International
Labour
Office

Geneva

On-call work in the Netherlands: trends, impact and policy solutions

Susanne Burri

Susanne Heeger-Hertter

Silvia Rossetti

CONDITIONS OF WORK AND EMPLOYMENT SERIES No. 103

INWORK

Conditions of Work and Employment Series No. 103

Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

On-call work in the Netherlands: trends, impact, and policy solutions

Susanne Burri *

Susanne Heeger-Hertter *

Silvia Rossetti **

*School of Law, Faculty of Law, Economics and Governance, Utrecht University (The Netherlands)

**Utrecht University School of Governance, Faculty of Law, Economics and Governance (The Netherlands)

INTERNATIONAL LABOUR OFFICE - GENEVA

Copyright © International Labour Organization 2018

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

Conditions of work and employment series ; no. 103, ISSN: 2226-8944 (print); 2226-8952 (web pdf)

First published 2018

Cover: DTP/Design Unit, ILO

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Printed in Switzerland.

Table of contents

1. Introduction

Flexible work (in Dutch *Flexibele arbeidsrelaties*) has steadily increased in the Dutch labour market and on-call employment represents the fastest growing group. Although on-call work is both the largest and the least institutionally regulated form of flexible employment, little is known on its developments and impacts. The main objective of this study, commissioned by the ILO, is to compensate this gap and provide an insight of the most relevant legal and socio-economic issues concerning the forms of on-call work that are used in the Netherlands. The paper relies both on available data and own research.

First on-call work is defined. However, an unequivocal correspondence between the statistical and legal definition of on-call employment is missing. Great attention is thus paid on the different forms through which on-call jobs[1] are contractually arranged and statistically measured. This preliminary step enhances a correct understanding of the phenomenon: its characteristics, its legal regulations, and its impact for workers, organizations and the society at large.

The scope of on-call work is addressed looking at the historical trends, the incidence and the socio-economic characteristics of on-call work in the light of the main relevant legal developments. The most common characteristics of on-call work are depicted by: gender, age, and educational level, participation in education, origin, sectors, size of the organisations where it is used, and working hours. The goal is here to identify in what respect on-call employees are distinct from permanent employees and, if stricking differences arise, from the rest of flexible employees. If the incidence shows the size of on-call work, the composition gives a hint of the precariousness risks that on-call employees may face when not supported by adequate labour and social protections.

The increased global competition and economic turbulence promote the spread of on-call work. However it is the institutional context that, allowing employers with large freedom in organizing the work relations, is the main responsible of its large diffusion. On-call work is highly beneficial for employers, as it allows to deal with personnel leaves and demand fluctuations (sick and peaks, *ziek en piek*) with the least organisational risks. At the same time, it is disfunctional to maintain a highly skilled and motivated personnel. For employees, on-call work provides more flexibility to reconcile work with private life domains (as education, or household). Nevertheless, it enhances the risk of precariousness if the flexibility is involuntary.

The potential risk for both employers and employees promoted recent statutory measures to regulate on-call work in 1999 and 2015. The social partners have the possibility to derogate from some statutory provisions by collective labour agreements, even to the detriment of employees. This might weaken the protection provided by statutory legislation.

The impact of these measures and derogations on the legal position of on-call workers is first discussed [2] The impact addresses the following aspects: probationary period, presumption of contracted working hours, right to be effectively given work, wages, working time, holiday, entitlement to (care) leaves, protection against discrimination, income protection during sickness, end of on-call contract and transition pay, non-competition clause, and statutory social security (in case of unemployment, work disability, insufficient income, and old age).

The impact of on-call work on workers, organisations and society at large is discussed. Workers' dimensions concern job quality, health, work accidents and income position. Some impact for organisations and society at large is mentioned as far as existing research is available. The risk of precariousness faced by on-call employees in the existing institutional context is used as a base to formulate conclusions and policy recommendations to relevant stakeholders.

This study is limited to the two main forms of on-call work in use in the Netherlands: preliminary agreements (*voorovereenkomsten),* which often generate zero hours fixed-term contracts and employment contracts with a future work obligation (*arbeidsovereenkomst met uitgestelde prestatieplicht*) which can

[1] So-called *oproepkrachten/afroepkrachten or invalkrachten*. We use in the paper both terms and do not differentiate between on-call and on demand jobs, as such distinction is made neither in Dutch statistics nor in law.

[2] Min-max contracts, zero hour contracts, including so-called *voorovereenkomst/overeenkomst met uitgestelde prestatieplicht*, see http://www.dutchcivillaw.com/legislation/dcctitle771010.htm

be either zero-hours or min/max; fixed-term or open-ended. Flexible work relations and on-call work are addressed according to the definitions used in Dutch legislation and by the Dutch national statistical office.

Another limitation concerns the most relevant period concerning the legal developments and the diffusion of on-call work between 1999-2016. Empirical data are provided for the period 2003-2016, unless other time frames are specified. This is because only data since 2003 have been updated to the CBS new definition of working population.

