



Reducing Precarious Work

Protective Gaps and the Role of Social Dialogue in Spain

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Overview

This research briefing highlights the significant challenges in identifying, addressing and reducing the prevalence of precarious work in the Spain. Precarious work is found among both standard and non-standard forms of employment as a result of four inter-related 'protective gaps': *employment rights; social protection and integration; representation; and enforcement*. Spain has been troubled for decades by a high level of precarious employment and it is a major source of concern. As in other countries, precarious work erodes both material standards at work and the norms of good employment and redistributes risks from employers to workers and the state.

In Spain, precariousness goes hand in hand with high unemployment as the two structural characteristics of the Spanish labour market. The main form of precarious work, temporary employment, began with the 1984 labour reform that liberalized its use in order to boost job creation in a context of stagnation and high unemployment. While the reform encouraged greater use of fixed-term contracts, reaching a peak of one in three employees, it did not impact on unemployment, which has tended to be more influenced by economic cycles than deregulatory reforms.

The four 'protective gaps' impact upon different types of precarious jobs in different ways. This briefing summarises key findings for workers in standard employment and in three forms of non-standard work: temporary work; involuntary part-time; and varying cost-driven subcontracted work. Our detailed case studies show that social dialogue can play a positive role in closing protective gaps and reducing precarious work. However, in a context of massive unemployment and labour market deregulation those engaged in efforts to improve conditions, whether employers, unions, public authorities or civil society organisations, are running against the wind.

Identifying 'Protective Gaps' in Spain

This research has developed the novel framework of 'protective gaps' in order to capture the multi-layered experiences and meanings of precarious employment, its variety in different sector and country contexts and associated prospects for labour market inclusion. Drawing on expert interviews and secondary data, the research mapped the character of four interlocking protective gaps in Spain.

i) Employment rights gaps

De jure standard employment rights in the Spain are similar to those in other European countries. Moreover, there is scope for employers and unions to improve, coordinate and integrate rights through collective bargaining. The major challenge facing employment rights in Spain is the high level of unemployment, even during periods of strong economic and employment growth. High unemployment rates affect employment rights through two different channels: i) by contributing to the growth of informal employment, excluded from any employment rights whatsoever; ii) by facilitating a never-ending process of labour market deregulation (more than 50 reforms since the 1980 Labour Code reform), mostly aimed at reducing workers' rights under the assumption that such rights hinder employment creation.

Use of statutory general extension of collective agreements implies that, with few exceptions (see below), most employees are covered by collective agreements regardless of their specific employment contract. Employment rights bargained through collective agreements are buttressed by statutory regulations that set minimum standards in important areas such as working time, for example. In

contrast, the role of the statutory minimum wage in Spain is limited by the relatively small number of employees who receive it due to its very low level, the lowest in fact in the EU¹.

The role of European directives in the process of setting statutory minimum rights across all types of employment relations cannot be downplayed. The recent ruling of the European Court of Justice about the need to treat temporary and open-ended employees equally regarding dismissal costs is a clear illustration.² However, protective gaps remain. In particular, cost-driven subcontracting dilutes employment standards along the supply chain, equal treatment of temporary employees suffers from non-compliance, and the apparent rise of false self employment tests the applicability of employment rights in these 'grey' areas of the labour market.

ii) Social protection and integration gaps

The second protective gap interacts in important ways with forms of precarious employment. The Spanish social protection system is characterised by a) a close relation between social rights and a person's employment record for the majority of social benefits (with the exception of healthcare, which is quasi-universal for residents) and b) a comparatively low expenditure on social assistance³.

Workers' eligibility for social protection depends largely on their work status and record. Precarious employment therefore has a profound impact on future rights to social benefits from the moment it affects a worker's contribution record. Temporary employees have problems accumulating pension and unemployment rights due to the higher risk of unemployment. Part-time employees, most of whom are women, make contributions to social security in proportion to their working time, leading also to lower pensions. In response, a new social agreement by the major trade unions (CC.OO and UGT), employers' organizations (CEOE and CEPYME) and the government⁴ established a more advantageous method for calculating part-timers' working hours in order to facilitate their entitlement to pension coverage. Nevertheless, pensions for part-timers are still far lower than for full-timers. The same can be said about pensions for the self employed. Because a high share of self employed choose the minimum social security contribution, their average pension is lower than for all employees (€679 and €1,149, respectively⁵). Regarding unemployment protection, while a 2007 reform⁶ recognized the right of the self employed to a form of unemployment benefits ('compensation for end of activity'), it is a voluntary, opt-in arrangement (only one in five are covered), the duration of benefits is lower, and most applications (around 80%) are rejected due to insufficiently convincing proof of end of activity.

