard Act (FLSA), which makes it unlawful for any person “to transport, offer for transportation, ship, deliver, or sell in commerce ... any goods in the production of which any employee was employed in violation” of its provisions on minimum wage, overtime compensation or the prohibition of child labour.<sup>107</sup> The objective is to maintain a level playing field for employers and it is reported that often the threat of such an action by the Department of Labor is sufficient to put an end to unfair labour practices.<sup>108</sup>

### **Systems of “plural employment” and “joint employment”**

In some countries, systems of plural employment are devised in order to address contractual relationships involving multiple parties. In South Africa, the Labour Court recently clarified that when the employee of a labour broker is reclassified as the employee of the user firm pursuant to the Labour Relations Act, both the labour broker and the user firm will be regarded as the employer of the worker.<sup>109</sup> In the United States, “joint employment” may be found when control and supervision over a worker’s activity is shared by different entities. In this instance, all the joint employers would be responsible for the obligations arising from the employment relationship under a given Act. As of 2016, a landmark legal case is under way concerning the franchising arrangements of a major fast-food company to determine whether the firm can be regarded as the joint employer of its franchisees’ workers under the National Labor Relations Act.<sup>110</sup> The Department of Labor observed in 2016 how the “expansive definition” of employment in the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act should be considered when determining joint employment in an effort “to ensure that all responsible employers are aware of their obligation and to ensure compliance with the Acts”.<sup>111</sup> Indeed, application and enforcement of “joint employment” status can be essential in protecting the rights of workers in contractual relationships involving multiple parties. As reported in Chapter 5, it is also pivotal in securing the effective application of fundamental principles and rights at work.

## **6.2. COLLECTIVE RESPONSES: COLLECTIVE BARGAINING AND WORKER VOICE**

Legislative changes can address shortfalls or gaps in existing laws, but another important and complementary, regulatory tool is collective agreements. Collective agreements can be tailored to consider the particular circumstances of the sector or the enterprise and are thus well-suited for addressing decent work deficits. In countries where collective bargaining is extended to cover all workers in a sector or occupational

category, the agreements can provide a means for including non-standard workers, who may not be members of the trade union, under the agreement. Doing so mitigates differences in the treatment of non-standard workers compared to standard workers, whenever they are present, and thus reduces the incentives to use NSE arrangements for cost-saving reasons.

While collective bargaining is an important means for regulating terms and conditions of employment, the coverage of collective agreements remains limited in many parts of the world. In addition, as shown in Chapter 5, unions often face difficulty in organizing and representing non-standard workers. Given these challenges, it is important to have multiple strategies in place regarding non-standard work, in order to differentiate between workers in different types of employment, and to distinguish their interests. The following subsections consider various approaches to including non-standard workers in the collective bargaining process and the extent to which they are covered by the provisions.

### **6.2.1. Ensure that the legislative framework effectively protects and promotes freedom of association and the right to collective bargaining for workers in NSE**

As discussed in Chapter 5, there are situations in which workers in NSE do not have the right to organize or bargain collectively as a result of legal impediments. Thus a first policy recommendation with respect to freedom of association and collective bargaining is to ensure that the legislative framework effectively protects and promotes these rights of all workers. Establishing a legislative framework that allows workers' organizations to operate freely and to choose how they are structured (for example, at the enterprise, sectoral, occupational or national level), as well as to remove impediments to the affiliation of all workers is a prerequisite in ensuring inclusive union strategies and actions in favour of non-standard workers.

In order to remove or close regulatory gaps in the protection of collective rights, the right of non-standard workers to establish and join trade unions must first be established, as well as the right of trade unions to affiliate and organize them. An interesting development in this respect is South Africa's Labour Relations Amendment Act 2014. Under this Act, trade unions representing the employees of temporary employment agencies are now able to exercise their organizational rights not only at the workplace of the agency, but also at the user firm's workplace. Moreover, workers employed by agencies who participate in a legally protected strike action are entitled to picket at the user firm's premises.<sup>112</sup>

In addition, the Act specifies that, when a dispute arises between an employer and a trade union concerning the trade union's level of representativeness, the competent commissioner who is attempting to resolve this dispute will also consider "the extent to which there are workers engaged in non-standard forms of employment in the corresponding bargaining unit", such as "temporary employment services (labour broker) employees, employees with fixed-term contracts, part-time employees, or employees in other categories of non-standard employment". The CEACR welcomed this provision as "facilitating the capacity of unions to be considered representative, and therefore to engage in collective bargaining, in sectors employing a high proportion

of non-standard workers, on the understanding that unions face additional difficulties to recruit these categories of workers”.<sup>113</sup>

Provisions enabling workers’ organizations to affiliate and protect these non-standard workers and eliminating legal or practical barriers for them to associate and bargain collectively are therefore crucial in overcoming these difficulties. Another possible measure could be to specify that the right to collective bargaining extends beyond the scope of the employment relationship. Several examples of countries explicitly providing this right to dependent self-employed workers, including Canada, Germany and Spain, were discussed in Chapter 1. These provisions are clearly aimed at removing legal obstacles to the full exercise of collective bargaining rights, including, as discussed in Chapter 5, those arising from anti-trust laws.

It is also essential that practical barriers to unionization are eliminated. In Chapter 5 it was reported that non-standard workers may be reluctant to organize because of the fear of retaliation, which could result in losing the job or being blacklisted.<sup>114</sup> This is particularly true for workers in temporary work relationships, irrespective of the specific type of contract, who can be reluctant to unionize if they are afraid that their contract will not be renewed or extended as a result.

This reluctance to unionize can also cause severe difficulties in the actual exercise of collective rights, even when the legislation fully recognizes freedom of association and the right to collective bargaining for non-standard workers. While in some jurisdictions specific statutory remedies may be in place against discriminatory or retaliatory dismissals for union reasons, “such remedies may be easily circumvented for non-standard workers in temporary work, by simply not renewing or prolonging their contracts, or for [on-call] workers, by ‘zeroing down’ their working hours”.<sup>115</sup>

Arguably, “this can make their position even more vulnerable, relative to standard workers, also in countries where an ‘employment at will’ regime is in place, since a dismissal grounded on union reasons could still amount to an unfair labour practice in those systems”. Standard workers, particularly when protection against unfair dismissal is non-existent or scarce, may be reluctant to exercise their labour rights. But it is still the non-standard workers in temporary or on-demand arrangements who are most affected in this respect, since a refusal to extend their contract or provide further work may mean that they are not even protected from discriminatory dismissal.<sup>116</sup>

It is therefore essential to fill this regulatory gap by extending protection against discriminatory dismissal to temporary or on-call workers. One example is the French Labour Code, which prohibits any form or act of direct or indirect discrimination such as being sanctioned or dismissed, for reasons including trade union activities. The provision explicitly includes renewal of contracts in the scope of anti-discrimination protection.<sup>117</sup>

### **6.2.2. Build the capacity of unions to organize workers in NSE and ensure their effective representation in collective bargaining**

Actions to organize and collectively represent workers in NSE can be broadly classified into two categories: actions *for* workers in NSE, and actions *by* workers, although the two are not mutually exclusive.



In the recent past, unions have become more supportive of non-standard workers. Some union action is prompted by a general pursuit of solidarity and social justice, reflecting broader concern with the erosion of standard employment, but also with inequality issues raised by non-standard work. For example, in Malaysia and Indonesia, union action to reduce the incidence of precarious work and improve general welfare is closely linked to the issues of outsourcing and labour brokering.<sup>118</sup> Union action is also motivated by concerns that non-standard work continues to spread and that employers are increasingly outsourcing production or replacing regular workers with workers employed through agencies, thus undermining existing wage and working-time provisions for all workers. In some instances, the declining overall number of trade union members has prompted unions to attempt to increase their base by including non-standard workers. Unions now also want to empower workers at the lower end of the labour market to gain access to “a larger basket of rights”;<sup>119</sup> they are therefore building up organizational strength and capacity among more vulnerable workers. In some countries, such as India, some labour dispute settlements that were unsatisfactory for workers encouraged unions to include non-standard workers in their collective bargaining to give them a better chance of achieving their desired outcomes.<sup>120</sup>

An important example in this regard is Japan. Japan has a highly dualistic labour market with a large proportion of workers, particularly women, employed in non-standard jobs. These jobs, while often referred to as “part-time”, do not necessarily involve shorter working hours, but are nonetheless characterized by lower pay, fewer career prospects and less job security. Japanese unions, which are enterprise-based, have traditionally limited their membership to regular employees, viewing non-regular workers as a buffer to protect the “lifetime employment” of regular workers. Yet the prominence of non-standard jobs, particularly in certain segments of the labour market such as retail, has prompted unions to reconsider their position.<sup>121</sup> Since the mid-2000s, the industry federation UA Zensen, which in 2014 had 1.45 million members, of whom 51 per cent were non-standard workers, has successfully unionized part-time workers in 30 per cent of its 2,450 affiliates. Although unionization of such workers is an explicit goal of the federation, unionization has been at the firm level and has often occurred in consultation with management, reflecting the cooperative tradition of Japanese unionism. In some instances, the initiative was prompted by management who had difficulties developing a human resource strategy for a segregated workforce. The integration of part-time workers in the unions has not, however, addressed the subsidiary status of non-standard workers in the enterprise, nor has it focused on pay, but the career paths of part-time workers have improved, with opportunities for shifting to “regular” status now being available.<sup>122</sup>

The rising number of non-standard workers has also led to the creation of new trade unions to represent the special interests of workers in NSE.<sup>123</sup> In some instances, this has arisen out of the non-standard workers’ struggle to get recognized and unionized through the mainstream union organization. This was the case with Indian contract workers employed by Reliance Energy Ltd (REL) in Mumbai in 2005–07. In other instances, because some workers may be employed through several agencies to work at the same enterprise, some of the sectoral or national unions can assist them to build membership beyond the workplace. For example, in Canada, the Immigrant Workers’



Centre (CTI-IWC) in Montreal was successful in creating the Temporary Agency Workers' Association and Temporary Foreign Workers' Association. Through these associations, workers are able to discuss and negotiate specific issues that are relevant to them within the sector, regardless of the employer, including rights to the legal status of immigrants and access to state services for undocumented workers.<sup>124</sup>

### **6.2.3 Promote inclusive forms of collective bargaining and create a conducive policy framework for collective bargaining**

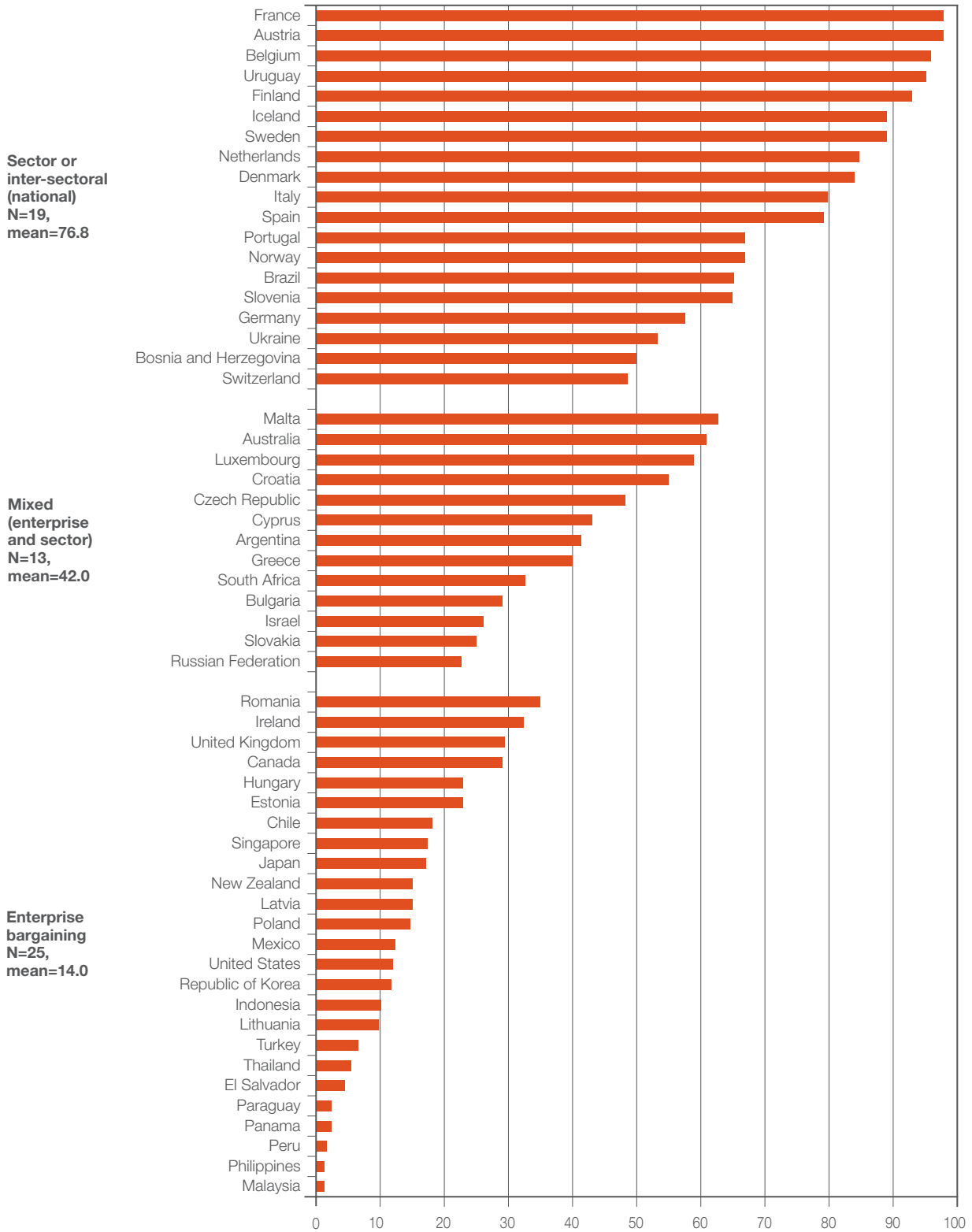
The inclusion of non-standard workers in the collective bargaining process and in collective agreements depends on numerous factors. One critical determinant is the organization of the collective bargaining process itself, namely the dominant method of bargaining in the country in question. It is possible to distinguish three levels of collective bargaining: enterprise bargaining, sectoral bargaining and national bargaining, along with some mixed scenarios.

Single-employer bargaining at enterprise level covers a limited number of workers, as it is restricted to those employed at the enterprise. Multi-employer bargaining at the sectoral or national level not only covers more workers, but collective agreements reached in this way may also be extended to all employers, including those that are not members of the employers' organization that negotiated the agreement. In most countries with such systems of collective bargaining, legal provisions provide for the extension of collective agreements. Figure 6.5 gives information on the different levels of collective bargaining systems that exist and their coverage, based on data for 57 countries, and box 6.2 provides more detailed information on how this works and the resulting outcomes.

For non-standard workers, single-employer bargaining may be particularly challenging, as employers usually have substantially stronger bargaining power in such negotiations. For contract workers in particular, single-employer bargaining is dependent on the ability to negotiate with the principal employer, who ultimately directs the terms and conditions of work.

In addition to covering greater numbers of workers, multi-employer bargaining at the sectoral or national level is helpful when principal employers are either hard to identify or it is difficult to involve them in the bargaining process. Since governments may normally extend a collective agreement reached through multi-employer bargaining to make it generally applicable to all workers in a particular industry, region or branch, multi-employer bargaining at the sectoral or national level is considered to be the most inclusive form of collective bargaining. While enterprise bargaining may offer more rewards for skilled workers, multi-employer bargaining is usually considered most beneficial for vulnerable workers, including those in NSE. Multi-employer collective bargaining can also lead to better outcomes for non-standard workers as it encourages unions to be more inclusive in their treatment of non-standard workers, since marginalizing "outsiders" would hinder their efforts and potentially hurt their reputation. In this regard, policies aimed at decentralizing collective bargaining should also take into account the risk of marginalizing non-standard workers.<sup>125</sup>

Figure 6.5. Levels of collective bargaining and bargaining coverage, 2012–13 (percentages)



Source: ILOSTAT, IR data; available at: [www.ilo.org/ilostat](http://www.ilo.org/ilostat).

**Box 6.2. How do the level and structure of bargaining affect bargaining coverage?**

The level of bargaining – whether at the enterprise, sectoral or national level, or a mixture of levels – is directly related to the coverage of collective bargaining agreements. Figure 6.5, based on data available for 57 countries, demonstrates that the type of bargaining (national, sectoral or enterprise) is the single most important predictor of the extent of bargaining coverage.

In single-employer bargaining (plant, enterprise, company), only a limited number of employees tend to be covered, usually those in large and medium-sized enterprises or units. Among the 25 countries where bargaining takes place at the enterprise level (lower panel of figure 6.5), coverage rates vary between 1 per cent and 35 per cent; the average is 14 per cent. At the high end of this range are countries such as Canada, the United Kingdom, Ireland and Romania, where employers still negotiate jointly in some sectors (for example, in Quebec, Canada, in the health services in United Kingdom, in construction in Ireland, or some groups of companies in Romania). Under pure enterprise-level bargaining, coverage does not exceed 25 per cent. In countries dominated by multi-employer bargaining at the sector or national level (upper panel of figure 6.5), bargaining coverage ranges from 49 per cent in Switzerland to 98 per cent in France or Austria. In the 19 countries where sector or national bargaining (or some combination thereof) prevails, an average 76.8 per cent of employees are covered by collective bargaining agreements. In the remaining 13 countries that cannot be classified under either of the two dominant types (either enterprise or sector), predictably, coverage rates tend to remain at an intermediate level. This association between bargaining level and bargaining coverage also holds over time.