This study is based on existing data from the Dutch national statistical office (CBS- *Centraal Bureau voor de Statistiek*)[3] and existing literature on causes, characteristics and impacts of on-call work in the Netherlands. The main data sources are: the Netherlands Working Conditions Survey (*Nationale Enquête Arbeidsomstandigheden*), the EBB Dutch labour force survey (*Enquête Beroepsbevolking*), and the Income statistics (*Inkomenstatistiek*). For the legal research the sources used are statutory legislation, especially the Dutch Civil Code (CC), the Work and Care Act (WCA) and the Unemployment benefit Act (WW), collective labour agreements, jurisprudence, and literature, including textbooks, articles and reports.

The paper is organized as follows. In section 2 the main developments in the Dutch labour market are introduced. Section 3 is devoted to the legal and statistical definitions of flexible and on-call work. Section 4 deals with trends and distribution of on-call work. In section 5 attention is paid to the causes of on-call work from both the employers and employees' perspective. Section 6 discusses the legislative developments in relation to on-call work, section 7 addresses the legal position of on-call workers, and section 8 gives an insight in some derogations and best practices in collective labour agreements (CLAs). In section 9, the enforcement of existing on-call workers is discussed. Section 10 deals with the impact of on-call work on workers, organizations and society. Conclusions and policy recommendations are presented in sections 11 and 12.

[3] https://www.cbs.nl/

2. Main labour market developments

Social and labour market institutions in the Netherlands promote full social participation through work according to the individual capacities and preferences. Especially in the last two decades, social and labour policies are strongly focused on activation to achieve the individual economic independence and social inclusion (Hemerijk and Marx 2010).

The strong growth of the so-called *flexibele schil* (flexible group of workers formed by flexible employment and self-employment) has been feeding a heated political and public debate in the Netherlands. This debate involves the causes of this trend, its effects, and the policy solutions to balance organisations' and workers' needs (Beer 2016, Kremer, Went et al. 2017).

As the number of fulltime and open-ended jobs has been steadily declining, flexible forms of employment represent the greatest share of the post-crisis employment growth in the Netherlands. The government and social partners adapted the institutional framework to allow for some forms of flexibility and avoid an uncontrolled drift toward precariousness that resulted in the adoption of two main legislative measures: the *Wet flexibiliteit en zekerheid* (Act on Flexibility and Security) and *Wet werk en zekerheid* (Work and Security Act).

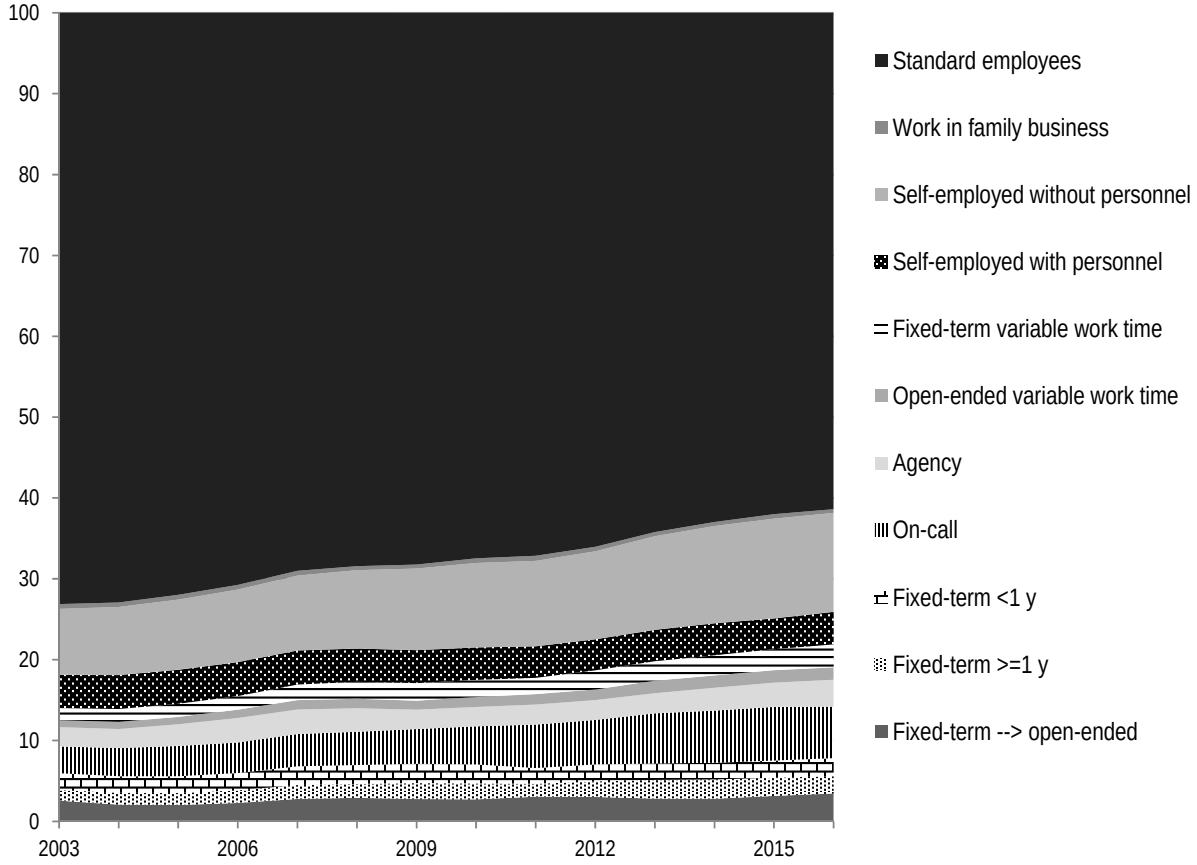
In the Netherlands, already in the early 1980´s a mix of external and internal forces led to an early emergence of part-time work and diverse flexible forms of employment. Along the years, regulations have equalized the position of part-time and full-time workers; fixed-term and permanent workers and since 2000 allowed working time adjustments (Burri 2015). This is not the case for other growing forms of flexible employment, especially temporary agency work (which has however been regulated in some respects) and on-call work, which has not been equalized with other forms of (flexible) employment.