iii) Representation gaps

Statutory extension of collective agreements supports high coverage of employees (around 80%), despite relatively low, albeit stable, union membership (around 17%). Thus, excluding the self-employed and the few sectors (civil servants and domestic employees) that do not have a collective agreement by law, most workers are covered regardless of contract type. Moreover, the 2007 Self Employment Statute recognizes the right to a kind of pseudo collective agreement –'Agreement of Professional Interest' - for workers known as 'Economically Dependent Self Employed' (TAED in the Spanish acronym) who work mostly for a single client. While there are no formal differences in the eligibility of different groups of workers for representation through unions and other channels of social dialogue, in practice

¹ Eurostat data estimates it at just 34% of average monthly earnings, compared for example to 41% for the UK, 42% Germany, 48% France and 51% Slovenia.

² Tribunal de Justicia de la Unión Europea (Sala Décima) de 14 de septiembre de 2016 sobre los asuntos acumulados C 184/15 y C 197/15, y C 16/15, sobre sucesivos contratos de duración determinada en el sector público.

³ Social exclusion benefits in Spain are a meagre 0.2% of GDP, compared to 0.5% (EU15), 1.2% (Denmark) and 0.8% (France) (Eurostat 2012).

⁴ Royal Decree-Law 11/2013, of August, 2, for the Protection of Part-Time Workers and other economic and social urgent measures.

⁵ Data for new pensioners, sourced from Estadísticas de Pensiones contributivas del Sistema de Seguridad Social, all pension types, 2016.

⁶ The *Self Employed Statute*, 20/2007 law of 11th of July.

certain groups are under-represented, such as migrant workers, temporary employees and employees of small firms with no formal system of representation. Although unions have attempted to involve worker in precarious employment through campaigning,⁷ there remain sizeable differences in affiliation rates by gender, age, activity, firm size and type of contract (table 1).

Table 1. Union membership rates by gender, age, activity, type of contract and firm size

Gender and age		Activity	Type of contract and firm size		
Total	16.4	Agriculture	17.7	Type of contract	
Male	17.8	Industry	20.4	Full time	13.0
Female	14.8	Construction	9.5	Part time	23.0
		Retail and Wholesale Trade	8.9		
Age		Transport	21.7	Employees	
16-24	7.1	HORECA	8.3	< 10	6.6
25-29	9.2	Information, Communication and Finance	22.0	From 10 to 49	11.9
30-44	16.2	Public Administration & Defence	33.0	From 50 to 249	17.7
45-54	21.1	Education	24.8	250 or more	29.2
55 +	19.9	Health and Social services	22.2		

Source: Authors' analysis from *Encuesta de Condiciones de Vida en el Trabajo* 2010 (Survey of Working Conditions).

iv) Enforcement gaps

Although we lack statistical evidence on enforcement levels, the comparatively high level of informal employment, the large number of micro firms⁸ with no union delegates or union presence and the under-resourced Labour Inspectorate suggest enforcement of rights is highly variable. The structure of certain types of work (e.g. temporary employment in small firms with no union representatives) combined with cost-cutting employer practices (e.g. non-payment of overtime) means employees risk falling below minimum standards.

Regarding the Labour Inspectorate, in 2009 Spain had 1,798 civil servants (inspectors and sub-inspectors) responsible for enforcing labour, social security and health and safety regulations, that is, around 11,000 workers per labour inspector.⁹ But as important as the resources allocated to labour inspections are, it is the priorities set by the administration that set the agenda. In 2013, a large majority of inspections focused on combatting the informal economy and foreign workers without working permits, while only 2 per cent concerned regulating temporary contracts.

Types of Precarious Work

Diminished standard employment

Although standard employment relationships, namely full-time and permanent jobs, are often the benchmark against which we define precarious employment, the truth is that precarious work can also be found among full-time, permanent jobs. Job security standards have diminished due to the erosion of statutory rules on redundancy payments, placing Spain well below countries such as Germany or France on the OECD's index of employment protection for employees with open ended contracts.¹⁰ At the same time, two consecutive reforms have reshaped rules governing collective bargaining:

⁷ See, for example, the recent publication by CC.OO (2016): *Repensar el Sindicato (Rethinking the Trade Union)*.