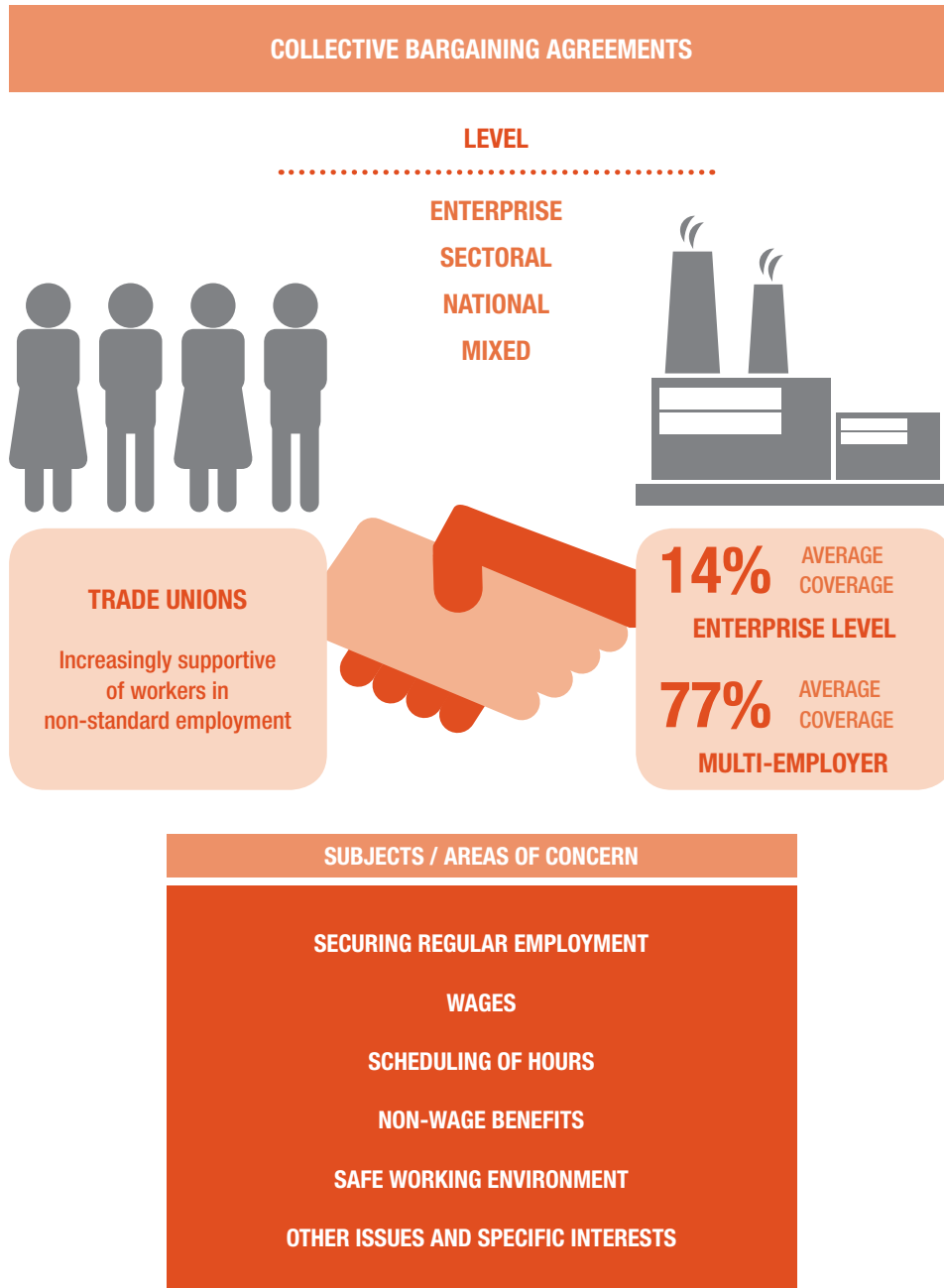
In many countries, particularly in Europe, collective agreements reached through multi-employer bargaining may be extended to all employers (and workers), including those who are not members of the employers' organization that negotiated the agreement. Public authorities use the extension of collective agreements to establish minimum employment and working standards in enterprises within sectors and branches operating under broadly similar conditions. Countries differ in the frequency with which they extend agreements and in the requirements for a minimum threshold that collective agreements need to meet in order to permit such extension. It is important to ensure that changes in the labour markets and barriers to union organization do not impede the parties involved from signing agreements that can be extended, so that the ability to extend the agreements remains meaningful and justifiable.

Source: Visser, Hayter and Gammarano, 2015.

For employers, the advantages of multi-employer bargaining may include the opportunity to participate in designing labour protections that are more effective for the sector than statutory interventions,<sup>126</sup> as well as preventing unfair competition by unscrupulous employers.<sup>127</sup> When employers know that collective agreements are likely to be extended and become binding, they also have incentives to join employers' organizations and engage in the bargaining process in order to influence its outcome.<sup>128</sup>

The manner in which unions influence employment and working conditions also differs depending on whether the method of collective bargaining is narrow, such as single-employer bargaining, or encompassing and inclusive, such as multi-employer bargaining. For example, research shows that more inclusive bargaining systems, as well as administrative extensions of collective agreements reached through multi-employer bargaining, have positive implications for wage equalization, the compression of wage structures<sup>129</sup> and reduction of the gender pay gap,<sup>130</sup> and can lead to an overall reduction

Figure 6.6. Collective bargaining levels and non-standard employment



of wage inequality between countries.<sup>131</sup> All of these outcomes are of consequence to workers in NSE (figure 6.6).

During the economic crisis of 2008–13, collective bargaining coverage increased in several countries, such as Australia and Finland, but, it fell – in some instances dramatically – in many more. The sharpest drop in bargaining coverage occurred in the group of European countries that suffered severe economic difficulties during

the crisis, namely Cyprus, Greece, Ireland, Latvia, Portugal and Romania, where bail-out loans were often conditional on changes to the collective bargaining framework.<sup>132</sup> In Japan, the United Kingdom and the United States, the erosion of bargaining coverage has continued over a number of decades, in tandem with falls in trade union membership.

Among countries where bargaining coverage has remained stable or even improved, the inclusion of non-standard workers was sometimes an explicit policy goal, with greater consideration given to the proportion of NSE when assessing how representative the parties were and the use of extended collective agreements to provide inclusive labour protection for non-standard workers. For example, in Switzerland and the Netherlands, collective agreements have been extended to workers in a number of sectors, including contract cleaning, security services, waste disposal and personal care. This is a potent policy tool, as these sectors have a large share of migrant workers and temporary agency workers with high levels of mobility, which usually results in low levels of unionization.<sup>133</sup>

Also in Europe, the implementation of the Posted Workers Directive<sup>134</sup> ensures that minimum wages and other minimum working conditions set out in generally applicable collective agreements also apply to posted workers from other EU countries, often those in NSE (e.g. in the construction and commercial cleaning sectors). In 2014, Germany adopted a legislative package on the “strengthening of bargaining autonomy” which included a set of measures aimed at strengthening the extension of collective agreements in order to promote and support collective bargaining. While provision for extending collective agreements already existed, the requirement for such an agreement to cover 50 per cent of all workers in a bargaining area and to be approved by a Collective Bargaining Committee in which either peak-level organization had veto power and could block an extension, meant that the use of the policy tool had been declining. The new legal provisions contained in the Act on Collective Agreements abolish the threshold and emphasize the need for extensions to be “in the public interest”. Whereas under the 1996 Posted Workers Act extension was previously used only in a limited number of sectors, the reform opened the scope for the extension of minimum wages and conditions of work in collective bargaining agreements to all sectors.<sup>135</sup> Norway introduced extension provisions in 1993; the scope of extension has since been expanded to include migrant labour posted by foreign companies (e.g. in construction and shipyards).

In South Africa, the Minister of Labour has the power to extend collective agreements reached in sectoral bargaining councils to encompass all workers and enterprises falling within its scope, if the parties to the agreement are considered sufficiently representative. A growing concern over the challenge that “labour brokering” posed to labour regulation and collective bargaining led to a discussion at the National Economic Development and Labour Council (NEDLAC) of a set of proposed amendments on “temporary employment services” in the Labour Relations Act 1995 (LRA). The LRA amendments of 2014 reinforce the policy-based extension of collective agreements. The Act now requires the Minister to consult with the parties likely to be affected and to take into account the composition of the workforce (including temporary agency workers, fixed-term, contract and other non-standard employees) when deciding

whether a bargaining council that has requested the extension of its collective agreement is sufficiently representative. Once extended, an agreement applies to all workers in a sector, including those in TAW.

#### **6.2.4. Use collective bargaining as a regulatory tool to address NSE**

Social partners have devised a variety of regulatory strategies for improving the terms and conditions of work of non-standard workers. The key issues include: securing regular employment; providing equal pay for work of equal value; scheduling of hours, including guaranteeing minimum working hours for on-call workers; regulating economically dependent self-employment; ensuring a safe working environment; extending maternity protection; and addressing the specific interests and needs of non-standard workers.<sup>136</sup> Many of these issues are the same as those suggested in section 6.1 on legislative responses to make jobs better. In many of these cases, the absence of national regulations or the shortcomings of existing regulations have prompted the social partners to address these issues through collective bargaining. Nevertheless, the importance of collective agreements should not be underestimated, as these initial regulatory responses are often the basis for later efforts, including legislative ones.

#### **Securing regular employment**

A primary concern among temporary and temporary agency workers, as discussed throughout this report, is security of employment. The end of a temporary contract often means the end of an employment relationship, without a guarantee or an expectation that a new contract, whether temporary or permanent, will be offered. Transitions into regular employment remain limited in many parts of the world, and are particularly compromised at times of economic crisis. In many developing countries, and especially in countries where the law does not put limits on the number of renewals of temporary contracts, temporary workers may work for the same enterprise for many years without ever obtaining an open-ended contract.

One of the key priorities for unions is therefore to negotiate the regularization of employment (examples of successful negotiations include agreements reached in Colombia and India), or to agree a time limit after which a worker is no longer considered as temporary and becomes a “standard” employee (successful agreements along these lines have been concluded in Canada, New Zealand, the Philippines and South Africa, among other countries; see table 6.7 and box 6.3). Demands for regularization and continuity of employment have been particularly successful when there is sufficient evidence to suggest that non-standard workers are indeed performing the core activities of the enterprise, that they have been working sufficiently long for the same employer, that they work under the supervision and direct control of the principal employer and perform work of a permanent nature, or that they should have had a labour contract in the first place.<sup>137</sup>

Regularizing non-standard workers has been considered the best model to ensure their “inclusion”, albeit not necessarily an easy one to adopt. Other strategies may include establishing limits on the duration of temporary contracts, including modification of legally set limits on the use of FTCs (examples of successful negotiations can be



**Table 6.7. Securing regular employment: examples of recent collective agreements**

Collective agreement	Selected provisions
Philippines: Indo Phil Textile Mills, Inc. and IndoPhil Textile Workers Union company agreement (2010–15)	A temporary or casual employee performing the job of a regular employee who has worked for 156 days in any 12-month period is deemed a regular employee.
Canada: Crown in Right of Ontario and Ontario Public Service Employees Union collective agreement (2013–14)	Where the same work has been performed by an employee in the Fixed-Term Service for at least 18 consecutive months (except when such employee is replacing a regular employee on an authorized leave of absence), and where the Ministry has determined that there is a continuing need for that work to be performed on a full-time basis, the Ministry shall establish a position within the regular service to perform that work.
South Africa: Road Freight Bargaining Council Agreement (2012–13)	An employee of a temporary employment service who is provided to one or more clients within the industry for a period in excess of two months is deemed to be an ordinary employee, with a consequent application of all relevant provisions of this Agreement to that employee.
South Africa: Transnet SOC Limited and Transnet Bargaining Council Agreement (2014–16)	The company should directly employ 1,772 fixed-term workers in two major divisions of the company on terms and conditions (including remuneration, bonuses, leave and a variety of other allowances and benefits) set out in the Council Agreement by end March 2016.
New Zealand: BOC/ Linde Engineering Employees and Engineering, Printing and Manufacturing Union collective agreement (2012–14)	Employment of temporary employees for successive engagement totalling more than six months is not allowed, except where the employer, the employee and the union agree in writing to that longer duration.
Colombia: cement factory Argos and unions Sutimac, Sintrargos, Sintraceargos company agreement (2012)	In exchange for union’s consensus on the merger process of the management of its all cement factories, direct employment of a significant number of workers previously employed through temporary agencies was obtained.
India: Tamil Nadu Electricity Board and unions agreement (2007)	Immediate regularization of 6,000 out of 21,600 contract workers; gradual regularization of the remaining ones.
Germany: the employer association for the metal and electrical industry Südwestmetall, and the Metalworkers’ Union IG Metall (2012)	Temporary agency workers may be used in any business for 18 months. After this period, if there are no objective reasons to continue the temporary contract, the company must award a direct permanent employment contract within the next six months.

Source: Adapted from Xhafa, 2015, and using examples from Ebisui, 2012, as well as other ILO sources.

**Box 6.3. Regularizing casual workers in South Africa: a case study**

Transnet SOC Limited is a freight and transport handling company in South Africa. It has five divisions, including Transnet Port Terminals (TPT) and Transnet Freight Rail (the largest division). TPT includes both the Durban Container Terminal and the Port of Richards Bay's mineral bulk operations (imports and exports) which operate 24 hours a day, seven days a week. They are subject to considerable fluctuations in shipping volumes entering and leaving port, and subsequently in the demand for labour.

For years, the Terminals were staffed by a combination of full-time employees on indefinite contracts and casual employees engaged through labour brokers. Despite performing identical work, casual workers earned less, and had fewer benefits compared to permanent staff, including no job security.

The Transnet Bargaining Council reached a collective agreement on fixed-term workers, committing to regularizing into indefinite contracts 300 employees in TPT, and 1,472 in Transnet Freight Rail by end March 2016. The agreement provides that Transnet should directly employ fixed-term workers on terms and conditions (including remuneration, bonuses, leave and a variety of other allowances and benefits) set out in the collective agreement. As a result, these workers will no longer be employed through labour brokers.

Through social dialogue, parties were able to address the issue of the use of labour brokers. The industrial relations climate has shifted from one characterized by mistrust and confrontation towards more positive relations. The number of days lost due to industrial action in TPT fell from an average of 13.5 days (2010–11) at the Durban Container Terminal and Port of Richards Bay to 0.5 days and 0.35 days (August 2014), respectively.

Source: Agreement of the Transnet Bargaining Council regarding Fixed Term Contract Employees, between Transnet SOC Limited and South African Transport and Allied Workers' Union (SATAWU) and United National Transport Union (UNTU), 2014.

**Table 6.8. Regulating work organization**

Collective agreement	Selected provisions
Germany: Südwestmetall and IG Metall pilot agreement in the metal industry (2012)	Works councils have greater co-determination rights and the right to call for negotiations to regulate the use of temporary agency workers by a works agreement. Topics included in such an agreement can range from the purpose and area of deployment and the volume of temporary agency work to the permanent employment of such workers.
South Africa: Motor Industries Bargaining Council agreement (2010–13)	After August 2013 no more than 35 per cent of an employer's core workforce may consist of temporary employees.
Colombia: Ecopetrol and Union Sindical Obrera (United Workers Union) company agreement (2009–14)	Contracting and subcontracting firms undertaking activities directly related to the oil industry must pay their [contract] workers the same salary (in money and in kind) and benefits contemplated in this collective agreement.

Source: Xhafa, 2015.

found in Belgium, France, South Africa and Sweden).<sup>138</sup> In some cases (e.g. Colombia, Germany, South Africa), social partners negotiated limits on the proportion of the workforce that could be temporary or subcontracted, as well as negotiating labour clauses that required subcontractors to apply the same terms and conditions of employment (see table 6.8).

### **Wage negotiations**

Another major focus of negotiations is wage issues and inequality of pay between standard and non-standard workers. As shown in Chapter 5, in most countries non-standard workers face wage penalties, and wage gaps can be quite sizeable, even within the same sectors or occupations and between workers with the same qualifications performing the same or very similar tasks. In addition to being perceived as unfair, such differences also create tensions among workers. To advance equal treatment and non-discrimination, improve solidarity between workers and also help ensure that the recourse to non-standard work is not driven solely by cost considerations, unions, employers and employers' organizations have used collective bargaining to progressively diminish wage differentials between workers with different status who are performing the same work. This approach has been particularly relevant for part-time and temporary workers in a direct employment relationship, though it has also been used with respect to contract and temporary agency workers (some successful examples are to be found in Germany, India, Japan, Mauritius and Norway – see table 6.9). Some of the negotiations revolved around the issues of equal pay for work of equal value, but also around enforcing minimum wages for contract workers, creating cost-of-living allowances, paying minimum bonuses to non-standard workers, and committing employers to paying wages through bank accounts rather than in cash, in order to prevent withholding of payments or accumulation of arrears (as has been the case in India).

In many countries, negotiations over equal pay for work of equal value have been further supported by labour law developments. For example, the EU Directives on part-time and fixed-term work lay down the principle of equal treatment with regard to the basic working and employment conditions of these workers, based on a comparison with a standard worker doing the same or similar work in the same establishment.<sup>139</sup> The EU Directive on TAW also ensures that temporary agency workers should be entitled to “equal treatment” with regard to “basic working and employment conditions”; in addition, it allows for derogations through collective agreements established by social partners, while respecting the overall protection of temporary agency workers.