Highly relevant is also the strong rise of self-employed without personnel (*zelfstandig zonder personeel*). As entrepreneurs, they are excluded from all the social and labour protections and face high precariousness if they are not able to handle the business risk.

According to Broughton, Green et al., although all work relations are at some risk of precariousness in the post financial crisis, for flexible work relations (especially if involuntary) this risk is higher. This is because flexible work is associated to lower social and labour rights, which may hinder job and life quality (Broughton, Green et al. 2016).

As shown by the development of the area underneath standard employment in figure 1, the share of flexible workers has strongly increased in the last 14 years. The most significant growth concerned the self-employed without personnel, as well as on-call employees (among others (Chkalova, Goudswaard et al. 2015, Beer 2016, Bolhaar, Brouwers et al. 2016).

Figure 1. Percentage of the workforce in standard and flexible employment relations between 2003 and 2016



Source: EBB (2003-2016), own elaboration

Although the majority of Dutch workers is still employed with a permanent contract, the incidence and the number of flexible work relations is steadily growing. Those relations takes different names that do not often corresponds to the names of the contracts regulated in law.

3. Flexible work relations and on-call work

In this section the concepts concerning flexible and on-call work are discussed according to the current legal definitions. Statistical definitions address the operationalization and thus the way in which trends and outcomes of on-call work are measured.

Both in legal and statistical terms, the most widely accepted definition of flexible work (or *flexibele schil*) is negative. Flexible work is defined as the absence of, in legal terms, a permanent labour contract at a fixed number of working hours (Chkalova, Goudswaard et al. 2015, Beer and Verhulp 2017).

3.1 Legal concepts: definition

3.1.1 Work relations

In Dutch law, there are different types of contract under which a person can perform work. The most important is the employment contract. Employment contracts are, legally spoken, concluded between two parties: the employer and the employee (Article 7:610 Civil Code, hereafter: CC). Employment contracts can be concluded for an indefinite period of time: open-ended as well as for a certain period: fixed-term or temporary. Dutch law provides for equal treatment of workers on fixed-term and open-ended contracts, except in cases in which unequal treatment is objectively justified (Article 7:649 CC).

Employment contracts can be fulltime or part-time. The contents of part-time contracts must, by law, be equal with full-time contracts (Article 7:648 CC). In case of part-time employment contracts, the number of working hours can be fixed or flexible. Work relations without an exact number of working hours (flexible hours) are the so-called 'on-call contracts' (*oproep-/ afroepcontract*). On-call contracts may stipulate both a minimum and a maximum number of hours a week (min-max contract) or leave this element entirely open (zero-hours contract). On-call contracts can, according to legal literature and case law, be shaped in two forms: the first is a preliminary agreement (*voorovereenkomst*) which is no employment contract. It (only) regulates the conditions in case the parties decide to enter into an employment contract (a fixed-term contract). The second form is an employment contract with a future work obligation (*arbeidsovereenkomst met uitgestelde prestatieplicht*). This contract can be both open-ended as well as fixed-term.

Temporary agency work is a triangular employment relationship which appeared in the Netherlands in the 1960s. The relationship between the temporary agency firm and the user firm is that of a contract of services (*overeenkomst van opdracht*). The contractual relationship between the worker with the agency firm is classified as an employment contract (Article 7:690 CC). The relationship between the worker (temporary agency employee) and the user firm (third party) is a relationship *sui generis.* It is considered as a factual relationship and not an employment contract (Countouris 2016).[4] A special form of temporary agency work is pay-rolling. In this formula employees are factually engaged by the real employer. Formally they work on an employment contract with a payrolling-enterprise which performs all administrative duties.[5]

Finally workers who perform work without being an employee are the so-called *zzp-ers* (*zelfstandigen zonder personeel*). These free professionals and freelance workers are normally assumed to work on a 'contract for services' which is regulated in article 7:400 *et seq.* CC. Under this type of contract the work is not done in subordination to another person.

[4] P. 35.

[5] In December 2016 the Supreme Court decided that payrolling is subject to statutory rules for temporary agencies (Article 7:690 CC). ECLI:NL:HR:2016:2356 (*Care4Care/StiPP*).

