



Reducing Precarious Work

Protective Gaps and the Role of Social Dialogue in France

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Overview

This research study analyses gaps with regard to what might be described as a standard (or good quality) working relationship and looks at how these gaps have developed in a French labour market which has for a long time been characterised by a relatively high rate of (particularly long-term) unemployment. This specificity must be taken into account if we want to understand certain legislation or collective agreements which have been introduced over the last few years. But it must also be seen against the backdrop of intense debate about employment contracts and the ongoing implementation of very recent reforms whose effects are as yet difficult to judge.

Identifying ‘Protective Gaps’ in France

i) Employment rights gaps

The open-ended contract (OEC) is the reference point for an analysis of changing employment standards. It was not legally defined in the labour code as the “standard and general form of employment relationship” until 1982, a considerable time after the 30 years of economic growth which followed World War 2. In spite of the increase in various non-standard forms of employment, the OEC (in which we include civil servant status) remains dominant; accounting for almost 80% of all jobs (salaried or otherwise). This percentage tends to fluctuate in the short-term depending on the economic situation, but it has remained stable since the 2000s.

Most protection standards, which are often set at a higher level than those in the UK or Spain, are laid down in law and/or collective agreements and apply to all salaried jobs. This is certainly the case with the minimum wage, the main types of social protection (maternity leave, health and safety at work regulations, pensions, the personal training account, equal pay), and with unemployment benefit rules.

In principle, therefore, eligibility for these rights extends to a broad sector of the population. In the past, most of these rights were linked to employment contracts and to social security contributions (made by employers and employees) and were based on a model of stable employment. However, evidence of increasing instability in certain sectors of the labour market (yo-yoing between short-term contracts and unemployment, increasing use of fixed term contracts, a greater risk of job loss in the case of older and less well qualified workers, etc.) is gradually steering debate and policies (both governmental and those agreed through collective bargaining) towards the “safeguarding of employment trajectories”, by placing the emphasis on the individual portability of certain rights, regardless of the situation (employment, inactivity, unemployment).

ii) Social protection and integration gaps

Furthermore, there are a number of possible exceptions (for example limited rights for posted workers) as well as de facto limitations related, for example, to the length of time in the job, actual number of hours worked (for eligibility for health insurance, unemployment benefit, etc.).

The social protection system consists mainly of entitlements based on employer and employee contributions. It is, for the most part, managed jointly by social partners, but under close state supervision. It provides wide-ranging cover for all and has redistributive aspects, so it plays a significant role in terms of integration.

However, it appears to be under increasing pressure. The equilibrium of some schemes is being compromised by a reduction in resources due to unemployment and demographic changes.

The main gaps arise, first and foremost, from fragmented employment trajectories, consisting of alternating periods of unemployment, employment and inactivity. Therefore, the poverty rate among the active population is rising, in spite of the social safety net. Some marginal groups are totally or partially excluded from the system when they make no social contribution (through employment). Universal rights have been introduced to give them access to welfare. The “active solidarity income” (revenu de solidarité active or RSA) has recently been extended to include young people between the ages of 18 and 25 (subject to conditions).

Additionally, complementary social protection schemes differ depending on the size of the business and sectoral agreements. Some recent reforms have been introduced to reduce certain gaps. Therefore, a “rechargeable” entitlement to unemployment benefits must, for example, encourage people to return to work, even if this is only for short periods. A top-up health scheme, which has been compulsory since 1 January 2016, should help to narrow the gap between large and small businesses.

iii) Representation gaps

Eligibility for employee representational rights is strong, including the right to join a trade union and to stand for election as a workforce representative. However, the French paradox is well known: trade union density is among the lowest in the OECD but collective bargaining coverage is one of the highest, mainly due to the principle of extension by the state of sectoral collective agreements (80% of which involve a request for extension, which is only rarely refused).

Trade union density may be low, but trade unions are present and active in businesses and employee participation in the election of representatives remains high. Employers’ organisations, however, at both national and industry level, are highly structured.

The main representation gaps result in the main from sector and size effects. Firstly, the various obligations involved are less stringent in the case of small businesses. Secondly, employee representatives have a lesser presence in small businesses. This is further compounded by a sector effect

(for example retailing, domiciliary care and hotels and catering) and, in part, by employment status and employee categories (e.g. temporary and part-time workers).

iv) Enforcement gaps

The French labour inspectorate is a generalist one. It is, therefore, responsible for a wide range of matters relating to work and employment, irrespective of the businesses or sectors concerned. However, due to lack of staff and the broad spectrum of its responsibilities, not all grievances or reports from employees or trade unions can be properly dealt with. Here, too, we see a gap, in that small businesses are inspected less frequently than large ones. In spite of repeated efforts, carrying out checks on businesses which employ posted workers is also difficult.