### **Scheduling of hours**

The scheduling of hours is a recurrent issue for part-time and on-call workers. Through collective bargaining, social partners negotiate issues related to guaranteeing a minimum number of hours, reasonable scheduling notice and secure and regular shifts. Some recent examples of such successful negotiations include agreements concluded in the restaurant sector in New Zealand between the Unite union and several fast-food companies, such as McDonald's, Burger King, and Restaurant Brands Ltd (including

**Table 6.9. Negotiating equal pay**

Collective agreement	Selected provisions
India: Coal India Ltd. and Indian National Mineworkers Federation (INMF) and others, wage agreement for contractor workers engaged in mining operations (2012–16)	Where the existing wage rate of any employee based on [a collective] agreement or otherwise is higher than the rate for contract workers, the higher rate shall be protected and treated as the minimum wage rate for contract workers.
Norway: Norsk Industry (Federation of Norwegian Industry) and Fellesforbundet (the United Federation of Trade Unions) sectoral agreement (2012–14)	Employees in manpower or temporary work agencies shall have the same wages and working conditions that apply in the enterprise leasing such labour for the duration of the leasing period in accordance with the Working Environment Act.
Mauritius: Total Mauritius Ltd. and Chemical, Manufacturing and Connected Trades Employees Union company agreement (2014–16)	All employees performing work of same value should be equally remunerated, including casual and contractual workers with a fixed-term contract of employment.
Japan: Aeon and its union's agreement, 2004	Wage system changed to be linked to qualification; evaluation and promotion system changed to use the same tests and screening methods between part-timers (representing 80 per cent of the company's workforce) and full-timers. This allowed the regularization and promotion of many part-timers.
Germany: Collective Bargaining Association for Temporary Agency Work Employers and IG Metall sectoral agreement in electrical and metal industry (2012–17)	The sectoral agreement, intended to serve as a pilot agreement for other sectors, includes seniority-dependent wage adjustments of temporary agency workers in order to reduce wage differences with permanent staff.

Source: Adapted from Xhafa, 2015, and using examples from Ebisui, 2012, and various other ILO sources.

Pizza Hut), which were known for practising zero-hours arrangements. The agreements, concluded in 2015, introduced secure and regular shifts, sufficient notice of the employees' hours of work, minimum shift durations and limits on the number of hours and shifts worked per week. Unite's successful campaign led the Parliament of New Zealand to vote unanimously for a ban on certain forms of zero-hours contracts (see section 6.1.2 above). Collective agreements ensuring a minimum number of working hours have also been concluded in Ireland (for home helpers and in the retail industry) and in Canada (with two different supermarket chains in Ontario).<sup>140</sup>

### Regulating dependent self-employment and disguised employment

Workers in dependent self-employment and disguised employment typically fall outside the scope of labour regulation. Without a recognized employment relationship, it is difficult to engage in collective bargaining or to be covered under any collective agreements that are negotiated. Thus the first step towards regulating dependent self-employment and disguised employment is to recognize the existence of an employment relationship, as explained in section 6.1.3 on addressing employment misclassification.

Some collective agreements address the reclassification of dependent and misclassified self-employed as wage employees. This was the case with the agreement in the Netherlands postal and parcel delivery sector, which concerned businesses that were using self-employed deliverers, many of whom were earning less than the national minimum wage. The agreement stipulated that these businesses had to convert 80 per cent of the existing contracts with deliverers into employment contracts by the end of 2013.<sup>141</sup> In a similar spirit, in Austria, a 2009 collective agreement helped with the “in-sourcing” of self-employed couriers.<sup>142</sup>

In countries where dependent self-employment is a recognized legal category, there have been some collective agreements directed specifically at these workers. In Germany, such an agreement was signed in 2009 between the national Federation of German Newspaper Publishers (BDZV), several regional publisher associations and two trade unions (DJV and ver.di). The agreement considers self-employed freelance journalists as “employees” if at least 50 per cent of their income derives from a single employer or client in the journalism sector, and sets collectively agreed fees for articles and images provided by self-employed journalists. In Italy, the main trade union organizations (CGIL, CISL and UIL) have had special structures in place since 1998 for representing non-standard workers, including those with a status midway between dependent and autonomous employees (*parasubordinati*).<sup>143</sup>

### Ensuring a safe working environment

In Chapter 5, it was shown that non-standard workers often face disadvantages in terms of workplace safety. In some cases, these disadvantages are linked to deliberate outsourcing of hazardous tasks; in others, they are related to the lack of general and OSH-specific training. Examples of recent national collective agreements in this area include a Spanish agreement for temporary agency workers (2008–10) that stipulated a special allocation of funds by temporary agencies for OSH training. In the Republic of Korea, a number of multi-employer collective agreements specify that the principal employer is responsible for preventing industrial accidents in cases where contractors’ workers are working on the employer’s site.

For non-standard workers in supply chains in recent years, a corporate social responsibility model has been developed and widely adopted by multinational companies, whereby brands and retailers voluntarily adopt codes of conduct. Some firms also monitor their suppliers for compliance.<sup>144</sup> However, in practice, such codes of conduct and auditing programmes have remained largely inefficient in improving the safety and health of workers at the bottom of the supply chains, including those in NSE.<sup>145</sup>

One of the key reasons for this is that brands and retailers at the top of the supply chain have rarely been held jointly responsible with the contractors and factories at the bottom for the working conditions of workers down the chain.

Following the 2013 collapse of the Rana Plaza building in Bangladesh that left over 1,200 workers dead in one of the deadliest industrial accidents of all time, discussions on the need for greater accountability of lead firms in supply chains came to the fore, resulting in the Accord on Fire and Building Safety in Bangladesh (2013).<sup>146</sup> This accord is a five-year, independent, legally binding “agreement between brands and trade unions to work towards a safe and healthy Bangladeshi Ready-Made Garment Industry”.<sup>147</sup> It was signed by over 200 apparel brands from over 20 countries in Europe, North America, Asia and Australia; two global trade unions – UNI and IndustriALL; eight Bangladesh trade unions, and four NGO witnesses. Its aim is to make lead firms of the garment supply chains jointly responsible for health and safety conditions of their workers, to ensure a safe working environment, and to improve the enforcement of global labour and human rights. The Accord is monitored by a Steering Committee with equal representation of the signatory companies and trade unions with a neutral Chair provided by the ILO. Though not targeted specifically at non-standard workers, it aims at improving safety conditions for all workers, including those working shoulder-to-shoulder with permanent workers and brought in to respond to spikes in demand in factories at the bottom of the supply chain. While being seen as a game changer and an example of a new model of corporate accountability, the Accord still faces challenges associated with unauthorized subcontracting, the non-participation of leading retailers and brands such as Walmart and Gap, and its viability beyond the timeline of the current agreement. Also, it remains to be seen whether and how similar accords can be signed in other sectors, and in other countries.

### **Other issues and specific interests and needs of non-standard workers**

Workers in NSE may also have some specific needs related to their status. For example, some temporary and temporary agency workers may be vulnerable during maternity leave, especially if their contracts do not cover pregnancy or the immediate post-maternity period. Other issues noted in Chapter 5 include receiving less training compared to standard workers, and lacking protection against sickness and work-related injury. Workers in NSE may also suffer other social consequences as a result of their employment status, such as disadvantages when trying to secure loans and mortgages.

To address some of these issues, collective bargaining has been used to improve maternity protection for agency workers in Denmark (by shortening the qualifying period for agency workers to access maternity benefits) and in Italy (by providing a lump-sum payment and a monthly childcare contribution). In Indonesia, agreements in the construction and transport sectors allowed some informal workers to automatically become members of cooperative and professional associations, thus improving their access to training and professional certification. In the United Kingdom, the Association of University Teachers helps FTC workers to obtain discount mortgages.



### 6.2.5. Building alliances between unions and other organizations in order to develop effective collective responses to issues in NSE

There have been important collective responses to address the difficulty that some workers in NSE have faced in exercising their right to freedom of association. For example, in the United States, numerous day labour worker centres have been established to address the risks associated with casual, day labourers, who congregate in the early mornings at informal hiring sites hoping to find work for the day or week. The centres facilitate and monitor the employment and working conditions of day workers, many of whom are undocumented immigrants. It is estimated that one in five day labourers search for work at day labour worker centres. A study using data from the National Day Labor Survey measured the wage impact of day labour worker centres on the hourly wages earned by day labourers and found a modest, but statistically significant, wage premium earned by workers who used these centres, compared with those who did not.<sup>148</sup> In 2001, the National Day Laborer Organizing Network (NDLON) was founded with the aim of organizing day labourers and to “protect and expand their civil, labor and human rights”.<sup>149</sup> Today, it is the largest and most structured of associations of worker centres, operating as an umbrella organization for over 40 centres that focus on correcting systemic violations of the rights of day labourers and giving them a public voice. In 2006, NDLON signed a national partnership agreement with the AFL-CIO, an umbrella federation for 56 US unions. The partnership agreement aims at promoting and advancing the workplace rights of all workers.

Some immigrants’ rights groups have been working collaboratively with the worker centres. One of them, based in New York, has developed a smartphone app for day labourers to help them track payments, record instances of unsafe work, and share pictures of abusive employers – anonymously.<sup>150</sup> Such an initiative is an example of a modern way of not only protecting workers against wage theft, but also of empowering them in the face of abusive employers.

A different type of example is Turkopticon, a website and browser extension that can be installed into Amazon Mechanical Turk (AMT). AMT is a leading micro-task crowdwork platform, launched by Amazon in 2006. The platform allows requesters posting tasks to review the workers, but there is no possibility for workers to review the requesters. Moreover, AMT allows requesters to reject results – and thus not pay for work for whatever reason – and there are no mechanisms, either technical or legal, for workers to seek redress, even if the rejection is malicious with the intent of getting the work done for free. Thus AMT’s rejection feature “has effectively legalized wage theft in crowd work”.<sup>151</sup> In response to concerns over abusive practices on the platform, in 2008 two computer science PhD students developed Turkopticon, which allows workers to review requesters with respect to pay, speed of payment, fairness of evaluation, and communication. As of January 2016, 56,000 users had created accounts on the Turkopticon website, with 35,000 using one of the browser extensions; nearly 300,000 reviews were posted between 2009 and 2016.

These grassroots solutions can be effective at protecting workers against abusive practices, but their long-term sustainability is unclear. Turkopticon has, since its inception, been run on the volunteer labour of the computer scientists who designed

it, and they are often placed in the difficult position of mediating disputes between workers and requesters over published reviews.<sup>152</sup> Moreover, there are limits to how much a review site can affect working conditions. The US worker centres provide a forum for civic engagement for a vulnerable group in the labour market, but the centres are funded primarily from foundation grants, which have to be continuously renewed. While they can help deter abuse and potentially raise the earnings of day labourers, the employment relationship remains informal, with workers continuing to bear risks related to OSH and other working conditions.

While these efforts are to be welcomed, the challenge remains to institutionalize them by formally recognizing their existence and by involving employers' organizations and governments to devise guaranteed sources of financing. Doing so would provide the resources for these initiatives to address concerns beyond wage theft and to make these non-standard jobs "decent". A significant step in this direction has been taken by the German trade union IG Metall. The union hired one of the computer scientists who devised Turkopticon to help implement the "FairCrowdWork Watch",<sup>153</sup> a site launched in 2015 that allows crowd workers to rate and find information about several crowd-work platforms as well as providing a help hotline for these workers, thus setting a good example of cooperation between grassroots initiatives and institutional actors.

### **6.3. ADAPTING SOCIAL PROTECTION SYSTEMS TO IMPROVE PROTECTION FOR WORKERS IN NON-STANDARD EMPLOYMENT**

As discussed in Chapter 5, workers in NSE may not be covered or may have inadequate coverage under the existing social security systems.<sup>154</sup> Some categories of workers may not be covered by legislation, for example if the length of their employment is less than a certain minimum duration (this would be the case for some temporary workers, particularly casual workers and some temporary agency workers), or if they work less than a certain number of hours per week (some part-time, on-call and temporary agency workers). In addition, workers in NSE may be covered by the law, and yet still fail to meet the eligibility criteria for specific benefits, because their short tenure or short contribution periods can limit access to such entitlements. These workers may also face lower benefit levels as a result of their low wages and contributions, unless mechanisms are in place to ensure at least a minimum level of protection. Exclusion from coverage may also occur if workers are informally employed and contributions to the social security system are not being made on their behalf, despite their being legally covered. There are also workers whose attachment to the labour market is more tenuous and who do not meet minimum contribution thresholds for pension or unemployment insurance, and are thus not eligible to receive benefits.

Workers in NSE can be found in any of the above scenarios, but the policy options for addressing their lack of social security coverage differ. This section will examine these different situations and review different policy options; it will also consider the experiences of countries that have successfully adapted social protection to improve the situation of workers in NSE. Before turning to these issues, however, it presents a brief review of social protection systems, their different components – the social insurance

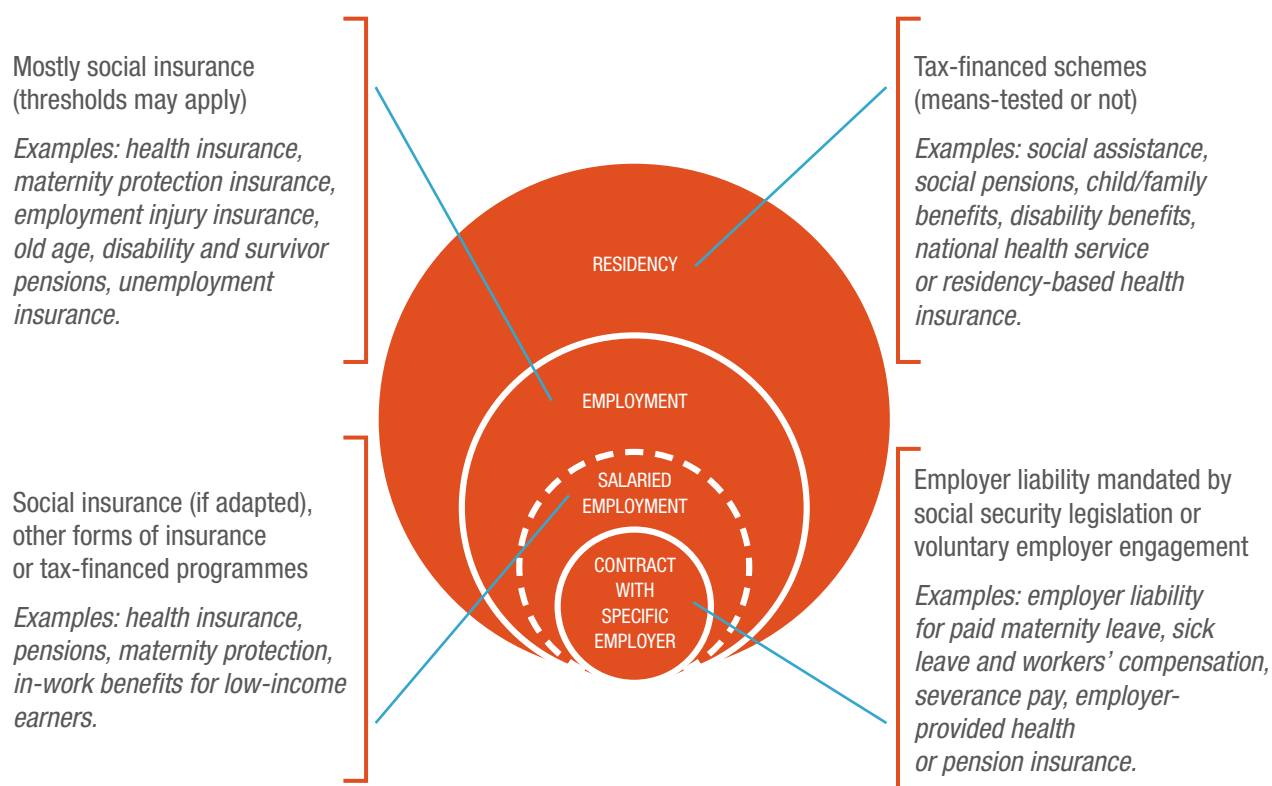
or “contributory” portion and the non-contributory part – and how they should ideally complement each other to provide universal and adequate protection.

### 6.3.1. Understanding the different types of social protection

Social protection plays a particularly important role for workers in NSE, as it can allow them to enjoy a higher level of income security in the transition between jobs, compensate for low earnings and ensure effective access to health care and other social services. It is therefore essential to look at policy options for reducing workers’ vulnerabilities, and to look at how social protection systems can better address the needs and particular circumstances of this group. Ensuring, to the extent possible, equal treatment of standard and non-standard workers (as explained in section 6.1) is key to extending social protection and thus reducing insecurity for workers in NSE.

Before addressing policy options in more detail, it is necessary to make clear distinctions between the different types of protection and the ways in which they are (or are not) linked to the employment relationship. Four different types of protection can be distinguished:

1. *Social protection linked to a contract with a specific employer.* This includes protection that is provided in the form of employer liability mandated by social security legislation or voluntary employer engagement, such as employer liability for paid maternity leave, sick leave and workers’ compensation, severance pay, employer-sponsored health or pension insurance. Such protection is effective only as long as workers are employed with this specific employer; they lose their protection as soon as they leave the job. This type of protection is most strongly linked to the standard employment relationship; workers in NSE are typically excluded.<sup>155</sup>
2. *Social protection linked to salaried employment.* This type of protection is linked to status as a salaried employee, but not to job tenure with a specific employer; therefore workers moving from one job to another continue to be covered and are also covered to some extent during periods of unemployment. Such protection is usually provided through social insurance – as mandated by social security legislation – to all employees, yet certain thresholds may apply with regard to minimum hours of work (potentially excluding some categories of part-time workers), the length of contract (potentially excluding some categories of temporary workers), or other criteria. Examples include health insurance, maternity protection insurance, employment injury insurance, old-age and survivor pensions, or unemployment insurance. In addition, some categories of employees may also be eligible for tax-financed benefits, such as in-work benefits for low-income earners. This type of protection extends beyond the standard employment relationship and includes some forms of NSE, depending on the criteria set out in the relevant national legislation.
3. *Social protection linked to participation in gainful employment (including non-salaried employment).* This category includes protection that is linked to participation in gainful employment in a general way, though it is not limited to salaried employment. It includes social insurance schemes that allow for the coverage of non-salaried workers, such as the self-employed, through mandatory or voluntary coverage,

**Figure 6.7. Employment and social protection: how is social protection coverage linked to employment?**

Source: Authors' compilation.

potentially subsidized from public funds for those with very low incomes. In addition, tax-financed programmes may also provide protection for this group. Examples include health insurance, pensions, maternity protection or in-work benefits for low-income earners. This type of protection potentially includes several categories of workers in NSE, in particular those in non-salaried employment. It is important to note that a regular income of a certain level (contributory capacity) is also a precondition for other forms of insurance, such as micro-insurance, mutual funds (*mutuelles*) and private insurance.