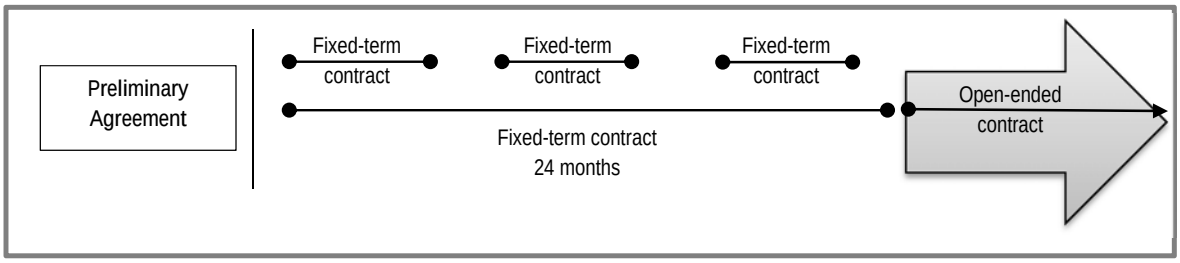
3.1.2 On-call work

As many forms of flexible work, also the concept of 'on-call contract' is not a legal concept. The basis for the on-call relationship is an agreement under which the employer call the employee when work is available, thus for a flexible number of working hours. As mentioned in the previous section, two forms of on-call work are distinguished: preliminary agreement and the so-called employment contract with with a future work obligation, hereafter FWO.

The preliminary agreement regulates the conditions under which work is performed each time the employee is called. The conditions can for instance deal with the way of calling (by telephone or in writing), and the duration of the employment contract. In most cases from this agreement one or more fixed-term employment contracts may result in which the number of working hours can be fixed or variable. If the preliminary agreements do not objectively define the duration of the call, the on-call contract is assumed to be open-ended (Houweling, Voet et al. 2015).[6]

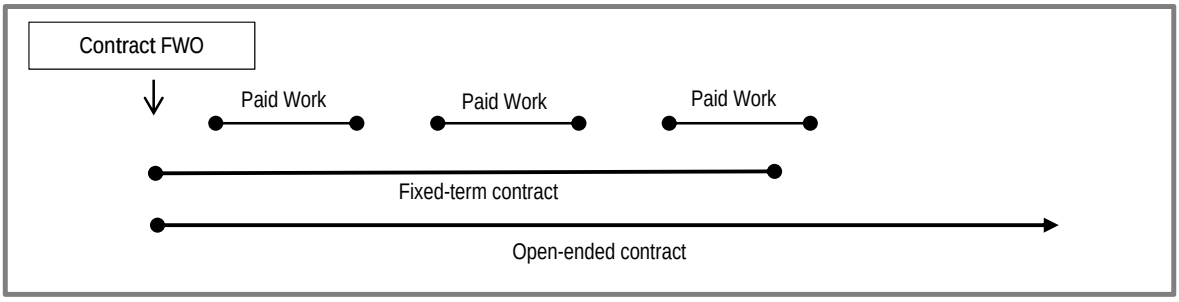
The use of on-call work with preliminary agreements face the same limitations concerning the chain regulation for fixed-term employment contracts (*ketenregeling*, Article 7:668a CC). The contract following either three consecutive fixed-term contracts or a fixed-term contract of 24 months becomes permanent, unless interruptions longer than 6 months break this chain. The chain rule is a rule of semi-mandatory law, which allows for deviations by collective labour agreements (CLAs). Since preliminary agreements are not employment contracts until the work is actually performed, employers and employees face no obligations to respectively offer work or to answer the call.

Figure 2. Scheme related to preliminary agreements



Employers and employees face more obligations if on-call work is performed through FWO contracts. This is because FWO are employment contracts that commit, within reasonable limits, employers to offer available work and employees to accept it. The employment protection depends on whether the FWO contract is fixed-term or open-ended, and only the amount of work performed is actually paid.

Figure 3. Scheme related to employment contract with a future work obligation (contract FWO)



p. 181.

Preliminary and FWO contracts can guarantee a working hours range, as in the case of min-max contracts. In these min-max contracts, the pay is guaranteed up to the minimum agreed number of hours independently from the actual calls. Application of overwork supplements on top the normal remuneration is rarely the case since – by CLAs[7] – they apply mainly to full-time contracts. If conversely the working hours and thus the pay fully depend on employers' demand, on-call work is based on zero-hours contracts. In both cases, employees are entitled to a minimum of three hours' pay for each call (Article 7:628a CC).

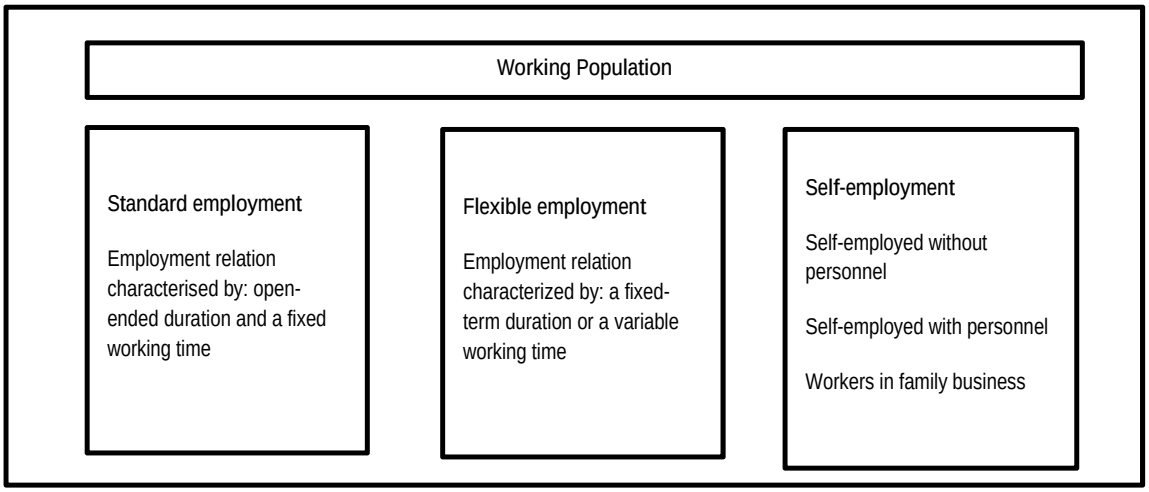
In short, from a legal perspective two aspects define the on-call work in the Netherlands. They are: the direct relationship between employer and employee and the variability of the working hours.