The question of illegal work is another key issue. The Ministry of Labour has launched a campaign to tackle it. A number of reforms designed to combat illegal working have recently been introduced in sectors such as personal services where individuals employ women illegally on a part-time basis. In addition to this, we are now seeing the emergence of so-called “grey” work, where employers declare the minimum number of hours required to cover themselves legally but increasingly fail to declare all hours worked.

Types of Precarious Work

Changes in the structure of the economy (the growth of the service sector, particularly personal services), in forms of labour management (in a quest for greater internal and external flexibility, with the lengthening of sub-contracting chains), in lifestyle (changes in family structure, people’s desire to work the hours they choose throughout their working lives) are just some factors which can contribute to the creation of new protection gaps.

Diminished standard employment

Much evidence exists of the erosion of the standard employment relationship, particularly where workers’ employment status and standard of living are concerned. In France, a million workers live below the poverty threshold. Although open-ended contracts are still the most widely used type in France (in terms of stock), a third of these contracts are broken within a year and 90% of workers are now taken on fixed-term contracts.

The last few years have seen a kind of erosion of the core workforce with the development of certain fast-expanding sectors. A case in point are the hotel and catering, retailing and personal services sectors, which concentrate a large number of indicators of precarity. Young people and women are overrepresented, and the jobs available are usually unskilled, part-time, low paid and offer very few, if any, training opportunities.

Furthermore, businesses are outsourcing more and more work and jobs to sub-contractors, which are smaller businesses and so, here too, this creates significant protection gaps between small and large businesses. They also contribute to the weakening of workers' collectives and the fragmentation of the workforce, which limits trade union activity or collective action, protests or simply all access to information relating to employees' rights. Since the early 2000s, businesses have increasingly employed workers on contracts which are sometimes so short that they deny workers access to their rights.

Temporary work

In France, the two main types are fixed-term jobs and temporary agency work. In terms of employment flows, they represent the greater (and growing) proportion of new hires. Involving mainly young people, women and the least well qualified, these types of employment are an indication of the increased dualisation of the labour market. For young people, these types of contracts provide a transition phase between school and standard employment. These transitions have been delayed and become more chaotic since the economic crisis leading to deskilling, and leaving some workers trapped in precarious employment.

The main problems with in-work gaps seem to be concentrated in new ways of using these contracts to provide quantitative flexibility in the very short term: in spite of the rules (or thanks to derogations) we have witnessed the growing use of successive very short contracts, which often involve the same person and which can be likened to British "zero hours contracts". This leaves a section of the population trapped in a constantly churning cycle, which takes them from unemployment to employment and then back again. Hours worked are low and it is not easy for labour inspectors or unions to carry out checks.

And the situation is further compounded by representation gaps. It is a fact that trade union density is lower in the case of fixed-term contracts and temporary agency work and that trade unions are often faced with the dilemma as to whether to "defend these workers or defend the standard employment relationship". Furthermore, the fear of joining a trade union or of discrimination on the grounds of union membership, and/or the worker's decision to wait until they have a stable contract before they do so, more frequently affects those on short-term contracts since it is not their career progression which is at stake but their job.

Finally, as a number of rights to social protection are still linked to some form of employment stability, those who find themselves in these precarity traps may be partially or totally excluded from the system, for no other reason than because they can never reach the required length of job tenure.

Self employment and cost-driven subcontracting work

The proportion of self-employed workers in the active population has risen slightly as a result of the economic crisis. This increase is related to the economic situation (unemployment) but, above all, it can be attributed to a large extent to the creation of the new status of 'auto-entrepreneur' (which made it easier for people to set up their own businesses). This, in turn, led to the emergence of the "bogus self-employed" (in transport or home delivery of meals, for example) who are also known as the "economically dependent self-employed", since they are dependent on a client (often their former boss).

It may not be the case for all self-employed people, but a growing number of them find themselves in extremely precarious situations.

Furthermore, we know that conventional self-employed workers (who are not covered by the labour law) work longer hours. Their poverty rate exceeds that of salaried employees and their state of health is generally poorer. These are just some indicators of gaps related to work and social protection.

The workers in these categories sometimes belong to professional associations or groups. But these tend to be more highly qualified workers. All of this, therefore, suggests (although little work has been done on the subject) that the difficulties involved in implementing rights are more serious.

Posted workers constitute a separate and rapidly expanding category, although they are a relatively small group in terms of FTEs. Although, in principle, these contracts are subject to the statutory minimum wage requirements, there are still some legal gaps where, for example, the right to training or health and safety checks are concerned. These workers have very little representation, even though trade unions have targeted information campaigns and operations at them. Each “major project” points to the fact that, in spite of legal protection (bolstered by new obligations which apply to principal contractors), the subcontracting chain is so long and complex that not all rights are enforced. We often see arrangements which are borderline illegal.

Variable and part-time hours employment

In the French context, the significant increase in part-time working, particularly among women, is unique in two respects: it tends to be voluntary (although this term is open to discussion) and it tends to be long-term part-time work. Part-time workers are eligible for most rights. The redistributive function of social protection applies, for example, to pension rights. Therefore, a significant proportion of part-time work may be deemed standard employment. A recent law (which includes many exceptions) has raised the minimum number of hours for part-time contracts to 24.