4. *Social protection linked to residency status.* This category includes programmes that are not linked to status in employment (or are explicitly linked to non-employment, as when targeting people out of work). Most of these programmes are financed from general government revenues, yet some combine contribution and tax financing. Examples include social assistance, social pensions, child/family benefits, disability benefits, national health service or residency-based health insurance.

The schematic representation in figure 6.7 illustrates these different types of protection in overlapping circles to highlight the variety of policy options and the possible combination of different sources of protection. As a general rule, if workers can combine different types of protection, they can usually achieve a better level of protection.

Figure 6.7 does not refer explicitly to the term “standard employment relationship” as most social protection schemes reach beyond this relationship and include some categories of workers in NSE, such as those in part-time or temporary work and some categories of non-salaried workers, depending on the criteria set out in national legislation. The broken line indicates that the boundaries between salaried employment and other forms of employment are often blurred. Social protection for workers in NSE depends heavily on the rules set out in national legislation, and their effective implementation and enforcement. This means that there is generally ample scope for modifying legislation to provide more comprehensive coverage.

The objective is to design national social protection systems that combine different mechanisms that are linked to employment or residence in an optimal way, with appropriate financing available through taxes or contributions. Financing through taxes is a helpful way to ensure at least a basic level of coverage for large groups of the population and to construct a floor of social protection. However, benefit levels tend to be rather modest and are prone to erosion over time unless the scheme has broad political support.<sup>156</sup> Contributory mechanisms, and in particular social insurance, therefore play a key role in ensuring higher levels of protection and meeting the social security needs of many workers. Inevitably, these are linked to employment in some form or another, either through an explicit link to economic activity as an employee or a self-employed person, or, implicitly, on the assumption that contribution capacity equates to a certain level and regularity of income. The absence of social insurance schemes will not make social protection policies more equitable, as it will lead to the emergence of private schemes to provide benefits to those who can afford them. Thus, rather than equalizing benefits, it risks creating a gap between those workers who have minimum protection and those that can afford private insurance, thereby exacerbating inequality.

The following sections will discuss the role of social insurance and tax-financed schemes in more detail and outline policies that can better ensure social protection coverage for workers in NSE.

### **6.3.2. The role of social insurance**

Social insurance coverage plays a key role in protecting workers in NSE, in particular by ensuring income security and access to health care. Such coverage is particularly important during transitions from one job to another, as it is not linked to a specific employer.

However, not all workers in NSE are covered by social insurance. Coverage depends on the rules set out in national legislation and on the way these rules are implemented and enforced. Some categories of non-salaried workers may not be covered at all, or may face particular challenges.<sup>157</sup> For salaried workers, social security legislation specifies thresholds with regard to a minimum duration of the contract, a minimum number of hours worked or a minimum level of earnings – which may exclude some categories of part-time or temporary workers. Minimum thresholds can constitute barriers for the coverage of workers in NSE, and contribute to the segmentation of the workforce into groups of well-protected insiders and unprotected or less well-protected outsiders.

Moreover, as such thresholds have an effect on labour costs, they can also create incentives to employ workers in “cheaper”, unprotected forms of employment.

**Table 6.10. Extending social insurance coverage: policy options**

	Coverage and exclusion	What can be done to ensure effective coverage for this group?
Part-time employment	<p>Covered if thresholds on minimum working hours/days are met.</p> <p>In case of multiple employers, specific regulations may apply.</p> <p>Marginal part-time work often excluded or covered through special regulations.</p>	<p>Lower thresholds regarding working hours.</p> <p>Allow practical solutions for workers with multiple employers, and for those combining part-time dependent work and self-employment.</p>
Temporary employment	<p>Covered if thresholds on minimum duration of employment are met.</p> <p>Casual workers are often excluded.</p>	<p>Lower thresholds regarding the minimum duration of employment.</p> <p>Allow for more flexibility with regard to the number of contributions required to qualify for benefits; allow for interrupted contribution periods (e.g. <math>x</math> number of contributions during <math>y</math> months).</p> <p>Enhance portability of entitlements between different social security schemes to facilitate mobility between jobs.</p> <p>Simplify administrative procedures for registration and contribution payments.</p>
Temporary agency work	<p>Covered through employing agency (thresholds with regard to duration of employment and working time apply).</p>	<p>Ensure compliance with legislation; introduce joint liability.</p> <p>Measures taken to facilitate coverage for temporary and part-time workers are likely to benefit temporary agency workers as well.</p>
Dependent self-employment and disguised employment relationships	<p>Covered if self-employed workers are covered, or if specific measures are taken to prevent misclassification and ensure adequate protection.</p>	<p>Prevent the misclassification of workers and ensure adequate protection for those in dependent self-employment.</p> <p>Simplify administrative procedures for registration and contribution payments.</p> <p>Adapt social security mechanisms to the needs and circumstances of self-employed own-account workers.</p>

Complement these efforts with the implementation of a social protection floor that provides a universal minimum level of protection.

Source: Authors' compilation.



However, recent policy reforms in many countries have been introduced to create a more level playing field by bringing NSE categories within social insurance coverage. This has not only contributed to making the conditions for different categories of workers more equal and to removing undesirable incentives for non-coverage, but has also helped to smooth the transitions between different types of jobs for workers, while ensuring their social insurance coverage (see table 6.10). Workers in NSE can therefore continue building their social insurance entitlements over their working life, thus facilitating labour mobility and contributing to greater stability, better protection and an effective safeguard against the informalization of employment.

### **Part-time employment**

Social insurance coverage for part-time workers is largely determined by the thresholds for hours of work or earnings set out in national social security legislation. In many cases, regular part-time workers with moderate and consistent hours (usually more than 20, or sometimes 15, hours per week) are covered by social insurance. Yet, as discussed in Chapter 5, in some parts of the world regular part-time workers are excluded from some or all social security benefits, and marginal part-time workers nearly everywhere are excluded from unemployment insurance and other social security benefits.

In order to extend social insurance coverage for part-time workers, the thresholds for the minimum number of working hours or earnings need to be lowered in line with the ILO Part-Time Work Convention, 1994 (No. 175), so as to avoid the exclusion of an “unduly large percentage of part-time workers”. In addition, practical solutions to facilitate social insurance coverage for workers with multiple employers, and for those combining part-time dependent work and self-employment, are needed. This may involve the adaptation of legal frameworks and some streamlining of administrative procedures, including simplifying and facilitating electronic access to registration, consultation and contribution payment mechanisms.

Where marginal part-time and on-call workers are covered by unemployment benefits, these usually take the form of unemployment assistance. Countries that combine unemployment insurance with unemployment assistance can provide coverage to a greater proportion of workers, including marginal part-timers (e.g. Australia and New Zealand).<sup>158</sup> A related policy, given the high share of women in part-time employment, is to provide specific measures to top up social security entitlements for caregivers for a certain duration, so as to allow those who have reduced their working time because of care giving duties to enhance their levels of social security coverage.<sup>159</sup> Other countries guarantee minimum pensions for the insured with long contribution records, which benefits many part-time workers.

### **Temporary and temporary agency employment**

The inclusion of temporary workers in social insurance largely depends on the thresholds regarding the minimum duration of employment set out in the national social security legislation, and the level of compliance with these regulations. Workers on FTCs over several months are usually covered, whereas those with short contracts and casual

workers, including day labourers, usually are not. This is the case, for example, in India, where the majority of casual workers fall outside the scope of social security legislation.<sup>160</sup> In some countries, different rules are applied to temporary workers compared to other workers, as is the case, for example, for sickness and maternity coverage in Chile and Mexico.<sup>161</sup>

Temporary agency workers may be insured under the same rules as regular workers, yet their terms of employment (part-time work, short contracts) may make them more susceptible to a lack of coverage, as outlined in Chapter 5.

What can be done to improve social insurance coverage for temporary workers? Lowering the thresholds set out in the legislation regarding the minimum duration of employment is critical for the extension of coverage and for ensuring greater parity between workers in different forms of employment. For example, Viet Nam is set to reduce the minimum employment period for social insurance coverage from three months to one month as of 2018.<sup>162</sup> In order to encourage compliance, the lowering of legal thresholds can be combined with measures to facilitate the registration of workers and payment of contributions for employers. This is particularly important for small enterprises with limited administrative capacities. In addition, mechanisms can be put in place for workers to obtain information about their entitlements and their individual insurance records.

Access to benefits can also be improved by allowing more flexibility with regard to interrupted contribution periods, that is, workers may qualify for a certain benefit with  $x$  contributions during the last  $y$  months. In Denmark, for example, workers are eligible for unemployment benefits if they have been a member of the unemployment insurance fund in the previous 12 months and if they have had at least 52 weeks of paid employment in the last three years.<sup>163</sup>

Another key element is to ensure portability of entitlements to facilitate job mobility while ensuring continued protection. In France, the unemployment insurance scheme was modified in 2014 to introduce “refillable rights”. Previously, if an unemployed worker was offered a job, the worker would, upon accepting this position, lose the remaining entitlements to unemployment benefits, which could be detrimental if the newly accepted job was of a short-term nature. With the reform, these accumulated benefits are not lost. As a consequence, the reformed scheme acts as an incentive to facilitate re-entry into the labour market.<sup>164</sup>

As mentioned earlier, social insurance schemes that recognize child-rearing when calculating contribution periods can facilitate women’s access to social security benefits and reduce gender inequalities in social insurance systems. In the Czech Republic, personal care for a child qualifies as meeting the contributory requirement of 12 months of employment during the last two years for unemployment benefits. Similar arrangements exist in Norway, Lithuania and Sweden.<sup>165</sup> Child-rearing is also considered when calculating pension entitlements in Chile, Germany, Japan, Switzerland and the United Kingdom.

For sectors with a high incidence of casual work and high job fluctuation, an additional layer of support may be necessary. In India’s construction sector, Worker Welfare Funds are funded by a contribution of 1 per cent of the total value of every construction

project, and ensure coverage for all workers involved in the project, including casual workers and subcontracted workers.<sup>166</sup> In the United States, some organizations offer centralized payroll administration functions and thereby act as a bridge between the employers of short-term workers in the IT sector and the social security administration.<sup>167</sup>

### Self-employment, including dependent self-employment

Social insurance coverage of the self-employed is one of the main challenges. Although many countries cover some categories of self-employed through mandatory or voluntary coverage,<sup>168</sup> overall coverage rates remain low, resulting in significant social protection gaps for this group. For example, most self-employed workers in Australia are excluded from pension coverage; in Germany and Greece, they are excluded from sickness and maternity coverage; and in other OECD countries coverage is subject to voluntary membership of schemes, which often does not manifest in adequate benefits. Only a few OECD countries (Australia, Czech Republic, Denmark, Estonia, Hungary, Iceland and New Zealand) provide social insurance cover for self-employed workers in the event of unemployment.<sup>169</sup>

There are nonetheless a number of notable examples of social insurance coverage for self-employed workers,<sup>170</sup> including mandatory coverage of farmers in Austria, Brazil and France through mechanisms adapted to their specific characteristics and needs, or the coverage of artists and related occupations through the artists' social insurance funds (*Künstlersozialkassen*) in Germany. In France, the status of “*auto-entrepreneur*” introduced in 2008 seems to have improved protection for some categories of self-employed workers, though there are still some concerns about potential increases in misclassified self-employment.<sup>171</sup> In Argentina, Brazil and Uruguay, the introduction of simplified payment mechanisms for taxes and social insurance contributions (monotax) for some categories of own-account workers and micro-entrepreneurs has resulted in a significant extension of coverage.<sup>172</sup>

Responding to a tendency to reclassify workers as self-employed contract workers in order to avoid social insurance contributions, some countries have taken measures to ensure equal treatment of workers in dependent self-employment and to curb disguised employment. Austria, Germany and Italy have implemented measures to close protection gaps and ensure equal treatment with wage employees, including by extending access to social security. In Italy, a special and separate social security fund was created for economically dependent workers, aimed at hindering the use of this form of contractual relationship for the sole purpose of circumventing regulations on the payment of social security contributions.<sup>173</sup>

What else can be done to facilitate social insurance coverage for self-employed workers? One of the key areas of concern is the calculation of earnings (which are often low and/or volatile) and the fact that self-employed workers usually have to cover the full contribution rate, including the employers' share.<sup>174</sup> These concerns can be addressed through a number of solutions: for example, taking account of annual rather than monthly earnings (e.g. Brazil); flat contributions (Philippines, Thailand); proxy income measures (Brazil, Republic of Korea); or the use of broad contribution categories (e.g. Cabo Verde, Costa Rica, Tunisia). Simplified administrative

procedures for registration and contribution payments, such as the monotax mechanisms (Argentina, Brazil, Uruguay) also help to ease the administrative burden on the self-employed.

### **6.3.3. The role of tax-financed social protection in building comprehensive social security systems**

Unless mechanisms are in place to ensure social security coverage for workers in NSE through an extension of contributory or non-contributory (tax-financed) social security schemes, these workers are likely to end up inadequately covered or not covered at all.<sup>175</sup> As a result, they are more exposed to social risks than other workers, especially as regards income security and effective access to health care. Moreover, the challenges posed by “new” forms of employment spurred by technological change resemble to some extent some of the “old” problems associated with informality.

In this context, it is essential to carefully consider different mechanisms to ensure adequate coverage, which may be financed through contributions and through general taxation. Tax-financed protection plays a key role in filling the gaps and ensuring at least a basic level of coverage, thereby guaranteeing a floor of social protection for everyone, in line with the Social Protection Floors Recommendation, 2012 (No. 202). Yet, in order to achieve a higher level of protection in line with the Social Security (Minimum Standards) Convention, 1952 (No. 102), and more advanced standards, contributory schemes, namely social insurance, are indispensable.<sup>176</sup>

Non-contributory schemes financed from general taxation play an important role, especially for those who are not covered or not sufficiently covered by contributory mechanisms. For example, tax-financed pension schemes can ensure at least a basic level of income security in old age for (former) workers in NSE. Some countries, such as Bolivia, Canada, Mauritius, Namibia, Nepal and Sweden, provide a universal pension for older people that guarantees a basic level of income security; contributory pensions complement this universal pension. Other countries, such as Australia, Chile or South Africa, provide non-contributory old-age pensions for those who have not earned sufficient entitlements under the social insurance scheme, or do not reach a minimum level of income security.<sup>177</sup> Tax-financed benefits may also close coverage gaps for workers in NSE for child and family benefits (e.g. Argentina), unemployment protection and social assistance (e.g. France, Germany).

In the area of health protection, tax financing is essential for national health services (e.g. United Kingdom) and for subsidizing health insurance contributions for low-income workers, including many non-standard workers who may not be sufficiently covered otherwise (e.g. Colombia, Ghana, Thailand).<sup>178</sup> In Ghana, the National Health Insurance Fund is financed from contributions from salaried workers (proportional to their earnings) and flat-rate contributions from workers outside the formal economy. Coverage of specified groups exempted from contributions, such as children, older people, pregnant women and the most vulnerable, is funded through an earmarked VAT on luxury goods, alcohol and cigarettes.<sup>179</sup>

The combination of contributory and non-contributory elements is key to building a comprehensive social security system with a strong floor of social protection. The guidance provided in Recommendation No. 202 emphasizes the potential of combining different financing sources in ensuring the financial, fiscal and economic sustainability of national social security systems, and in achieving universal social protection.

#### **6.4. INSTITUTING EMPLOYMENT AND SOCIAL POLICIES TO MANAGE SOCIAL RISKS AND ACCOMMODATE TRANSITIONS<sup>180</sup>**

The previous sections in this chapter have outlined specific regulatory responses directed at NSE (sections 6.1 and 6.2) and discussed how social protection can be redesigned and strengthened to support workers in these jobs (section 6.3). While these policy responses are central for reducing decent work deficits in NSE, it is also important to institute or strengthen policies that can address the various risks that individuals face over their working lives, irrespective of their contractual status. Though unemployment is usually considered the most significant risk as it can result in temporarily reduced earnings or, worse, a permanent loss of earnings, it is not the only risk. Uncertainties about income can also arise through changes in an individual's earning capacity related to parenthood, illness or eroding skills. Some of these problems can be shouldered by the individual, but sometimes “the risks accumulate or the shoulders are too small to carry the burden”, thus necessitating risk-sharing.<sup>181</sup>

Hence there is a need to develop policies to help mitigate these risks and to facilitate workers' transitions in the labour market throughout their working lives. Beginning at the broader policy level, it is necessary to institute macroeconomic policies that directly support full employment, in line with the ILO Employment Policy Convention, 1964 (No. 122). With respect to labour market transitions, there is a need, as discussed in the section 6.3, to extend social insurance to improve the coverage of workers in NSE. Yet there is also a need to redesign social insurance programmes to cover a broader array of contingencies beyond the unemployment risk. This implies that workers need to become more adaptable to changing market circumstances, for example, when skill sets become outmoded. It also implies making adjustments to the workplace environment in recognition of workers' needs. Central to this approach is enabling reduced working hours – shortened work weeks or breaks from employment – that permit workers to manage parental and elder care responsibilities, training and lifelong learning. Similarly, firms should, within certain limits, be able to institute the same reductions in working hours in response to falls in demand.