3.2 Statistical concepts: operationalization

Our empirical knowledge about on-call work depends strongly on the match between legal and statistical concepts. The statistics on Dutch labour market are based on a definition of working population that include individuals in working age for whom paid work is a relevant form of social participation. The boundary for relevant social participation used to be 12 hours per week (Hilbers et al., 2010). However, from 2015, CBS adjusted this concept to the recent labour market developments. First, it widened the working age range from 15-64 to 15-74 years. Second, it aligned the working time to the ILO boundary of 1 hour per week (Chkalova, Goudswaard et al. 2015).

On the bases of this general concept a distinction is made between permanent employment, flexible employment, and self-employment (see table 1). Self-employment further distinguishes between: self-employed with and without personnel, and workers in family business.

Table 1. Definition of working population according to different employment relations

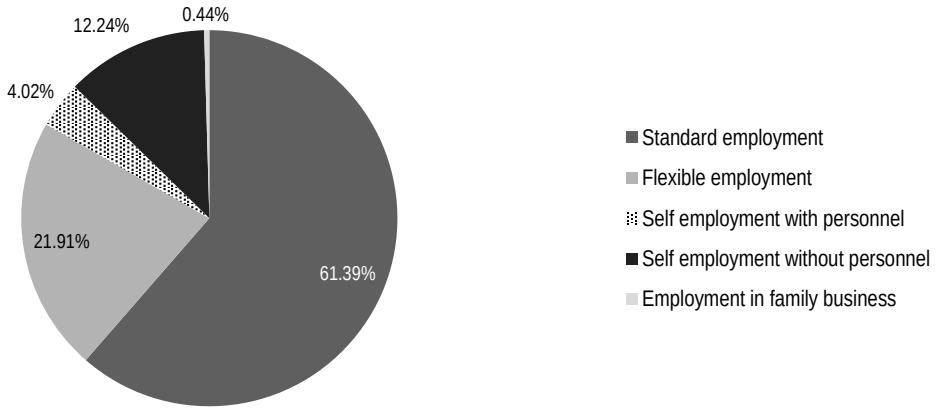


Source: (Hilbers, Houwing et al. 2011, Chkalova, Goudswaard et al. 2015, Kösters and van den Brakel 2015); own elaboration

The distribution of the working population across these work relations in 2016 shows a significant incidence of flexibility (see graph 2). In 2016 permanent employees represents less than 2/3 of the working population (61,39%), while non-standard workers amount up to almost 1/4 for what concern flexible employment (21,91%), and to about 1/6 for self-employment (16,7%).

[7] See for instance Article 5.16 (7) *CAO Verpleeg- Verzorgingshuizen en Thuiszorg* 2016-2018.

Figure 4. Distribution of working population across employment relations in 2016



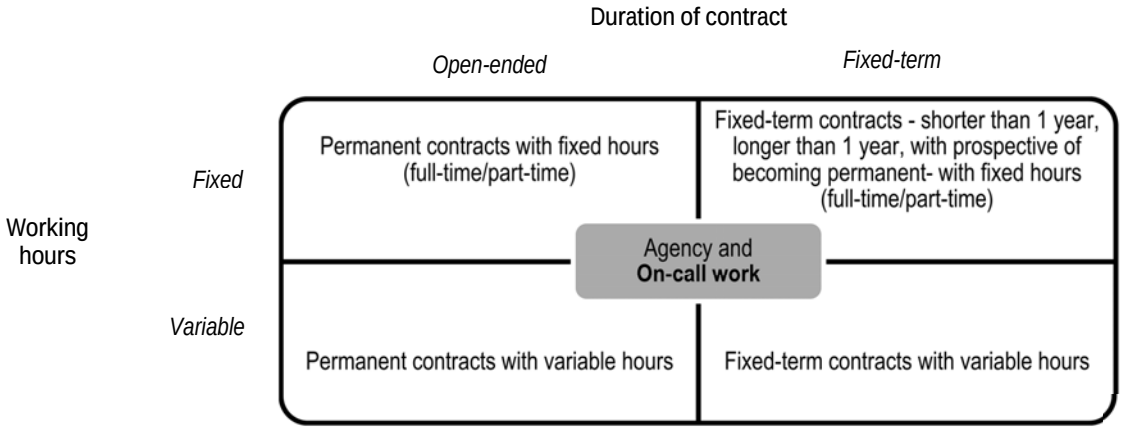
Source: EBB (2016), own elaboration

The distinction between permanent and flexible employment relations is based on two dimensions. The first is whether the employment contract is permanent or fixed-term. The second is whether the number of working hours are fixed or variable. An employment contract is defined as flexible if either its duration is fixed-term or the working hours variable.