⁸ In 2016, three in five (62%) firms with employees had two or less employees.

⁹ Authors' calculation based on the Labour Force Survey and *Memoria de la Inspección de Trabajo y Seguridad en España* (2014).

¹⁰ OECD Employment protection summary indicators, accessed from EPRC_V3, 2013.

- increased options for firms to opt out of collective agreements;
- eliminated ‘ultra-activity’, whereby a collective agreement was considered valid after its expiration until a new agreement was signed, now limited to one year; and
- granted pre-eminence to firm level collective agreements.

These reforms were implemented in a context of wage stagnation. Spain had already recorded real wage gains below 1 percent in the immediate pre-crisis years. This was followed by real wage deflation amounting to a cumulative 5.4 percent drop in average real wages from 2009 to 2015.

Regarding social protection, gaps in unemployment benefits are widespread resulting from the higher unemployment rates and longer unemployment spells confronted by many groups of workers – especially pronounced for migrant workers for example. In 2016 (2nd quarter) less than half of all unemployed workers received unemployment benefits.¹¹ Regarding pension rights, two consecutive reforms (among others) extended retirement age to 67 years old, increased the number of years for entitlement for pension rights from 15 to 25,¹² and eliminated the automatic price index for pension rises with a further cap of 0.25% in times of deficit of the social security system. On the other hand, the first of the reforms, bargained *in extremis* with trade unions, eventually recognized the need to make additional contributions for working mothers to compensate for leave due to motherhood.

Part-time employment

Part-time work in Spain was for a long time a marginal form of employment. Then, partly due to various regulatory reforms that eliminated negative discrimination -in terms of social contributions in particular- at the turn of this century part-time employment began to gain momentum. Nevertheless, prior to the crisis only one in ten workers (11 percent) were in part-time employment. Then, the crisis and its aftermath lead to a significant acceleration in its use, reaching 16 percent of total employment by 2015 (one in four female workers who make up three quarters of all part-time workers). In Spain, part-time work is largely ‘demand driven’ such that employers design flexible and low hours contracts to follow the contours of demand as opposed to workers’ preferences. In 2015 more than three in five part-timers were in fact involuntary, up from one in three pre-crisis (figure 1). Low hours are a major source of precariousness that adds to low wages: part-timers faced a widening pay gap of 20 percent in 2013 (14 percent in 2008), mostly unaccounted for by differences in workers’ characteristics.

Temporary work

Temporary employment is the oldest and most important source of precarious employment in Spain. Before the crisis, as many as one in three (35 percent) employees were on fixed-term contracts. The concentration of job losses among this kind of contract during the first year of the Great Recession reduced this share to 22 percent, but with the recovery the rate has risen to 25 percent. Fixed-term contract employees face a major protection gap regarding dismissal compensation, as they have a right to just 12 days compensation at contract end compared to 20 days for those with open-ended contracts (higher in cases of unfair dismissal). The European Court of Justice has recently challenged this difference in treatment. Moreover, the existence of very short contracts (one quarter (26%) last less than 7 days, while the average is 77 days) often prevent employees reaching the employment continuity thresholds required to access different social benefits. Likewise, they have less chance of profiting from

¹¹ 43% received contributory and/or non-contributory unemployment benefits, calculated as the average number of persons receiving unemployment benefits divided by the total number of unemployed (Labour Force Survey).

¹² According to Muñoz de Bustillo et al. (2011) ‘Working life and retirement pensions in Spain: The simulated impact of a parametric reform’, *International Social Security Review*, 64(1): 73-93, the increased number of years considered when calculating pension rights reduces total pensions by 1% per year. Having said that, the reform may benefit those workers unemployed in later years of active working life.

seniority wage bonuses which are widely used in Spain.¹³ The result is a widening wage gap of 36 percent in 2013 (up from 31 percent in 2008), largely unaccounted for by workers' characteristics. Having a temporary contract also implies lower experience of training provision.