A first step for this approach, discussed in section 6.1, is to adapt legislation so that all workers are treated equally in terms of wages and other working conditions, access to social security and employment services, regardless of their working hours.<sup>182</sup> And while many of these policies would be beneficial to workers in NSE, they would be of benefit to all workers. Indeed, the policies recommended in this section try to address an important deficiency that is also present in standard employment – that of not considering workers' needs for flexibility to meet family and other personal responsibilities, as well as their personal desires for learning and change throughout their working life. Thus the overall objective is to build a more adaptable and inclusive



labour market that supports all workers, irrespective of their contractual status. Doing so requires confronting shortcomings in the current design of standard employment relationships.<sup>183</sup>

#### **6.4.1. Address the risk of unemployment and underemployment: policies to support job creation and mitigate job loss**

##### **Macroeconomic policies to support full employment**

Macroeconomic policies, including investment policies, while not specific to NSE, are of fundamental importance for job creation, wage growth and public financing of social services. For all countries, but particularly those where self-employment and casual employment are endemic, there is a need for active macroeconomic policy interventions that can boost economic growth, including by providing businesses with the credit needed to expand their operations and support them in less prosperous times. When businesses are uncertain about future prospects due to weak or volatile macroeconomic conditions, they are more likely to turn to temporary labour or other non-standard work arrangements. Thus, promoting full, productive employment requires supportive monetary and fiscal policies that reduce volatility, develop the economy and ensure productive investments that create jobs. Governments also need to use fiscal policies to invest in physical and social infrastructure that supports enterprises and workers alike.

The promotion of full employment is enshrined in the ILO's 1944 Declaration of Philadelphia, which states that nations should "[further] programmes to achieve full employment and [raise] standards of living". Two decades later, the International Labour Conference adopted the Employment Policy Convention, 1964 (No. 122), which requires ratifying member States to "declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". The policy should aim to ensure that "there is work for all who are available for and seeking work", that the work is "as productive as possible" and that it is freely chosen.

Efforts to promote full employment in line with the requirements of Convention No. 122 may include the adoption of measures applying specifically to young people in order to encourage their hiring by firms. They may take the form of special contractual arrangements and/or financial incentives for firms. Such measures may help governments combat endemic youth unemployment. However, they need to be carefully designed in order to avoid a potentially discriminatory effect on young people (see box 6.4).

Yet despite this international commitment, over the past few decades macroeconomic policy has often been reduced to simply controlling inflation, as most central banks have adopted inflation targeting as their main priority.<sup>184</sup> While controlling inflation is important, it should be considered alongside policies to boost investment and job creation, including access to credit for domestic investment.<sup>185</sup> Too often, interest rates are set high to stave off inflation and, in the case of many developing countries, to attract foreign investment in order to roll over liabilities. As a result, credit for domestic investment is not only squeezed, but is too expensive. It is thus not surprising that firms in low- and middle-income countries often report access to finance as a major constraint for their businesses.<sup>186</sup> But these problems can be overcome by having central banks



**Box 6.4. Special contracts for young people?**

In France, a law introducing the First Employment Contract (*Contrat Première Embauche*, CPE) was adopted in March 2006 to encourage the recruitment of workers under the age of 26 by firms with more than 20 employees. The CPE established a period for “consolidating employment” of two years, during which the employer could end the contract of employment without giving any reason to the employee. The French Constitutional Council had nonetheless considered that, in the event a dismissed employee brought a case before the court, the employer would have to state the reasons for the dismissal so that the court could assess whether the decision was justified and non-discriminatory. The law was never applied and was abrogated within a month in the face of public protest, particularly among young people who felt the CPE was discriminatory and created more precariousness for young workers. The CPE provisions were similar to those contained in the Contract for New Employment (*Contrat Nouvelle Embauche*, CNE), which was introduced in August 2005 but was applicable to all new employees in firms with no more than 20 workers. This, too, was repealed in 2008 after the French courts and the ILO ruled<sup>187</sup> that the Ordinance regulating the CNE contravened the Termination of Employment Convention, 1982 (No. 158), despite the Government’s express reference to the requirements of Convention No. 122. All existing CNEs were then converted into contracts of indefinite duration. Other measures have been introduced since then to promote the employment of young workers, including the “jobs for the future” (*“emplois d’avenir”*) scheme, adopted in 2012, which is based on subsidized employment contracts for young people with a low educational level who are facing particular difficulties in entering the labour market.

Active labour market policies may also give rise to temporary contracts. For example, in Bulgaria, the Promotion of Employment Act provides for subsidized temporary employment of between six months and one year for young people up to 29 years old. Similarly, the “Sanssi card” system in Finland offers a wage subsidy to employers who recruit workers aged under 30. Apprenticeship contracts as well as other forms of training arrangements (such as shorter-term traineeships and internships) also imply a relationship of limited duration with an employer.

In all these cases, the key to ensuring that such programmes and arrangements are successful and not abusive is to determine the extent to which, under such provisions, young people acquire competencies and skills that will enhance their longer-term employability. This is true of dual apprenticeship arrangements operating in several European countries, such as Austria, Denmark and Germany. It can also be true of programmes that do not contain an explicit training component, as is the case with certain wage subsidy programmes in Germany, which have proved to be very effective in promoting longer-term integration of unemployed young people. These programmes also involve heavy penalties for dismissal during or immediately after the period of subsidized employment.

In this regard, the targeted reduction of employment protection for young people appears to be the least advisable of all options in terms of their effects on the integration of young people into stable employment. Such provisions are likely to be discriminatory, and also simply increase the volatility of youth labour markets, with no – or even a negative – effect on the longer term integration of young people into stable employment.

Source: Bördös, Csillag and Scharle, 2015; Caliendo et al., 2011; Eurofound, 2013; Jeannot-Milanovic and Rosen, 2016; Lepage-Saucier, Schleich and Wasmer, 2013; O’Higgins, forthcoming, Chapters 4 and 6; and Tičar, 2013.

or national development banks use policy tools that promote lending to key economic sectors for employment creation and growth.<sup>188</sup> Another important issue is the need to manage financial flows through regulatory measures to ensure that finance is directed

at productive investments, as well as to avoid financial crises, which plagued the developing world in the 1990s and ushered in the Great Recession in 2008.

Also important is the need to institute fiscal policies that boost aggregate demand, particularly during downturns, but which also provide funds for public investment in both physical and social infrastructure. Yet in many developing countries, tax-to-GDP ratios are low (in some cases around 10 per cent of GDP), limiting the ability of governments to invest in infrastructure that is fundamental for economic development, as well as being important sources of employment. Low tax revenues limit the ability of governments to invest in public services, with implications for the quality of the labour force and workers' ability to access the labour market. Moreover, fiscal policy is not only limited in many developing countries (and some developed countries as well), but has tended to be pro-cyclical, augmenting boom and bust cycles and further harming the labour market.

### Public employment programmes

More directly related to the labour market, governments have a role to play in providing work opportunities through public employment programmes, particularly if unemployment insurance systems do not exist or cover a limited proportion of the labour force, and where there are high levels of involuntary part-time or casual work. Perhaps the best-known contemporary example in this respect is the Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MNREGA) of India, which guarantees 100 days of work per year to all rural households. These households can apply for work at any time of the year and men and women receive equal payment, with wages linked in many states to the prevailing minimum wage. In 2012–13, approximately 50 million rural households received benefits from the programme at a cost of roughly 1 per cent of GDP. Moreover, the programme has been praised for boosting agricultural productivity and rural living standards through the construction of much-needed basic infrastructure. It has also been associated with increasing overall compliance with the minimum wage, as the programme acts as a floor on wages in rural areas.<sup>189</sup>

Public employment programmes do not have to be limited to low-income countries or to times of crisis. They can be used to provide needed public services, while at the same time creating jobs. Care services are lacking in most countries of the world, and the problem is likely to be exacerbated by ageing populations unless specific measures are taken. Thus, instituting public care systems can have the added benefit of making access to care services more equitable across the population, facilitating labour market participation, while providing work.

#### 6.4.2. Redesigning unemployment insurance as “employment insurance” to mitigate job loss and to support skills development and lifelong learning

The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), in addition to mandating the extension of unemployment benefits to a larger share of employees as compared to earlier standards, also specifies that member States should endeavour to cover partial unemployment (i.e. temporary reduction in the

number of working hours) and temporary suspension of work, as well as part-time work for persons seeking full-time work. It also calls for instituting employment assistance, such as employment services, vocational training and guidance. Extending and expanding unemployment insurance systems, as dictated in Convention No. 168, is particularly suited for workers in NSE, especially those doing involuntary part-time work, but also because of their higher rate of transition in the labour market.

As discussed in Chapter 2, some countries have, during times of economic crises, instituted policies to reduce working hours to mitigate job loss. *Kurzarbeit*, the German strategy of reduced working hours, has been referred to as “the paradigm of employment insurance”.<sup>190</sup> There are three different types of *Kurzarbeit*: short-time work to maintain employment in cyclical troughs; seasonal short time for industries such as construction that may not be able to operate during the winter months; and structural short time to prepare redundant workers to find a new job. Reduced wages due to short-time work are compensated in the same way as unemployment benefit. In 2009, approximately 1.2 million workers in Germany went on short-time work, reducing their working time on average by one-third while maintaining their employment relationship. The programme permits workers to maintain their skills, qualifications, social network – and their income – as well as being beneficial for employers, who save on the costs of dismissal, hiring and training by not dissolving their workforce. Other examples include unemployment insurance for involuntary part-time workers in Denmark and Sweden; the interim allowance (*Zwischengeld*) in Switzerland, which insures the income gap between “full-time” unemployment benefits and the income of the new job;<sup>191</sup> and the Italian *Cassa Integrazione Guadagni*, which provides a substitute income to those workers who are temporarily laid off or whose working hours have been reduced during temporary critical situations of their employers.<sup>192</sup> The United States has a similar programme – Short-Time Compensation (STC) – that compensates workers whose hours are reduced during a downturn. The programme exists legally in 28 states and the District of Columbia, though until recently it was not a well-known option.<sup>193</sup> In 2012, new federal legislation was enacted (the Middle Class Tax Relief and Job Creation Act) that uses monetary incentives to encourage states that do not have STC programmes to adopt them, as well as supporting the expansion of existing state STC programmes.<sup>194</sup>

Workers should be empowered to have a life-course orientation to their careers. Individuals should be enabled to change from one work situation to another according to changes in the economy as well as their own changing preferences or abilities. One way of doing this is by reconfiguring unemployment insurance and training programmes as “employment insurance” that can aid workers before any job loss occurs.<sup>195</sup> Most existing unemployment insurance systems offer training to workers after they have lost their job, in some instances making the receipt of benefits conditional on participation in the training. Yet most unemployment insurance recipients would prefer to receive job search assistance early in the spell of unemployment rather than participate in training, as many already have experience of work and skills that are frequently transferable to other occupations or industries. Moreover, some training programmes last longer than the receipt of benefits, leaving workers without an income and defeating the purpose of the unemployment insurance benefits.<sup>196</sup> In addition, many

retraining programmes are not successful at building skills and placing workers in new jobs.<sup>197</sup>

A system of entitlements to training, funded through a reconfigured “employment insurance” system, such as individual “training” accounts, also has the benefit of supporting workers with the greatest need for continuing education, who often do not have the resources to finance the absence from work and the training on their own, as well as workers in small- and medium-sized enterprises who are less likely to benefit from employer-sponsored training.<sup>198</sup> In France, a “personal training account” was introduced in 2015. Workers acquire a number of hours of training rights per year, up to a maximum of 150 hours over a seven-year period. Part-time workers’ rights are calculated on a pro rata basis. Since these rights are attached to the person and not the job, employees can use them with successive employers, irrespective of their type of employment contract, as well as during periods of unemployment.<sup>199</sup>

#### **6.4.3. Support care: parental and elder care leave and the provision of publicly provided care institutions**

Supporting care responsibilities is integral to the policy of accommodating transitions and managing social risk as it recognizes that providing care is not just the responsibility of one individual (usually female) worker, but a broader societal responsibility. In all countries, whether rich or poor, in ageing and young societies alike, care responsibilities are integral to workers’ daily lives. An important critique of the standard employment relationship mentioned briefly at the beginning of this report is that it was predicated on a male breadwinner, with a female homemaker responsible for care activities, yet not paid for carrying them out. As a result, women could not dedicate themselves fully to paid work and often took on secondary jobs at the margins of the labour market. As explained in Chapter 3, this is one of the main reasons behind the high proportion of women in part-time employment and other forms of NSE.

Thus there is a need to enact policies that allow workers to accommodate personal and family responsibilities, in accordance with the Workers with Family Responsibilities Convention, 1981 (No. 156). This Convention recognizes in its Preamble that the “problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies”, and mandates that ratifying States adopt measures to enable workers with family responsibilities to freely choose employment that can support their needs, including becoming and remaining integrated in the labour force.

Policies to support parental and other care leave, as well as legislation to facilitate the transfer between full-time and part-time work and vice versa, help workers – both men and women – to address their care responsibilities. Moreover, a progressive reduction of normal hours of work for all workers, as promoted by the Reduction of Hours of Work Recommendation, 1962 (No. 116), is helpful for accommodating workers’ personal and family responsibilities, by facilitating a more gender-neutral division of labour in the household. Countries that have tried to reconcile family responsibilities with paid work, including by reducing men’s working hours, have the smallest gender gap in working

**Table 6.11. Workers' right to request a transfer to part-time work**

Reasons	Countries
Employees raising young children	Angola (workers with family responsibilities), Armenia (up to the age of one), Austria (up to the age of seven or entry into school, up to the age of four if certain conditions are not met), Belgium (up to the age of 12 – up to the age of 21 for a disabled child), Czech Republic (women workers only, for children under the age of 15 and unless the employer can invoke serious operational reasons), Cabo Verde (for children up to the age of 12 and disabled children, the employer can refuse the request in very limited cases), Finland (up to the second year of school), Germany (part-time parental leave until the child reaches the age of three), Japan (right to request for parents of children up to the age of entry into elementary school, employers must respond positively in the case of children up to the age of three), Kazakhstan (for women and single fathers), Republic of Korea (right to request a reduction in working hours instead of parental leave for children up to the age of six who are not enrolled in elementary school), Latvia (up to 14 years – up to 18 years in the case of a disabled child), Lithuania (up to the age of three – up to 14 years in the case of a single parent and up to 16 years if the child is disabled), Luxembourg (with the agreement of the employer, possibility of part-time parental leave during one year instead of full-time leave during six months), Norway (up to the age of ten), Portugal (collective agreements must establish preferences for admission to part-time work in favour of employees with family responsibilities), Russian Federation (up to the age of 14 – up to the age of 18 in the case of children with a disability), Slovenia (right to take part-time parental leave), Spain (up to the age of eight), Sweden (up to the age of eight)
Employees with other care responsibilities	Armenia (for a period of six months maximum), Austria (for a period of three months with a possible extension to six months in certain cases), Belgium, Cabo Verde (the employer has a right of refusal in very limited cases), Czech Republic (unless the employer can invoke serious operational reasons), Kazakhstan, Lithuania, Mexico, Russian Federation, Spain
Pregnant women workers	Armenia, Czech Republic, Kazakhstan, Latvia, Lithuania
Health reasons / Disabled employees	Angola, Armenia, Denmark (system of flex-jobs with a wage subsidy), Finland (if feasible for the employer), Lithuania, Portugal (collective agreements must establish preferences for admission to part-time work in favour of employees with reduced work capacity, disability or chronic illness)
To undergo training	Angola, Belgium, Republic of Korea (the employer must make efforts to transfer the employee from a full-time to a part-time position), Portugal (collective agreements must establish preferences for admission to part-time work in favour of employees attending an educational institution)
Older employees / Part-time retirement schemes	Austria (in enterprises with more than ten employees), Belgium, Finland (if it is feasible for the employer), Germany, Luxembourg, Slovenia, Spain (in principle the employer needs to recruit another employee at the same time to compensate for the reduction in working hours), Viet Nam

Source: Authors' compilation.

hours. In Denmark, for example, the hours of full-timers have been reduced, while those of part-timers have increased.<sup>200</sup>

A number of countries have implemented policies to facilitate workers' access to part-time work in certain circumstances, for instance when they provide care to young children or other family members. Examples of such policies are given in table 6.11.

In certain countries, such as Bulgaria, Cabo Verde, Germany, Iceland, Portugal and Romania, labour legislation explicitly prescribes that employers must make part-time work available or at least facilitate access to it at all levels of the enterprise, including for employees in senior positions. Some countries go further and have put in place a formal procedure for workers who wish to work longer or shorter hours, or to benefit from other forms of flexible working. In the United Kingdom, for instance, the right to request flexible working, which was previously limited to employees with children or other care responsibilities, was extended in 2014 to all employees with at least 26 weeks of continuous employment. Such flexibility may involve changes to number of hours, work schedules or place of work.<sup>201</sup> In the Netherlands, the Flexible Working Hours Act, which came into force on 1 January 2016, gives employees with at least six months of service the right to request a change of work schedule or place of work, whereas previously they could only ask for changes in the number of hours they worked.

In all countries, statutes that regulate alternative work arrangements also include provisions intended to protect employers from difficulties in accommodating the request or escalating costs. First, periods of leave that reduce working hours temporarily are combined with the right to employ at least a partial wage replacement. In most cases, the replacement worker is financed through social insurance or other taxes, ensuring that the cost is widely shared. Second, statutes explicitly grant employers the right to refuse requests for alternative work arrangements on serious business grounds. Third, the statutes require substantial notification periods to allow employers to plan for the alternative schedules. Small employers are exempt from these provisions in some OECD countries – with the definition of small employers ranging from ten to 20 employees.<sup>202</sup>

Sweden is a successful example of a country that has instituted policies to support temporary work leave. In a given week, the nominal employment rate in Sweden is about 76 per cent, but only 65 per cent of workers are at their job.<sup>203</sup> The other 11 per cent are on different forms of leave – for education, training, parental or other care responsibilities, sabbatical or illness. In Germany, the parental leave allowance (*Elterngeld*), introduced in 2007, insures the income loss due to full-time or part-time leave by 67 per cent of the former net wage income, which is similar to the replacement rate for “full-time” unemployment. Entitlements are portable from one employer to another and to any location in the country. The policy could be considered as an element of wider “employment insurance”, although it is not formally included in the unemployment insurance system. In Quebec, Canada, a parental leave programme introduced in 2006, and building on the federal employment insurance programme, allows all workers, including part-time, casual workers and the self-employed, to access parental leave benefits as long as they earned CAD 2,000 the previous year.<sup>204</sup> The programme gives workers flexibility in that they can choose between having a shorter



leave with a higher rate of benefits (75 per cent), or a longer leave with a lower rate or benefits, but still above the federal parental leave level of 55 per cent. Furthermore, between three and five paid weeks are reserved for the father.