Unlike other definitions, employment is not flexible if hours are fixed but part-time. This is because legal advancements equalized the treatment between part-time and full-time employees and reduced the incidence of involuntary part-time. Nonetheless, excluding part-time from flexible employment remains questionable, especially in cases where shorter hours do not guarantee the individual financial independence and limited access to (statutory) social security.

From these two dimensions seven forms of flexible employment are distinguished (see figure 5). Forms with limited contract duration and fixed hours include fixed-term contracts: expected to become permanent; with a duration equal to 1 year or longer; or shorter than 1 year. Forms with possibly variable hours include: on-call employment, temporary agency employment, open-ended contracts with variable working hours, and fixed-term contracts with variable working hours.

Figure 5. CBS definition of standard (white) and flexible (green) employment



Source: (Van den Brakel and Kösters 2016); own elaboration

The CBS definition of on-call work (figure 5) includes workers who are available on-call or on-demand for the performance of work and with whom no fixed working hours are agreed.[8] It combines two subjective measurements: the employment relation (permanent, fixed-tem, agency, on-call) and if respondent work for variable or fixed hours. Combining these two subjective measurements makes errors more likely and it risks to severely underestimate the phenomenon of on-call work (Algemene Bond Uitzendondernemingen 2016).[9] Therefore, the operationalization here includes three forms of on work with variable working hours: the on-call group, the permanent group, and the fixed-term group.

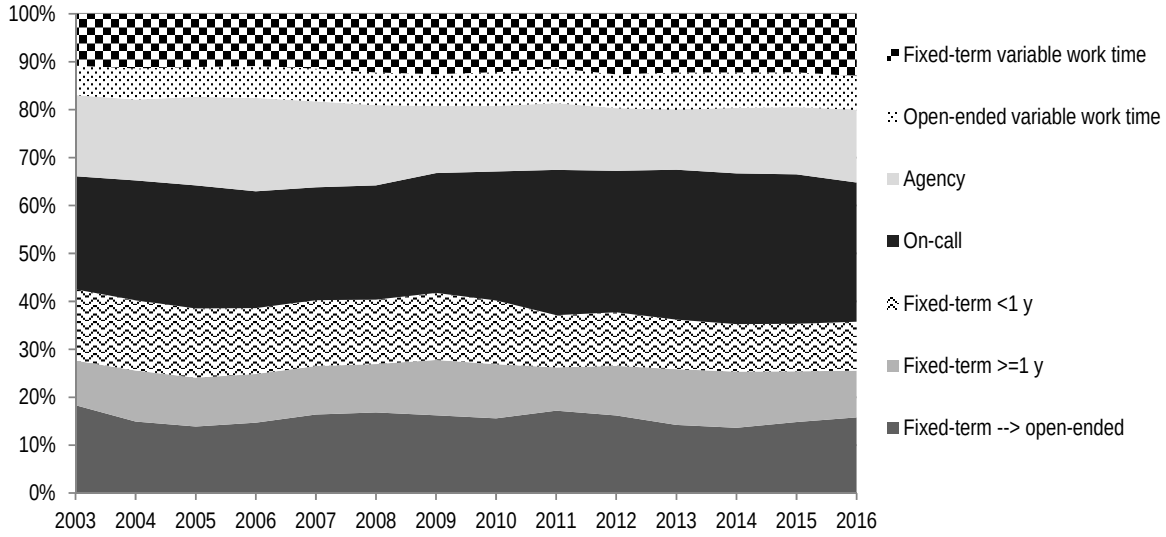
Given its significant growth, it is of great social relevance to investigate the latest legal and socio-economic aspects concerning on-call work. This study addresses: the main features of on-call work in the Dutch labour market, the extent to which Dutch institutions have compensated the risk of precariousness linked to on-call work, and the impact that on-call work have on workers, companies, and society at large.

[8] Full Dutch definition: *"Werknemer die op oproep of afroep beschikbaar is voor het verrichten van werkzaamheden en met wie geen vaste arbeidsduur is overeengekomen. Oproepkrachten worden ook wel aangeduid als afroep- of invalkrachten"*, available at https://www.cbs.nl/nl-nl/onze-diensten/methoden/begrippen?tab=o#id=oproepkracht
In English: "Workers who are available on-call or on-demand for the performance of work and with whom no fixed working hours is agreed On-call workers are referred as on-call (*oproepkracht*) on-demand (*afroepkracht*) on-demand or temporary workers (*invalkracht*) This definition reflects to some extent the use that of this employment form is made. While on-call and on-demand work (*op- af-roep*) address workers called to deal with demand peaks, temporary work (*invalkracht*) identify workers substituting personnel on leave. However, the term *oproep-*, *afroep-*, and *invalkracht* are often used interchangeably.
[9] Pp. 11-24

4. Trends and distribution of on-call work

The great flexibility with which on-call work can be used by employers is at the bases of its rapid development (Euwals, de Graaf-Zijl et al. 2016). As shown in graph 3, on-call workers represent the biggest and the most rapidly growing group among the seven categories of flexible employees in the Netherlands. As depicted by the purple area of graph 3, the share of on-call employment relations increased by about ¼ between 2003 and 2016 from 23,63% to 29,06% of flexible relations. Also growing is the share of fixed-term and open-ended contracts with variable working hours, which reach respectively 12 and 8%. Together those three groups amount to almost 50% of the flexible employees.