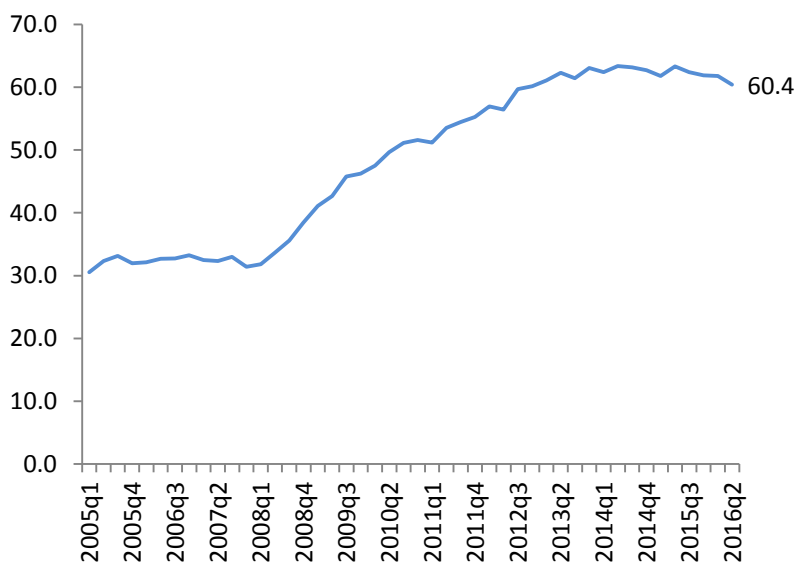


Figure 1. Trends in involuntary part time employment 2005-16

Source: Spanish LFS, authors' compilation.

Cost-driven subcontracting work

Subcontracting is often driven by cost cutting considerations and might lead, in the absence of productivity gains due to specialization, to wage reduction and worsening of labour standards. Our analysis covers two types of subcontracting: outsourcing of production activities¹⁴ to other firms; and use of self employed in place of dependent employment. Regarding outsourcing, protection of workers who transfer employers with outsourced activities is governed by the collective agreement or the procurement terms. The major source of gaps typically concerns variation of collective agreements between client and subcontractor organisations (usually with lower conditions in the latter).

Regarding the use of self employed, social partners and the government consider the issue of sufficient importance to have established a special legal employment relationship, the economically dependent self-employee (or TAED) designed to provide some protection to, in the words of the 2007 reform, 'the weakest link in the contractual process'. However, the conversion of employees into self employed transfers part of the employer's costs, such as social security contributions, to the newly self employed and displaces the inherent uncertainties of business. Thus, while the new regulation recognizes certain rights of TAEDs, the low numbers formally granted this new legal status since the enactment of the law cast a shadows on the practical relevance of the legislation.¹⁵

Three Case Studies of Precarious Work

The Spanish research team selected three case studies from different sectors designed to illuminate how processes of social dialogue might reduce precarious work and identify the challenges which remain (table 2). The data reflect the complexity of employment relations across the diverse sectors (economically dependent self-employment, subcontracting in construction and catering assistants), the precariousness of employment across diverse contractual forms (self employed, part-time and

¹³ More than three in five (61%) collective agreements recognize seniority wage bonuses.

¹⁴ It is estimated that one in five (19%) Spanish firms outsourced part of their activity (2009 data).

¹⁵ In December 2014, the number of registered TAEDs was just 9,045. In contrast, in 2004 a special module of the Spanish Labour Force Survey estimated that slightly less than 300,000 self-employed persons worked for a single firm or client. Therefore, a decade ago 16% of self-employment could be considered as dependent self-employment. The corresponding figure for 2014 is slightly lower, 13%.

outsourced services) and the diversity of ways of conducting social dialogue, from traditional collective bargaining, to extensive consultation leading to the enactment of new laws or the use of innovative practices such as the Popular Legislative Initiative. The findings reveal the following conclusions.

i) Improving working conditions or legitimising bogus self-employment?

The approval of the new TAED (economically dependent self-employed) relationship implied the legal recognition of a new type of worker, who is *de jure* independent (in terms of rights) but *de facto* very similar to employees in terms of duties. The TAED legal status acknowledges the subordinate and dependent position of the worker and recognises new rights in terms of (unpaid) vacation, bargaining rights and compensation for unjustified termination of the contract. Comparing the new TAED status with the standard self employed reveals key improvements. Nevertheless, TAED rights fall short of those enjoyed by employees. Overall, while the reform represents a successful strategy to increase protection for certain dependent self employed, it may also have contributed to legitimating a deterioration of standard employment forms via employer conversion of employees to ‘false’ self employed to reduce costs.