In addition to these workplace policies, there is also a greater need for public investment in care activities, including the development of a public childcare infrastructure for children under six years of age, all-day schooling for those of school age, and elder care facilities.

The provision – or lack of provision – of care services can affect women’s ability to enter or remain in the labour market, with consequences for both gender and income inequality. As traditionally women have shouldered the primary burden of care responsibilities, if care services are not provided publicly, then women either outsource these services if they can afford to do so, or withdraw from the labour market. Alternatively, they choose professions that allow them to balance their work and family responsibilities, including in NSE, often with marked differences in wages, hours and access to statutory benefits.

Reconciling care responsibilities with work is most difficult for women on lower incomes. Women from higher income quintiles have the financial means to outsource care responsibilities, perpetuating inequality between groups in the labour market. Among women with children under six years of age in Latin America, the labour force participation rate of those from the poorest quintile is just 40 per cent, compared with 70 per cent for the richest.<sup>205</sup> Moreover, women from of the poorest income quintile who do work may either be exacerbating “time poverty” or redistributing responsibilities to other, typically female, household members. This finding is substantiated by the higher share of young female NEETs (not in education, employment, or training) from lower-income families in developing countries.

By assuming responsibility for the welfare of children and the elderly, the Scandinavian countries are able to encourage greater labour force participation of women who, less burdened by care responsibilities, can enter and remain in the labour market more easily.<sup>206</sup> Moreover, the many public services offered provide numerous decent employment opportunities, and the high quality of these services ensures support from society as a whole. The provision of high-quality public care services is not only fundamental for breaking the intergenerational cycle of poverty, by providing better opportunities for the next generation, but also in minimizing present inequality between different groups, by giving women (and men) the opportunity to continue in paid work.

## 6.5. POLICY CONCLUSIONS

This report began with a discussion of the recent changes in the world of work and how they have led to a rise in NSE. These changes have strained the ability of regulations to provide protection to workers, leading to decent work deficits. There is thus a need to adapt regulations and policies to ensure decent work for all. Adapting regulations and policies must be an ongoing effort, as the world of work is never static and new challenges loom on the horizon. In addition, more effort needs to be put into ensuring that regulations are applied. This is particularly true for sectors and occupations where

**Table 6.12. Policy measures for addressing deficits in non-standard employment**

<b>Policy measures</b>
<b>Plugging regulatory gaps</b>
Ensure equality of treatment
Provide for minimum hours and other safeguards for part-time and on-call workers
Address employment misclassification
Restrict the use of NSE
Assign obligations and liabilities in contractual arrangements involving multiple parties
Ensure all workers have access to freedom of association and the right to collective bargaining
<b>Strengthening collective bargaining</b>
Build the capacity of unions to organize workers in NSE and ensure their effective representation in collective bargaining
Promote inclusive forms of collective bargaining and create a conducive policy framework for collective bargaining
Use collective bargaining to develop regulatory measures to address NSE
Advance other collective efforts and build alliances between unions and other organizations in order to develop effective collective responses to issues in NSE
<b>Strengthening social protection</b>
Eliminate or lower thresholds regarding working hours, earnings or the minimum duration of employment
Allow more flexibility with regard to the contributions required to qualify for benefits and interruptions in contribution periods
Enhance portability of entitlements between different social security schemes and employment statuses
Simplify administrative procedures for registration and contribution payments
Prevent the misclassification of workers aimed at avoiding social protection coverage and ensure adequate coverage for the self-employed
Complement social insurance programmes with non-contributory programmes that can provide a basic level of coverage for all
<b>Instituting employment and social policies to manage social risks and accommodate transitions in the labour market</b>
Enact policies to support job creation and mitigate job loss through macroeconomic policies that support full employment, public employment programmes and work-sharing initiatives
Redesign unemployment insurance as “employment insurance” to support skills and career development
Support care through policies to facilitate parental and elder care leave and through the provision of publicly provided care institutions

regulatory oversight has traditionally been weak and where collective bargaining coverage is limited.

The recommendations outlined in this chapter are a mix of policies targeted at improving the quality of non-standard jobs, so that specific decent work deficits in these jobs are removed or mitigated, and policies that support workers in general, by strengthening social protection and helping to accommodate workers as they face risks and transition between jobs and in and out of the labour market throughout their working lives. Table 6.12 provides a summary of the main policy recommendations.

The first set of policies address the need to fill regulatory gaps in five broad legislative areas. The proposed measures seek to remove differences in labour protection for workers in non-standard jobs vis-à-vis those in standard jobs, by extending protections to workers in non-standard arrangements to support equality of treatment and to reduce incentives for using non-standard arrangements solely to reduce labour costs. The policy measures also address the issue, specific to part-time, on-call and casual work, of providing safeguards to workers with respect to control over their schedules and provision of minimum hours. In some instances, legislation is needed to address grey areas in the law, as well as to assign joint and shared liability in multi-party employment arrangements and ensure that all workers have access to freedom of association and collective bargaining rights. Legislation needs to be complemented by efforts to raise employers' and workers' legal awareness of their rights and obligations. In addition, there is a need to improve enforcement, especially with regard to employment misclassification, which denies workers critical labour rights.

The second set of policy measures address a different regulatory tool: collective bargaining. Collective agreements are well suited to address shortfalls in the working conditions of NSE as they can be tailored to the particular circumstances of the sector or the enterprise. They are thus conducive to advancing regulatory provisions aimed at lessening insecurities in NSE, but efforts are still needed to build the capacity of unions to do so, including through the organization and representation of workers in non-standard work arrangements. In countries where collective bargaining is extended to cover all workers in a sector or occupational category, it can provide a means for protecting non-standard workers, thus mitigating differences in treatment amongst workers in different employment arrangements. Alliances between unions and other organizations can also be useful for developing effective collective responses to issues of concern to non-standard and standard workers alike.

The third set of policies concern strengthening social protection systems to ensure that all workers benefit from social protection coverage. In some cases, this may require adapting existing social security systems, for instance by eliminating or reducing thresholds on minimum hours, earnings or duration of employment so that workers in non-standard arrangements are not excluded from coverage. Changes include making systems more flexible with regard to contributions required to qualify for benefits, allowing for interruptions in contributions, and enhancing the portability of benefits between different social security systems and employment statuses. These modifications to the social security system should be complemented by efforts to guarantee a social protection floor – or a universal basic level of coverage

The fourth set of proposals concern the need to introduce supportive policies that help workers to manage risks and better accommodate transitions in their working lives. They include broader policies that support full employment, so that there are employment opportunities for those who want to work, by directing macroeconomic policy to this objective as well as by instituting public employment programmes when needed. In addition, unemployment insurance programmes should be adapted to respond to a broader range of contingences, such as reduced working time arrangements during periods of economic recession, as well as the temporary absences of workers who are undergoing training and study or who need to attend to personal and family responsibilities. Care responsibilities have to be better addressed at the workplace, through parental and elder care leave, as well as by ensuring the provision of care facilities.

While the focus of this report, and thus of these policy recommendations, is on NSE, some of the policies recommended concern the overall design of labour market institutions that is of relevance to all workers. Policies are needed to ensure that all forms of work are decent, as no contractual form is immune to the ongoing transformations in the world of work. Today, women make up a significant share of the working population, global supply chains connect industries and workers throughout the globe, new technologies have transformed the workplace, and new professions have emerged that could not have been imagined a few decades ago. The years ahead will undoubtedly bring new changes. Yet the dependence on work for one's livelihood and the effect of work on a person's overall well-being will not change. It is thus incumbent on governments, employers and workers, through national, regional and international efforts, to come together to address the challenges in the world of work, with the goal of promoting decent work for all.

## NOTES

- 1 ILO, 2007a.
- 2 See <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.
- 3 See also Kalleberg and Hewison, 2013.
- 4 See also Adams and Deakin, 2014a.
- 5 For a more detailed presentation of relevant international labour standards, see the Appendix to this chapter.
- 6 On this “global trend” in the protection of some non-standard workers, see Adams et al., 2015.
- 7 Exceptions are provided, for instance, for small and newly created firms and for employees earning over a certain threshold.
- 8 Cooke and Brown, 2015.
- 9 Landau, Mahy and Mitchell, 2015.
- 10 Labour Research Department, 2014.
- 11 Kothe and Rosendahl, 2013.
- 12 Countouris et al., forthcoming; Davies, 2013.
- 13 Ibid.
- 14 See Federal Labour Court, BAG, 14 December 2010 – 1 ABR 19/10.
- 15 Federal Constitutional Court of 29 May 2015 – 1 BvR 2314/12
- 16 Supreme Court (*Oberster Gerichtshof* – OGH) – 25 August 2014, 8 OBA 7/14h; see [http://www.labourlawnetwork.eu/national\\_labour\\_law/national\\_court\\_rulings/national\\_court\\_decisions\\_-\\_labour\\_law/prm/64/v\\_\\_detail/id\\_\\_5014/category\\_\\_3/index.html](http://www.labourlawnetwork.eu/national_labour_law/national_court_rulings/national_court_decisions_-_labour_law/prm/64/v__detail/id__5014/category__3/index.html) (Accessed 23 May 2016).
- 17 Shin and Kim, 2014.
- 18 *Sharma and others v Manchester City Council* [2008] IRLR 336 EAT.
- 19 Court of Cassation, Social Chamber, 4 juillet 2012, Appeal No. 11-12045.
- 20 Court of Cassation, Social Chamber, 3 July 2012, Decision No. 1647 FS-P+B.
- 21 De Stefano, 2016a.
- 22 Ibid.
- 23 Landau, Mahy and Mitchell, 2015; De Stefano, 2016a.
- 24 Adams and Deakin, 2014b.
- 25 ILO, 2012a, para. 57.
- 26 Xhafa, 2015.
- 27 De Stefano, forthcoming.
- 28 ILO, 2015a, para 7(f).
- 29 *Browning-Ferris Industries of California, Inc.* (362 NLRB 186) (2015).
- 30 *Oakwood Care Center* (343 NLRB 659) (2004).
- 31 *Miller & Anderson, Inc.* (05-RC-079249) (2016).
- 32 Art. 36, *decreto legislativo* 15 June 2015, No. 81.
- 33 Humblet, forthcoming.
- 34 Two sectoral instruments refer to the need to give workers sufficient advance notice of working schedules to enable them to organize their personal and family life accordingly: the Nursing Personnel Recommendation, 1977 (No. 157), and the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172).
- 35 Act No. 2013-504 of 14 June 2013 on the improvement of job security and Act No. 2016-1088 of 8 August 2016 on labour, modernizing social dialogue and safeguarding career paths. In addition to the provisions described, the 2016 Act puts increased emphasis on collective bargaining for the regulation of working time, including part-time work. On a number of issues (the maximum number of “complementary” hours that part-time workers may perform, the distribution of daily working hours and the minimum notice period when work schedules are modified), enterprise agreements now prevail over industry-wide agreements.
- 36 Luce, Hammad and Sipe, 2014.
- 37 See CLASP, Retail Action Project and Women Employed (2014), Appendix 2.
- 38 See <http://www.ag.ny.gov/press-release/ag-schneiderman-and-eight-other-state-attorneys-general-probe-retailers-over-use-call>.
- 39 Eurofound, 2015.
- 40 The University of Limerick (2015) reports that parties would rather revert to so-called “If and When” contracts, whereby workers do not undertake to be available for work and they are not entitled to be paid when employers do not call them.
- 41 Fuchs, 2004; Schmidt, 2002.
- 42 Arts. 13–18, Legislative Decree 15 June 2015, No. 81.
- 43 See De Stefano, 2016a.
- 44 Art. 35, Employment Act, Papua New Guinea.
- 45 Art. 73, Labour Act, Ghana.
- 46 Deakin and Wilkinson, 2005, p. 4.
- 47 A comprehensive summary of the background to the Employment Relationship Recommendation, No. 198 (2006) can be found in Casale, 2011, as well as the information and the discussion reported in ILO, 2003a and ILO, 2006a.
- 48 The ILO, in partnership with the European Labour Law Network, has produced guides to Recommendation No. 198 that contain additional examples of good practices at the national and international levels concerning the determination and use of employment relationships. For the most recent guides, see ILO and European Labour Law Network, 2013 and 2014.
- 49 Ameglio and Villasmil, 2011; ILO and European Labour Law Network, 2013.
- 50 Countouris, 2011.
- 51 Fair Work Act 2009, Australia, sections 357, 358 and 359.
- 52 *Autoclenz Ltd v Belcher* [2011] UKSC 41 at 35.
- 53 The Employment Relationship Recommendation, No. 198 (2006) also suggests measures in this respect. Relevant policies can also be mandated by other international labour standards, in particular: Labour Inspection Convention, 1947 (No. 81); Employment Policy Convention, 1964 (No. 122); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Tripartite Consultation (International

- Labour Standards) Convention, 1976 (No. 144); Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152).
- 54 ILO, 2006a.
- 55 Ameglio and Villasmil, 2011; Countouris, 2011.
- 56 US DoL, Wage and Hour Division, 2015.
- 57 Countouris, 2011.
- 58 Adams, Freedland and Prassl, 2015; Countouris, 2015; Adams and Deakin, 2014b.
- 59 Countouris, 2011.
- 60 See Corte di Cassazione, 5 May 2004, No. 8569; Corte di Cassazione, 26 February 2002, No. 2842; Corte di Cassazione, 6 July 2001, No. 9167.
- 61 State of California Department of Industrial Relations. Independent contractor versus employee (available at: [http://www.dir.ca.gov/dlse/faq\\_independentcontractor.htm](http://www.dir.ca.gov/dlse/faq_independentcontractor.htm); accessed 16 May 2016), citing *Yellow Cab Cooperative v. Workers Compensation Appeals Board* (1991) 226 Cal.App.3d 1288.
- 62 See De Stefano, 2016b.
- 63 Article 3357 of the Labour Code.
- 64 Legal Notice 44 of 2012, as amended by Legal Notices 110 and 364 of 2012.
- 65 Art. 12.2 of the Labour Code; see ILO, 2014d.
- 66 ILO and European Labour Law Network, 2013.
- 67 Art. 128A, Labour Act, Namibia. See Bamu, forthcoming. For an analysis of a similar presumption provided under the Labour Relations Act of South Africa, see Benjamin, 2011.
- 68 Labour Code, Articles L 7313-1, L 7112-1, L 7121-3 and L 7123-4.
- 69 Aleksynska and Berg, 2016.
- 70 *United Kingdom* – CEACR, observation, C.87, published 2016.
- 71 De Stefano, forthcoming.
- 72 A common limitation among these countries is the restriction or prohibition of the use of TAW workers in the construction sector.
- 73 See also Voss et al., 2013.
- 74 For example: <http://www.radionz.co.nz/news/political/298628/zero-hour-contracts-ban-passes-final-hurdle>; <https://www.theguardian.com/world/2016/mar/11/zero-hour-contracts-banned-in-new-zealand>.
- 75 Department for Business Innovation and Skills (BIS), 2015.
- 76 Backer and Smeby Lium, 2015.
- 77 Cooke and Brown, 2015.
- 78 English translation available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html> (accessed 9 May 2016).
- 79 Fragale Filho, 2016.
- 80 Landau, Mahy and Mitchell, 2015.
- 81 Weil, 2014.
- 82 Njoya, 2016.
- 83 US DoL, Wage and Hour Division, 2016.
- 84 Prassl, 2015; Corazza and Razzolini, 2014.
- 85 Weil, 2014; Prassl, 2015.
- 86 For European Countries, see Spattini, 2012. For India, see Landau, Mahy and Mitchell, 2015. Comprehensive information on the establishment of this protection in Namibia is provided in Bamu, forthcoming; Art. 29 Bis, *Ley de Contrato de Trabajo*, Argentina; art. 35; Ontario (Canada), Stronger Workplaces for a Stronger Economy Act and Employment Standards Act 2000; South Africa, Labour Relations Act.
- 87 See ILO, 2007b.
- 88 ILO, 2008.
- 89 Extensive information is provided in Jorens, Peters and Houwerzijl, 2012.
- 90 Johnston and Stewart, 2016, report that “[b]y 2013, all Australian jurisdictions apart from Victoria and Western Australia had largely enacted the provisions of the Model Work Health and Safety Act”.
- 91 Ibid.
- 92 Ibid.
- 93 *Decreto Supremo N° 006-2008-TR, Reglamento de la Ley N° 29245 y del Decreto Legislativo N° 1038*, Peru.
- 94 Jorens, Peters and Houwerzijl, 2012.
- 95 Art. 29, *Decreto Legislativo*, 10 September 2003, No. 276.
- 96 Art 134, *Code du Travail*, Guinea. See Bamu, forthcoming. See also art. 48, *Code du Travail*, Cameroon; art. 70, *Code du Travail*, Republic of Congo (where the liability also extends to social security contributions).
- 97 Ibid.
- 98 Act N° 18.099 and the amendments in Act N° 18.251, Uruguay.
- 99 Act on the Contractor’s Obligations and Liability when Work is Contracted Out (1233/2006) (as amended by several Acts, including 678/2015), Finland.
- 100 The principal, however, can demand that any coercive enforcement measure is previously executed on the contractors and subcontractors; Art. 29, Legislative Decree, 10 September 2003, No. 276.
- 101 Programme Act, 10 August 2015, Belgium.
- 102 NELP, 2013.
- 103 Article 183–B of the labour code.
- 104 Fair Work Ombudman, *A compliant supply chain is everyone’s business*, 10 March 2016, available at: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/march-2016/20160310-compliant-supply-chain-op-ed> [Sep. 2016]. See also Coles, 2015; Johnston and Stewart, 2016.
- 105 At the federal level, the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012. At the state level, the Industrial Relations (Fair Work) Act 2005 (South Australia) amended the Industrial and Employee Relations Act 1994 (South Australia); Schedule 2 of the Industrial Relations (Ethical Clothing Trades) Act 2001 (NSW) amended the Industrial Relations Act 1996 (NSW); the Outworkers (Improved Protection) Act 2003 (Victoria); and the Industrial Relations and Other