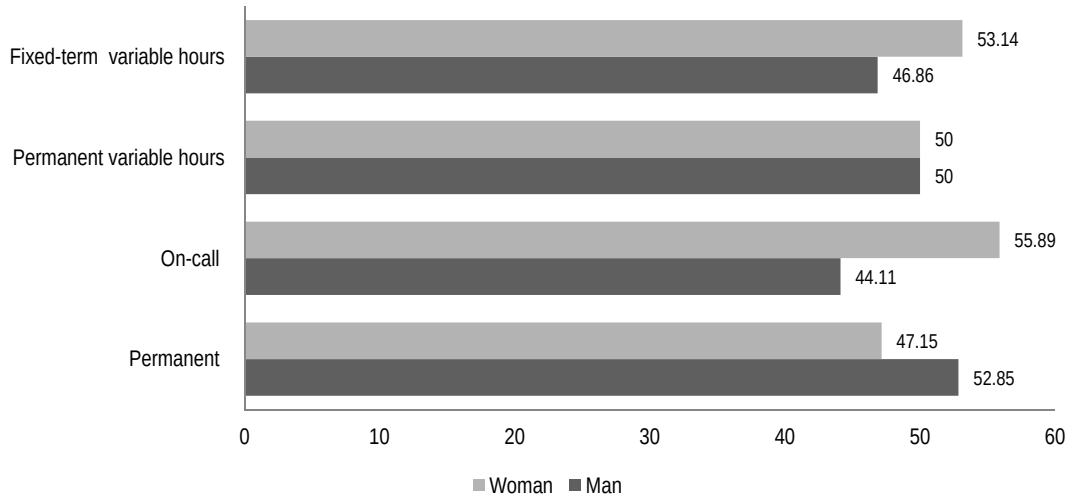
Figure 6. Distribution of employees across flexible employment relations between 2003 and 2016



Source: EBB (2003-2016), own elaboration

The socio-economic characteristics of on-call and permament employees are compared focusing on gender, age, origin, educational level, participation in education, and working time. Graph 4 shows that the gender balance switches between permanent and on-call work. As more men are permanent, more women work with variable working hours. Furthermore, this gender gap is higher in on-call contracts in which they are less employers' and employees' obligations and viceversa. The gap is nul in permanent contract with variable hours, higher in the less guaranteed fixed-term contracts and on-call groups. This data are consistent with other research finding women more often in flexible employment, especially in least regulated forms (Bolhaar, Brouwers et al. 2016).

Figure 7. Gender distribution of employees working on-call and permanent contracts (%)

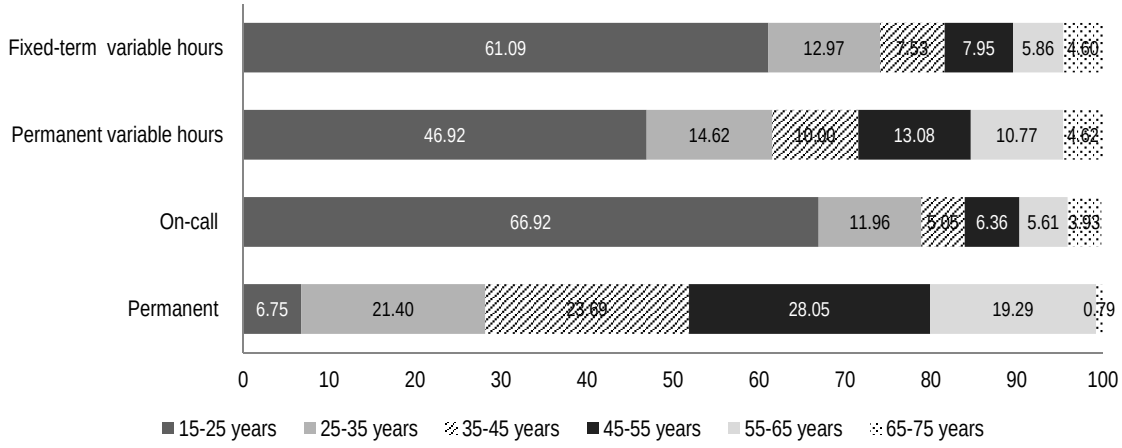


Source: Beroepsbevolking, CBS 2016

The age distibution shows differences between on-call and permanent work (figure 8). Half of the permanent workers are young and middle adult (35-55 years) and only a marginal percentage is younger than 25 years old. The opposite is true for on-call work, where young people (15-35 years) represent between 3/4 and 2/3 of the sample. The high incidence of young age is not due to workers in a early stage of their career (25-35 years), as they are underrepresented in on-call with respect to permanent work. It is fully due to the extreme overreprentation of the youngest age stage (15-25 years), where a significant share of indivuals is still in education (Figure 7).