‘In-work’ gaps fall into two categories. All other things being equal, part-time work often involves a wage penalty and is a handicap where career progression, access to training, etc. are concerned. Involuntary part-time work is often combined with more precarious forms of employment (short-term contracts) which exacerbates protection gaps, particularly in the case of those who are leaving unemployment.

Part-time workers are often less well-represented by trade unions, particularly because part-time work tends to be concentrated in low-skilled jobs, in small businesses.

Social protection gaps are created when the combination of these two factors prevents workers from reaching the coverage threshold. This mainly affects part-timers who work very short hours and are paid the minimum wage.

Four Case Studies of Precarious Work

The four case studies deal with the situations outlined above. Suggested by those involved as examples of ‘good practice’ in the field of social dialogue, we find that their outcomes are sometimes relatively weak. They reveal implementation problems, both with regard to the configuration of actors and the particularity of certain vulnerable groups, who are isolated in their working or everyday lives (table 1).

The first case study examines the question of seasonal employment contracts, a type of fixed term contract which is very widely used in France. The originality here lies in the capacity of employer and trade union actors to work together to reduce the gaps, in a sector which concentrates large numbers of them (housing, illegal working, heightened health and safety risks, etc.) within a given territory, and, at the same time, to improve the quality of the service.

The second case study examines precarity linked to short-term part-time work in the home care sector, one which is dominated by public sector markets. The IRIS project in the home care sector, an initiative which was initially designed to increase employees’ working hours, will ultimately lead to the construction of bridges between jobs in both sectors and this, in turn, will provide a means of safeguarding the employment trajectory of workers in precarious situations.

Table 1. Summary features of case studies 1-4

	1 - Seasonal employment	2 – Short part-time employment	3 – Long part-time employment	4 - Collective agreement and innovation funds
Sector	Hotels restaurants, camping	Home care service, not-for-profit	Large-scale retailing	Cleaning services
Categories involved	Mixed (from students to pensioners)	Mainly women, predominantly older ones	Mainly women	Women, immigrants
Social dialogue and levers	Extended multipartite dialogue, information, mediation	Regional tripartite dialogue, training which leads to qualifications, training for jobseekers	Negotiation at national and business level Increase in working hours beyond the legal minimum for part-time workers	Collective agreement with a social innovation fund, training, health and safety at work, advocating daytime work at one site
Results	Better housing, less illegal working, awareness of health/accident risks, fewer disputes	Easier movement from one job to another, longer working hours in some cases	More workers on long part-time contracts (26 hours), gradual increase in working hours for all	Risk prevention initiatives, training support, integration of difficult to place groups
Limitations and problems	Weakness of social partners. No mandatory rules, so employers may not follow them	Few small businesses involved. Sometimes negative effects of longer working hours (more difficult conditions)	Does not apply to franchised shops. Employees who may give up these long hours. Disagreements during the organisation of work	Big differences between small and large businesses. Risks inherent in multi-employer situations

The third case study examines long hours part-time work in large-scale retailing, which is held up as a model of French long part-time employment. This ‘classic’ form of social dialogue encompasses all levels of negotiation (business and sector) and enables workers to work longer hours, above the new legal minimum of 24 and this, in turn, increases income and helps to reduce social protection gaps.

The final case study, which focuses on the cleaning services industry, examines subcontracting procedures. This sector concentrates numerous protection gaps due to short part-time contracts, low wages and problems relating to health and safety at work. Although their priority is ensuring compliance with employment law, union actors are working to reduce the gaps created by issues such as the dispersal of workplaces by, for example, seeking to work with trade union representatives from the principal contractors' Health and Safety Committees (CHSCT). The innovation fund, funded by a contribution from businesses, also supports a package of training, occupational integration and risk prevention actions.

Benefits and limitations of social dialogue

These case studies bring to light initiatives which are interesting from the point of view of social dialogue and its benefits. Two tendencies coexist in these forms of social dialogue: firstly, the production of contractual rules (standard negotiation) and, secondly, the more informal mobilisation of actors to address new issues relating to information campaigns, for example.

In both forms (and possibly more so in the second, which involves other actors), this dialogue brings better understanding and a more detailed diagnosis of issues relating to precarious employment. These actions to reduce certain risks can sometimes lead to the emergence of others which have less traditionally been topics of social dialogue, such as problems relating to housing (in the case of the Maison du travail saisonnier and the cleaning sector), transport, or illiteracy.

However, it is sometimes difficult to monitor and evaluate the true effects. Only rarely do the schemes implemented include an evaluation component. Furthermore, we have the impression that, up against the double fragmentation of the productive fabric and the workers concerned, it is difficult for them to widen their reach and potentially be extended.

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Website: <http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social>.