Table 2. Summary features of case studies 1-3

	1. Economically dependent self-employment (TAEs)	2. Low hours part-time employment	3. Limitation of chain outsourcing in construction
Sector/occupation	Logistics, Distribution	Catering (outsourced)	Construction
Problems	Informal employment No vacation time No collective negotiation of employment conditions High level of dependency	Very low hours, largely involuntary in a low wage sector	High rate of fatal accidents linked to multi-tier, chain outsourcing Unclear responsibilities for health and safety
Social dialogue levers	Extensive consultation with social actors including unions and associations for the self employed	Traditional collective bargaining. First ever national sector level collective agreement	Union action through first ever use of Popular Legislative Initiative and industrial action leading to higher visibility of the problem and to the enactment of new regulation
Positive outcomes	Recognition of new/differentiated status Recognition of bargaining rights (via Agreement of Professional Interest) Various other new rights	Minimum 10-hours per week Compendium of all different local working conditions in previous agreements to facilitate HR management Higher wage growth to lower wages	Better control of health and safety Clarification of roles and responsibility of client and subcontractors Reduction of fatal accidents Limits to use of temp employment
Issues remaining	Lower rights compared with employees Unequal share of business uncertainty	Low wages and low hours	Non-compliance in small firms, especially important post-crisis with change in industrial organisation of construction sector

ii) Social dialogue against low hours employment

The traditional suspect *par excellence* when addressing the issue of low household income among workers is low wages. The growth of part-time employment in a country where it could be considered a rarity not so long ago is changing this, as now, increasingly often, low hours is as important a reason as low wages behind low incomes, if not more so. The ‘First National Collective Agreement of Catering to Communities’ (such as to schools and care homes) was the subject of this second case study. This radical new agreement addressed this issue by setting a minimum number of hours at 10 per week in order to overturn past practice when it was not unusual for catering assistants (mostly women) to work for as little as 45 minutes per day. The collective agreement also included higher wage increases for these low-wage workers and an agreement not to exploit firm level agreements to undercut conditions set nationally. The agreement also combines all lower level agreements into a single document so as to

facilitate HR management for firms operating in different geographical areas. This is therefore a very welcome example of the successful and mutual benefits of social dialogue in the rather auspicious context of high unemployment and crisis of tripartite social dialogue.

iii) Social dialogue to improve health and safety

This case study is a successful example of social dialogue that stresses the importance of using alternative and imaginative ways of social dialogue when traditional mechanisms of social dialogue are not viable, as well as the importance of persistence. Concerned with the high level of fatal accidents in the construction industry, in 1998 the union CC.OO launched a campaign. It proposed a new limit on the number of successive times a given activity could be subcontracted down the supply chain as a means to improve safety. With this goal, the CC.OO presented for the first time in Spain a 'Popular Legislative Initiative' to the Spanish Parliament, supported by 600,000 firms. Although the Initiative was rejected by Parliament, the campaign was not abandoned. Eight years later the Congress approved the Law for 'Regulating Subcontracting in Construction'. The resulting text, in the words of the then General Secretary of the construction federation of CC.OO, FECOMA, '*while not the text that the trade union would have approved, has very positive elements to start rationalizing the construction sector*'. Ten years after its approval the results are bittersweet due to the changes that have occurred since then in the construction sector, with the growth of small firms and the difficulties of controlling compliance with the law in microenterprises.

So what recommendations?

Our research findings support a call for all stakeholders a) to be more aware of the extensive protective gaps across the Spanish labour market and b) to design and implement effective policy and practice that can both close gaps and reduce the pervasiveness of precarious employment. Our high-priority recommendations addressing all four protective gaps are as follows:

- **Minimum hours** *employment per se is of little use if it isn't also accompanied by rights to preferred working hours;*
- **Strengthened role of inclusive collective agreements and improved capacities for social actors to perform socially responsible bargaining;**
- **Rights and regulation are only as good at improving working conditions of precarious workers as their level of compliance is.** *It is necessary to improve compliance levels especially in those areas where trade unions have low presence; and*
- **Legislate (at local or national level) to require decent employment standards in areas of cost-led subcontracting and high use of temporary work** *(e.g. via extension of best practice social dialogue agreements/outcomes per service activity)*

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