- Acts Amendment Act 2005 (Queensland) amended the Industrial Relations Act 1999 (Queensland).
- 106 See Marshall, 2011; Marshall, 2014; Fenwick, 2003.
- 107 Fair Labor Standards Act (FLSA), 29 U.S.C. §215 and 216. Exceptions apply for good faith purchasers.
- 108 NELP, 2013.
- 109 Labour Court, South Africa, *Assign Services v. CCMA and others* (JR 1230/15; 8 September 2015).
- 110 *McDonald's USA, LLC, a joint employer, et al.* (02-CA-093893).
- 111 US DoL, Wage and Hour Division, 2016.
- 112 *South Africa* – CEACR, observation, C.87, published 2016.
- 113 *South Africa* – CEACR, observation, C.98, published 2016.
- 114 Vacotto, 2013.
- 115 De Stefano, forthcoming.
- 116 Ibid.
- 117 Article L 1132 of the Labour Code.
- 118 See, for example, IndustriALL, 2016.
- 119 South Africa Department of Labour, 2006.
- 120 Shyam Sundar, 2011.
- 121 Keizer, forthcoming.
- 122 Ibid.
- 123 At the same time, in countries such as Germany, one can also find examples of associations of TAW employers, such as the Collective Bargaining Association for Temporary Agency Work Employers.
- 124 Henaway, 2016.
- 125 De Stefano, 2014.
- 126 One of the examples includes bargaining over TAW regulation in the Netherlands. See Visser, Hayter and Gammarano, 2015, for details.
- 127 Webb and Webb, 1902.
- 128 Traxler, 2000.
- 129 Kahn, 1998; Blau and Kahn, 1996.
- 130 Blau and Kahn, 2003.
- 131 Wallerstein, 1999. For an overview of empirical evidence, see Hayter, 2015.
- 132 The changes gave priority to company-level agreements over sectoral and national agreements; suspended or made it more difficult to apply extension provisions; and other practices (Marginson and Wetz, 2014).
- 133 Visser, forthcoming.
- 134 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- 135 Schulten, forthcoming.
- 136 The discussion in this section is based on Xhafa, 2015, and Ebisui, 2012.
- 137 Shyam Sundar, 2011.
- 138 For details, see Ebisui, 2012.
- 139 The Directive on Part-Time Work requires that due regard be given to other considerations which may include seniority and qualifications/skills. The Directive on Fixed-Term Work specifies that due regard must be given to qualifications/skills.
- 140 On the content of these collective agreements, see Humblet, forthcoming.
- 141 Drahokoupil, 2015.
- 142 Ibid.
- 143 For more examples in Europe and Central Asia, see ILO and European Labour Network, 2013 and 2014.
- 144 Anner, Bair and Blasi, 2013.
- 145 Locke, 2013.
- 146 Anner, Bair and Blasi., 2013.
- 147 See <http://bangladeshaccord.org/> (accessed May 2016).
- 148 Melendez et al., 2014, which also includes an overview of the literature on worker centres.
- 149 As stated in the NDLO mission on their website: <http://www.ndlon.org/en/about-us> (accessed May 2016).
- 150 Robbins, 2016.
- 151 Silberman and Irani, 2016, p. 518.
- 152 Ibid.
- 153 [www.faircrowdwork.org/en](http://www.faircrowdwork.org/en).
- 154 While acknowledging that the terms “social protection” and “social security” are used in different ways in different national contexts, this report uses them interchangeably to include a broad range of contributory and non-contributory social security instruments, including social insurance, social assistance and other schemes (see ILO, 2014e, pp.162–163).
- 155 For example, in the United States in 2005, around 13 per cent of contingent workers received health insurance through their employer (9 per cent of temporary agency workers; 19 per cent of part-time workers), compared to 72 per cent of standard full-time workers; 38 per cent of contingent workers had access to employer-provided pensions (4 per cent of temporary agency workers; 23 per cent of part-time workers), compared to 76 per cent of standard full-time workers (GAO, 2006).
- 156 ILO, 2014e.
- 157 ISSA, 2012.
- 158 Fagan et al., 2014.
- 159 Fultz, 2011.
- 160 Papola, 2013.
- 161 OECD, 2015a, p.181.
- 162 ISSA country profile for Viet Nam, available at: <https://www.issa.int/en/country-details?countryId=VN&regionId=ASI&filtered=false>.
- 163 ISSA country profile for Denmark, available at: <https://www.issa.int/en/country-details?countryId=DK&regionId=EUR&filtered=false>.
- 164 The system was modified in 2015 to eliminate potential adverse consequences on workers if previous employment paid less. As a result, workers now have the option of forgoing their refillable rights.
- 165 European Commission, 2012.
- 166 Newitt, Alastair and McLeish, 2014.
- 167 Hill, 2015.
- 168 European Commission, 2014.
- 169 OECD, 2015a, p.181.
- 170 ISSA, 2012.

- 171 European Parliament, 2013.
- 172 See, for example, ILO, 2014f.
- 173 European Parliament, 2013.
- 174 ISSA, 2012.
- 175 ILO, 2014e.
- 176 Ibid.
- 177 Ibid.
- 178 Ibid; ILO, 2015b.
- 179 ILO, 2015p.
- 180 This section draws in part on a background report prepared by Schmid and Wagner, 2016, for this report.
- 181 Schmid and Wagner, 2016, p. 80.
- 182 Schmid, 2015, p. 73.
- 183 See Bosch, 2004, for a discussion on how the standard employment relationship should be reformed, if it is to be saved. See also Supiot, 1999, for a discussion about reconfiguring the labour market so that it has a more inclusive, life-cycle approach.
- 184 Epstein, 2007.
- 185 Islam and Kucera, 2014.
- 186 World Bank, 2011 and 2014.
- 187 In November 2007, the ILO Governing Body approved the report of the Tripartite Committee set up to examine the non-observance by France of ILO Conventions Nos. 87, 98, 111 and 158, made under article 24 of the ILO Constitution by the Confédération générale du travail – Force ouvrière. See GB.300/20/6.
- 188 Epstein, 2007.
- 189 Rani and Belser, 2012.
- 190 Schmid, 2015, p. 84.
- 191 Schmid and Wagner, 2016.
- 192 See <http://www.eurofound.europa.eu/efemiredictionary/wages-guarantee-fund-cig>.
- 193 Schreur and Veghte, 2016.
- 194 Messenger and Ghosheh, 2013.
- 195 Brazil's unemployment insurance programme, the *Fundo de Amparo ao Trabalhador* (FAT), allows workers to receive unemployment benefits during participation in a professional training course. However the benefit is limited to workers whose contracts have been temporarily suspended, as specified in a collective agreement.
- 196 Schreur and Veghte, 2016.
- 197 See, for example, Jacobson, LaLonde and Sullivan, 2005.
- 198 Schmid, 2015.
- 199 On 1 January 2017, a “Personal Activity Account” will be set up to bring together the different entitlements acquired by a worker, including the Personal Training Account, in a global account that he or she will be able to use throughout his or her career.
- 200 Bosch, 2004.
- 201 Section 80F of the Employment Rights Act 1996, as amended, and the Flexible Working Regulations 2014.
- 202 Gammage, 2015.
- 203 Schmid, 2015; data are from 2008.
- 204 Tremblay, 2008.
- 205 Franzoni and Sánchez-Ancochea, 2015.
- 206 In a 1939 article in the *International Labour Review*, Alva Myrdal explained the comprehensive set of policies that are needed to ensure family security and women's access to the labour market (Myrdal, 2013).

**CHAPTER 6 APPENDIX:  
MOST RELEVANT ILO INSTRUMENTS CONCERNING NON-STANDARD EMPLOYMENT**



*International Labour Conference, Geneva*

This Appendix summarizes the content of the ILO Declaration on Fundamental Principles and Rights at Work of 1998, as well as several international labour standards that are relevant in the regulation and governance of forms of non-standard employment (NSE). Besides the instruments that explicitly mention or regulate NSE, many other international labour standards are applicable to workers in these forms of employment. This Appendix includes the most relevant standards.

## THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, commits member States to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights in four categories of subjects: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. The fundamental rights related to these four categories are universal and applicable to all people and the above-mentioned obligation arises from the very fact of membership in the ILO, even for States that have not ratified the Conventions in question. As set out in Chapter 5, the supervisory bodies of the ILO explicitly observed on many occasions that workers in NSE are covered by and must have full access to the rights enshrined in the eight fundamental Conventions, whose provisions are outlined below.

## ILO FUNDAMENTAL CONVENTIONS

The **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**,<sup>1</sup> provides that workers and employers, without any distinction whatsoever, with the sole possible exception of members of the armed forces and police, must have the right to establish and join organizations of their own choosing without previous authorization. Such organizations must have the right, inter alia, to freely organize their administration and activities and formulate their programmes, whilst public authorities must refrain from any interference which would restrict or impede the lawful exercise of these rights.

Under the **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**,<sup>2</sup> workers must be afforded adequate protection against any act of anti-union discrimination in respect of their employment. Workers' and employers' organizations also have to be adequately protected against any acts of interference by each other in their establishment, functioning or administration. Moreover, Convention No. 98 calls for the adoption, where necessary, of measures for encouraging and promoting collective bargaining.

The **Forced Labour Convention, 1930 (No. 29)**,<sup>3</sup> prohibits forced and compulsory labour, defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". It provides, however, for some exceptions to this prohibition. The **Protocol of 2014 to the**



**Forced Labour Convention, 1930**,<sup>4</sup> requires ratifying States to take effective measures to prevent and eliminate the use of forced or compulsory labour, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators. Measures referred to in the Protocol include specific action against trafficking in persons for the purpose of forced or compulsory labour. Efforts must be undertaken to ensure that the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour (including labour law as appropriate) apply to all workers and all sectors of the economy. In addition, labour inspection services and other services responsible for the implementation of this legislation must be strengthened, as well as efforts to protect persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process. Further, the **Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)**, provides, inter alia, that ILO member States should take the most effective preventive measures, such as steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy and are effectively enforced. In this regard, the relevant information on the terms and conditions of employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations or collective agreements. ILO member States should also take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as eliminating the charging of recruitment fees to workers; requiring transparent contracts that clearly explain terms of employment and conditions of work; establishing adequate and accessible complaint mechanisms; imposing adequate penalties; and regulating or licensing these services.

The **Abolition of Forced Labour Convention, 1957 (No. 105)**,<sup>5</sup> bans forced and compulsory labour as a means of political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a means of mobilizing and using labour for the purpose of economic development; in order to impose labour discipline; as a punishment for participation in a strike; and as a means of discrimination on the basis of race, social conditions, nationality or religion.

The **Minimum Age Convention, 1973 (No. 138)**,<sup>6</sup> requires the adoption of a national policy designed to ensure the effective abolition of child labour and to progressively raise the minimum working age to a level consistent with the fullest physical and mental development of young persons. The minimum age for admission to employment or work must not be less than the age of completion of compulsory school. It must not be less than 15 years, except in States whose economy and educational facilities are insufficiently developed which may, after consultation with the workers' and employers' organizations concerned, initially specify a minimum age of 14 years. Higher limits apply to hazardous work. On the other hand, a lower limit may be introduced, under certain conditions, for light work.

The **Worst Forms of Child Labour Convention, 1999 (No. 182)**,<sup>7</sup> defines as a "child" every person under the age of 18, and mandates the adoption of immediate and effective measures to secure the prohibition and elimination, as a matter of urgency, of the worst forms of child labour, including all forms of slavery or practices similar to slavery;

the use, procuring or offering of a child for prostitution or pornographic activities or for illicit activities; and work which is likely to harm the health, safety or morals of children.

The **Equal Remuneration Convention, 1951 (No. 100)**,<sup>8</sup> requires ratifying States to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. The concept of “remuneration” is broadly defined and includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.

Under the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**,<sup>9</sup> ratifying States undertake to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. For the purpose of Convention No. 111, “discrimination” is defined as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, or any other distinction, exclusion or preference determined by the Member concerned after consultation with representative employers’ and workers’ organization and with other appropriate bodies, which has the effect of “nullifying or impairing equality of opportunity or treatment in employment or occupation”.

## ILO GOVERNANCE CONVENTIONS

The **Employment Policy Convention, 1964 (No. 122)**,<sup>10</sup> requires ratifying States to declare and pursue an active policy designed to promote full, productive and freely chosen employment. National policies must take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and be pursued by methods that are appropriate to national conditions and practices.

Under the **Labour Inspection Convention, 1947 (No. 81)**,<sup>11</sup> ratifying States must maintain a system of labour inspection for workplaces in industrial and commercial workplaces, with possible exceptions for mining and transport. The functions of labour inspection are: (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work; (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. The **Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81)**,<sup>12</sup> extends the application of the provisions of the Convention to activities in the non-commercial services sector.

The **Labour Inspection (Agriculture) Convention, 1969 (No. 129)**,<sup>13</sup> contains similar provisions to those contained in Convention No. 81. It requires ratifying States to establish and maintain a system of labour inspection in agriculture. Member States may also undertake to cover by labour inspection in agriculture one or more of the



following categories of persons working in agricultural undertakings: (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers; (b) persons participating in a collective economic enterprise, such as members of a cooperative; (c) members of the family of the operator of the undertaking, as defined by national laws or regulations.

The **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**,<sup>14</sup> defines as “representative organizations” the most representative organizations of employers and workers enjoying the right of freedom of association. It requires ratifying States to operate procedures that ensure effective tripartite consultations on replies to questionnaires concerning items on the agenda of the International Labour Conference, the submission of newly adopted ILO standards to national competent authorities, the re-examination of unratified Conventions and Recommendations, reports to be made on the application of ratified Conventions, and proposals for the denunciation of ratified Conventions. Employers and workers must be represented on an equal footing on any bodies through which consultations are undertaken and their representatives must be freely chosen by their representative organizations. Consultations must take place at appropriate intervals, at least once a year.

## ILO TECHNICAL STANDARDS

### Standards that are directly relevant for workers in non-standard employment

The **Termination of Employment Convention, 1982 (No. 158)**,<sup>15</sup> provides that the employment of a worker must not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. It enumerates grounds that cannot constitute valid reasons for termination, including union membership; the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and absence from work during maternity leave because of illness or injury. Particular requirements apply in cases of termination of employment for economic, technological, structural or similar reasons. Member States may exclude certain categories of employees from all or some of the provisions of the Convention: (a) workers engaged under a contract of employment for a specified period of time or a specified task; (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration; and (c) workers engaged on a casual basis for a short period. Nonetheless, adequate safeguards must be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Convention.

The **Termination of Employment Recommendation, 1982 (No. 166)**, enumerates the different types of safeguard measures that may be adopted: (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;

(b) deeming contracts for a specified period of time, other than in the above cases, to be contracts of employment of indeterminate duration; and (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the above cases, to be contracts of employment of indeterminate duration.

While recognizing the economic importance of part-time work and its role in facilitating additional employment opportunities, the Preamble to the **Part-Time Work Convention, 1994 (No. 175)**,<sup>16</sup> also stresses the importance of productive and freely chosen employment for all workers, and the need to ensure protection for part-time workers in the areas of access to employment, working conditions and social security. Convention No. 175 applies to all part-time workers defined as employed persons whose normal hours of work are fewer than those of comparable full-time workers. Some categories of workers or establishments may be excluded from its scope under certain conditions. The Convention seeks to ensure equal treatment between part-time workers and comparable full-time workers, in different ways. First, part-time workers are to be granted the *same protection* as comparable full-time workers in relation to the right to organize, the right to bargain collectively, and the right to act as workers' representatives; occupational safety and health; and discrimination in employment and occupation. Second, measures must be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately, is lower than that of comparable full-time workers. Third, statutory social security schemes based on occupational activity should be adapted so that part-time workers enjoy *conditions equivalent* to those of comparable full-time workers. These conditions may notably be determined in proportion to hours of work, contributions or earnings. Fourth, part-time workers must also enjoy *equivalent conditions* with respect to maternity protection; termination of employment; paid annual leave and paid public holidays; and sick leave, it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings. With certain exceptions, the right to enjoy such "equivalent conditions" may be limited to those part-time workers whose hours of work or earnings are above certain thresholds, provided that the most representative organizations of employers and workers are consulted on this subject<sup>17</sup> and that such thresholds are sufficiently low as not to exclude an unduly large percentage of part-time workers. Furthermore, they must be periodically reviewed, in consultation with the most representative workers' and employers' organizations.

The **Part-Time Work Recommendation, 1994 (No. 182)**, calls for the progressive reduction of threshold requirements and provides that, where part-time workers have more than one job, their total hours of work, contributions or earnings should be taken into account in determining whether they meet threshold requirements in statutory social security schemes which are based on occupational activity. Recommendation No. 182 encourages the adoption of additional measures regarding the consultation of the representatives of the workers concerned on the introduction or extension of part-time work on a broad scale and related rules and procedures. In addition, information must be given to part-time workers on their specific conditions of employment. It also addresses the number and scheduling of working hours of part-time workers, changes in and work beyond the agreed work schedule, and leave, as well as access of part-time workers to training, career opportunities and occupational mobility. In addition, where

obligations on employers depend on the number of the workers they employ, part-time workers should normally be counted as full-time workers.

The Preamble to the **Private Employment Agencies Convention, 1997 (No. 181)**,<sup>18</sup> recognizes the role which private employment agencies may play in a well-functioning labour market, while recalling the need to protect workers against abuses. Ratifying States are required to take measures to ensure that workers recruited by private employment agencies are not denied the right to freedom of association and the right to collective bargaining, and that the agencies treat workers without discrimination. Private employment agencies also cannot charge directly or indirectly fees or costs to workers: specific exception to this provision may nonetheless be authorized by public authorities, in the interest of the workers concerned, and after consulting the most representative organizations of employers and workers. Ratifying States are also required to take the necessary measures to ensure adequate protection for the workers employed by private employment agencies, and to determine and allocate the respective responsibilities of private employment agencies and of user enterprises in relation to freedom of association; collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers' claims; and maternity and parental protection and benefits.

The **Private Employment Agencies Recommendation, 1997 (No. 188)**, supplements Convention No. 181 by providing, inter alia, that workers employed by private employment agencies and made available to user enterprises should, where appropriate, have a written contract of employment specifying their terms and conditions of employment, with information on such terms and conditions provided at least before the effective beginning of their assignment. In addition, private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

The **Employment Relationship Recommendation, 2006 (No. 198)**, provides that member States should formulate and apply a national policy in order to guarantee the effective protection for workers in an employment relationship. These policies should include measures to provide guidance on establishing the existence of an employment relationship and on the distinction between employed and self-employed workers, and to combat disguised employment relationships, for example, in situations where some forms of contractual arrangements may be used that hide the true legal status of workers. National policies should, inter alia, include measures to ensure standards that are applicable to all forms of contractual arrangements, including those involving multiple parties; to ensure that such standards establish who is responsible for the protection contained therein; to provide effective access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship; and to ensure compliance with laws and regulations concerning the employment relationship. Moreover, national policies should ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including women workers as well as the most vulnerable workers, young workers, older workers, workers in the

informal economy, migrant workers and workers with disabilities. The Recommendation also provides that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized by the parties. For the purpose of facilitating the determination of the existence of an employment relationship, member States should consider the possibility of the following measures: (a) allowing a broad range of means for determining the existence of an employment relationship; (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators are present; and (c) determining, following prior consultations with the most representative organizations of employers and workers, that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed.

Although home work is not explicitly addressed in this report as a separate non-standard form of employment, the **Home Work Convention, 1996 (No. 177)**,<sup>19</sup> is relevant since “[h]omeworkers, the majority of whom are women, constitute a particularly vulnerable category of workers on account of their often informal status and lack of legal protection, their isolation and their weak bargaining position”.<sup>20</sup> Convention No. 177 defines the term “home work” as work carried out by a person (the homemaker) (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions. Convention No. 177 requires ratifying States to adopt, implement and periodically review a national policy aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers. Such a policy must promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work. In addition, when the use of intermediaries in home work is permitted, the respective responsibilities of employers and intermediaries must be determined by laws and regulations or by court decisions.

The **Maternity Protection Convention, 2000 (No. 183)**,<sup>21</sup> is particularly significant for the scope of this report since it expressly provides for its application to all employed women “including those in atypical forms of dependent work”. Convention No. 183 contains provisions on health protection for pregnant and breastfeeding mothers, on maternity leave and cash benefits, on employment protection and non-discrimination, as well as on breastfeeding breaks.

Besides the abovementioned instruments, several other Conventions and Recommendations are relevant to the scope of this report, as international labour standards are normally applicable to all workers, unless otherwise specified. In addition to those already mentioned are the following standards, grouped by subject.

## Other ILO standards

### Equality of opportunity and treatment

The **Workers with Family Responsibilities Convention, 1981 (No. 156)**,<sup>22</sup> expressly states that it applies to all branches of economic activity and to all categories of workers. With a view to creating effective equality of opportunity and treatment for men and women workers, ratifying States must seek to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. In particular, all measures compatible with national conditions and possibilities must be taken to enable workers with family responsibilities to exercise their right to free choice of employment, as well as to take account of their needs in terms and conditions of employment and in social security. Convention No. 156 also provides that family responsibilities may not constitute, as such, a valid reason for dismissal.

### Vocational guidance and training

The **Paid Educational Leave Convention, 1974 (No. 140)**,<sup>23</sup> defines paid educational leave as leave granted to a worker for educational purposes for a specified period during working hours and with adequate financial entitlements. It requires ratifying States to formulate and apply a policy designed to promote, by stages as necessary, the granting of paid educational leave for the purpose of training at any level; general, social and civic education; and trade union education. Such policy must be designed to contribute, inter alia, to the acquisition, improvement and adaptation of occupational and functional skills, and the promotion of employment and job security in conditions of scientific and technological development and economic and structural change. As necessary, special provisions concerning paid educational leave must be established: (a) where particular categories of workers, such as workers in small undertakings, rural or other workers residing in isolated areas, shift workers or workers with family responsibilities, find it difficult to fit into general arrangements; (b) where particular categories of undertakings, such as small or seasonal undertakings, find it difficult to fit into general arrangements, it being understood that workers in these undertakings would not be excluded from the benefit of paid educational leave.

The **Human Resources Development Convention, 1975 (No. 142)**, requires ratifying States to develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.

The **Human Resources Development Recommendation, 2004 (No. 195)**, supplements Convention No. 142 and encourages ILO member States to formulate, apply and review – based on social dialogue – national human resources development, education, training and lifelong learning policies which are consistent with economic, fiscal and social policies. Such policies should, inter alia, facilitate lifelong learning and employability as part of a range of policy measures designed to create decent jobs, as well as to achieve sustainable economic and social development.



## Wages

The **Protection of Wages Convention, 1949 (No. 95)**,<sup>24</sup> applies to all persons to whom wages are paid or payable, although certain exclusions are allowed. It requires that wages be paid only in legal tender. The partial payment of wages in kind may be authorized under certain conditions. Wages must normally be paid directly to the worker concerned and employers must be prohibited from limiting in any manner the freedom of the worker to dispose of his or her wages. Deductions from wages may be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his/her representative or to any intermediary (such as a labour contractor or recruiter), must be prohibited. Wages must be paid regularly and, upon the termination of a contract of employment, a final settlement of all wages due must be effected within a reasonable period of time. In the event of the bankruptcy or judicial liquidation of the undertaking, workers must be treated as privileged creditors as regards wages due to them within certain prescribed limits.<sup>25</sup>

The **Minimum Wage Fixing Convention, 1970 (No. 131)**,<sup>26</sup> requires ratifying States to establish a minimum wage system covering “all groups of wage earners whose terms of employment are such that coverage would be appropriate”. In connection with such a system, provision must be made for full consultation with representative organizations of employers and workers concerned. According to Convention No. 131, minimum wages must have the force of law and cannot be subject to abatement. Contingent on this requirement, freedom of collective bargaining must be fully respected. Convention No. 131 also provides that the elements to be considered when determining minimum wage levels must include, so far as possible and appropriate in relation to national practice and conditions, the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; as well as economic factors, including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment.

The **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**,<sup>27</sup> requires the inclusion, in public procurement contracts, of labour clauses “to the effect that workers employed to carry out the contract shall receive wages and shall enjoy working conditions that are no less favourable than those established for the same work in the area where the work is being done by collective agreement, arbitration award or national laws and regulations”. The objectives of the Convention are twofold: “[f]irst, to remove wages, working time and working conditions being used as elements of competition among bidders for public contracts, by requiring that all bidders respect, as a minimum, certain locally established standards” and “[s]econd, to ensure that public contracts do not exert downward pressure on wages and working conditions”.<sup>28</sup> The Convention also applies to work carried out by subcontractors or assignees of contracts, and competent national authorities must take appropriate measures to ensure that it is applied in these cases.



### Working time

The **Hours of Work (Industry) Convention, 1919 (No. 1)**,<sup>29</sup> limits normal hours of work to eight per day and 48 per week. A number of exceptions may be introduced under strict conditions, for instance in case of accident or *force majeure*, or for processes which by nature must be carried on continuously by a succession of shifts. Workers may also perform overtime to enable the employer to cope with exceptional cases of pressure of work. Regulations providing for such temporary exceptions must be adopted only after consultation with the organizations of employers and workers concerned. They must fix the maximum number of additional hours allowed in each instance, and the rate of pay for overtime must not be less than 1.25 times the regular rate.

The **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)**,<sup>30</sup> contains similar provisions to those of Convention No. 1. The provisions apply to “commercial or trading establishments”, “establishments and administrative services in which the persons employed are mainly engaged in office work”, and “mixed commercial and industrial establishments, unless they are deemed to be industrial establishments”.

The **Forty-Hour Week Convention, 1935 (No. 47)**, calls on States to make continuous efforts for the reduction of working hours, both as a response to widespread unemployment and to enable workers to share in the benefits of technical progress. When ratifying the Convention, ILO member States declare their approval of the principle of a 40-hour week applied in such a manner that the standard of living is not reduced in consequence, and the taking or facilitating of appropriate measures to secure this end.

The **Reduction of Hours of Work Recommendation, 1962 (No. 116)**, promotes the progressive reduction of normal hours of work and establishes the 40-hour week as the social standard to be reached by stages if necessary. Measures adopted to reach this objective should be implemented in a manner suited to the particular national circumstances and the conditions in each sector of economic activity. Further, where the duration of the normal working week exceeds 48 hours, immediate steps should be taken to bring it down to this level.

Under the **Weekly Rest (Industry) Convention, 1921 (No. 14)**,<sup>31</sup> all staff employed in any industrial undertaking, public or private, must benefit from a weekly rest of at least 24 consecutive hours. This rest must, wherever possible, be granted simultaneously to the whole staff of each undertaking, and coincide with the days already established by the traditions or customs of the country or district. Total or partial exceptions may be authorized, with special regard being had to all proper humanitarian and economic considerations and after consultation with employers’ and workers’ organizations.

The **Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)**,<sup>32</sup> has a similar scope of application as Convention No. 30. It establishes the same basic requirements as Convention No. 14 as regards the right to a weekly rest of at least 24 consecutive hours. It also requires that the traditions and customs of religious minorities be, as far as possible, respected. Special weekly rest schemes may be introduced where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the normal rules cannot be applied. In addition, temporary exemptions may be granted in a number of

cases, including *force majeure*, to prevent the loss of perishable goods, or in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures.

Every person to whom the **Holidays with Pay Convention (Revised), 1970 (No. 132)**,<sup>33</sup> applies has the right to annual paid leave of at least three weeks for one year of service, and must receive in respect of that period at least his or her normal or average remuneration. A minimum period of service may be required for entitlement to any annual holiday with pay, but cannot exceed six months.

### Social security

The **Social Protection Floors Recommendation, 2012 (No. 202)**, aims at providing guidance to member States to establish and maintain social protection floors as a fundamental element of their national social security systems, and to implement such floors within strategies for the extension of social security with the aim of progressively providing for higher levels of social security to as many people as possible, guided by ILO social security standards. Member States should, in accordance with national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees to be provided to at least “all residents and children”, including at the least access to a nationally defined set of goods and services constituting essential health care, including maternity care, and basic income security for children, persons in active age who are unable to earn sufficient income, and older persons. When designing and implementing national social protection floors, member States should, inter alia, ensure coordination with other policies that enhance formal employment, income generation, education, literacy, vocational training, skills and employability that reduce precariousness, and that promote secure work, entrepreneurship and sustainable enterprises within a decent work framework.

The **Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)**, requires ratifying States to take appropriate steps to coordinate their system of protection against unemployment and their employment policy. They are also required to declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security. They must endeavour to establish, subject to national law and practice, special programmes for identified categories of disadvantaged persons having or liable to have difficulties in finding lasting employment, such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country and workers affected by structural change. In respect of social security, Convention No. 168 increases both the level of unemployment benefits and the contingencies to be covered, compared to previous ILO standards. In addition to full unemployment, ratifying States must endeavour to extend the protection of the Convention to, inter alia, partial unemployment. They must also endeavour to provide the payment of benefits to part-time workers who are actually seeking full-time work. In addition, statutory social security schemes which are based on occupational activity must be adjusted to the occupational circumstances of part-time workers, unless their hours of work or earnings can be considered as negligible.

### Transition from the informal to the formal economy

The **Recommendation concerning the Transition from the Informal to the Formal Economy, 2015 (No. 204)**, provides guidance to facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship; to promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; as well as to prevent the informalization of formal economy jobs. Under this instrument, the term "informal economy" refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements, excluding illicit activities. Recommendation No. 204 applies to all workers and economic units in the informal economy, including own-account workers, employers, and employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, among whom those in subcontracting and in supply chains, or as paid domestic workers employed by households, as well as workers in unrecognized or unregulated employment relationships. Under the Recommendation, Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units. They should also ensure that an integrated policy framework to facilitate the transition to the formal economy is included in national development strategies or plans as well as in poverty reduction strategies and budgets. This framework should address, inter alia, the establishment of an appropriate legislative and regulatory framework; the organization and representation of employers and workers to promote social dialogue; the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace; effective OSH policies; efficient and effective labour inspections; and income security, including appropriately designed minimum wage policies. Members should also take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy and put in place appropriate mechanisms or review existing ones to ensure compliance with national laws and regulations, including to ensure recognition and enforcement of employment relationships, so as to facilitate the transition to the formal economy.

## NOTES

- 1 Convention No. 87 came into force on 4 July 1950 and has been ratified by 153 ILO member States.
- 2 Convention No. 98 came into force on 18 July 1951 and has been ratified by 164 ILO member States.
- 3 Convention No. 29 came into force on 1 May 1932 and has been ratified by 178 ILO member States.
- 4 The Protocol will enter into force on 9 November 2016 and has been ratified by 8 ILO member States.
- 5 Convention No. 105 came into force on 17 January 1959 and is in force for 173 ILO member States.
- 6 Convention No. 138 came into force on 19 June 1976 and has been ratified by 169 ILO member States.
- 7 Convention No. 182 came into force on 19 November 2000 and has been ratified by 180 ILO member States.
- 8 Convention No. 100 came into force on 23 May 1953 and has been ratified by 172 ILO member States.
- 9 Convention No. 111 came into force on 15 June 1960 and has been ratified by 173 ILO member States.
- 10 Convention No. 122 came into force on 15 July 1966 and has been ratified by 111 ILO member States.
- 11 Convention No. 81 came into force on 7 April 1950 and has been ratified by 145 ILO member States.
- 12 The Protocol came into force on 9 June 1998 and has been ratified by 11 ILO member States.
- 13 Convention No. 129 came into force on 19 January 1972 and has been ratified by 53 member States.
- 14 Convention No. 144 came into force on 16 May 1978 and has been ratified by 139 ILO member States.
- 15 Convention No. 158 came into force on 23 November 1985 and is in force for 35 ILO member States.
- 16 Convention No. 175 came into force on 28 February 1998 and has been ratified by 16 ILO member States.
- 17 Exclusions may be introduced both for statutory social security schemes (except employment injury benefits) and for most of the measures taken in the area of working conditions (except maternity protection measures other than those provided under statutory social security schemes).
- 18 Convention No. 181 came into force on 10 May 2000 and has been ratified by 32 ILO member States.
- 19 Convention No. 177 came into force on 22 April 2000 and has been ratified by 10 ILO member States.
- 20 ILO, 2014h.
- 21 Convention No. 183 came into force on 7 February 2002 and has been ratified by 32 ILO member States.
- 22 Convention No. 156 came into force on 11 August 1983 and has been ratified by 44 ILO Members.
- 23 Convention No. 140 came into force on 23 September 1976 and has been ratified by 35 ILO member States.
- 24 Convention No. 95 entered into force on 24 September 1952 and is currently ratified by 97 ILO member States.
- 25 The Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which partially revises Convention No. 95, provides for the protection of wage claims in the event of an employer's insolvency, by means of a privilege and/or through a guarantee institution.
- 26 Convention No. 131 came into force on 29 April 1972 and has been ratified by 53 ILO member States.
- 27 Convention No. 94 entered into force on 20 September 1952 and is currently ratified by 61 ILO member States.
- 28 ILO, 2008.
- 29 Convention No. 1 came into force on 13 June 1921 and is currently in force for 47 ILO member States.
- 30 Convention No. 30 came into force on 29 August 1933 and is currently in force for 27 ILO member States.
- 31 Convention No. 14 came into force on 19 June 1923 and has been ratified by 120 ILO member States.
- 32 Convention No. 106 came into force on 4 March 1959 and has been ratified by 63 ILO member States.
- 33 Convention No. 132 came into force on 30 June 1973 and has been ratified by 37 ILO member States. It is to be noted that each Member may accept the obligations of the Convention separately: (a) in respect of employed persons in economic sectors other than agriculture; (b) in respect of employed persons in agriculture.

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# Non-standard employment around the world

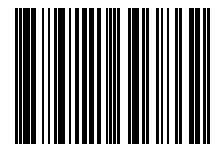
## Understanding challenges, shaping prospects

Non-standard employment, including temporary work, part-time work, temporary agency work and other multi-party employment arrangements, disguised employment relationships and dependent self-employment, has become a contemporary feature of labour markets the world over. This report documents the incidence and trends of non-standard employment across different countries of the world and explores the reasons behind this phenomenon, including increased firm competition, shifting organizational practices of firms, and changes and gaps in the regulation of work.

It assesses the implications for workers' pay, income security and other conditions of work, as well as the effects on firms, labour markets and society in general. The report reviews international, regional and national regulation of non-standard employment, identifying differences across countries as well as promising legislative responses for ensuring decent work. It also analyses other policy responses such as strengthening workers' organizations and collective bargaining, redesigning social protection systems, and further policies for addressing labour market governance.

The ultimate objective is to provide guidance on practices that can help ensure worker protection, sustainable enterprises and well-functioning labour markets.

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