As for women but more strongly, younger people are overrepresented in less regulated forms of on-call work. In older age workers are more often employed in permanent jobs with variable hours. The age gap in on-call work is lower in contracts providing the highest guarantees and obligations, where about 1/4 of workers is aged between 35-55 years old and 10% are in the late career. Consistently to what said above, this positive association between age and more regulated forms of on-call work can be also observed for education as well.

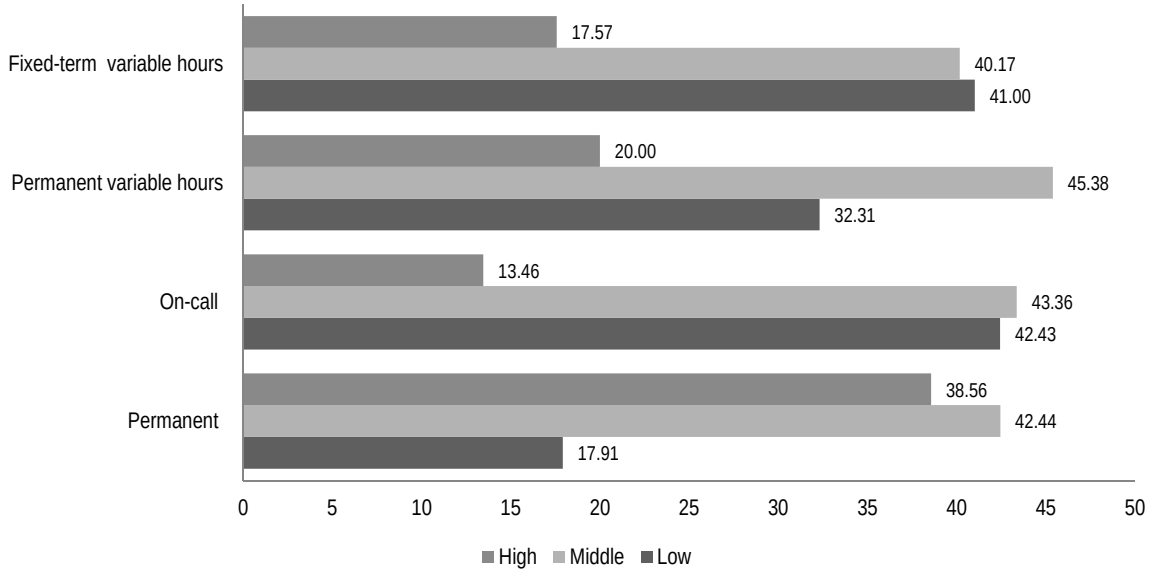
Figure 8. Age distribution of employees working working with on-call and permanent contracts (%)



Source: Beroepsbevolking, CBS 2016

As shown by figure 9, more educated workers are more often employed in permanent jobs and less educated workers are more frequent in fixed-term and on-call groups. In comparison with permanent workers with fixed working hours, the gaps concerns the low and highy educated, while the shares of the middle educated are similar for the different categories.

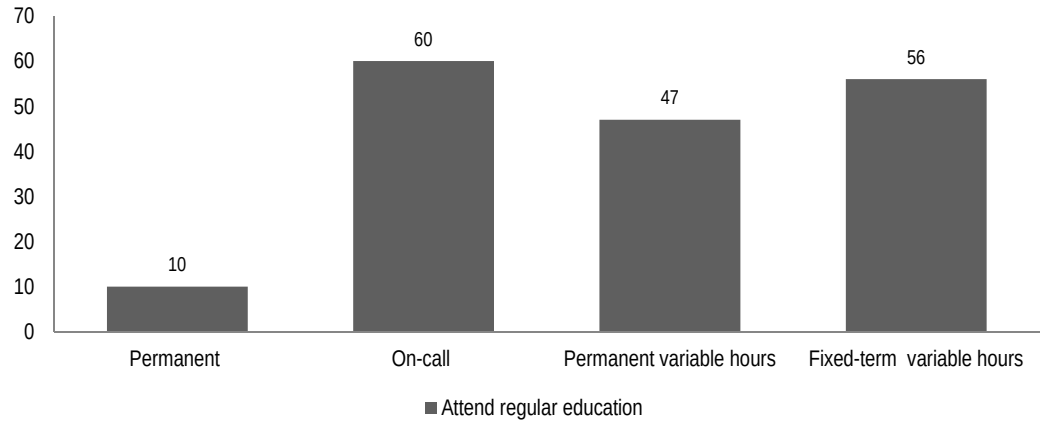
Figure 9. Educational level of employees working with on-call and permanent work (%)



Source: Beroepsbevolking, CBS 2016

The combination of age and educational characteristics may reflect the fact that on-call workers are still in education. In fact, as shown in figure 10 between 47 and 60% of the groups working with flexible working hours are still attending education. The fact that this share is only 10% among permanent workers with fixed working hours, hints that students perform on-call work, especially in on-call and fixed-term jobs. One of the reasons might be the need of flexibility to combine paid work with their main study activity.

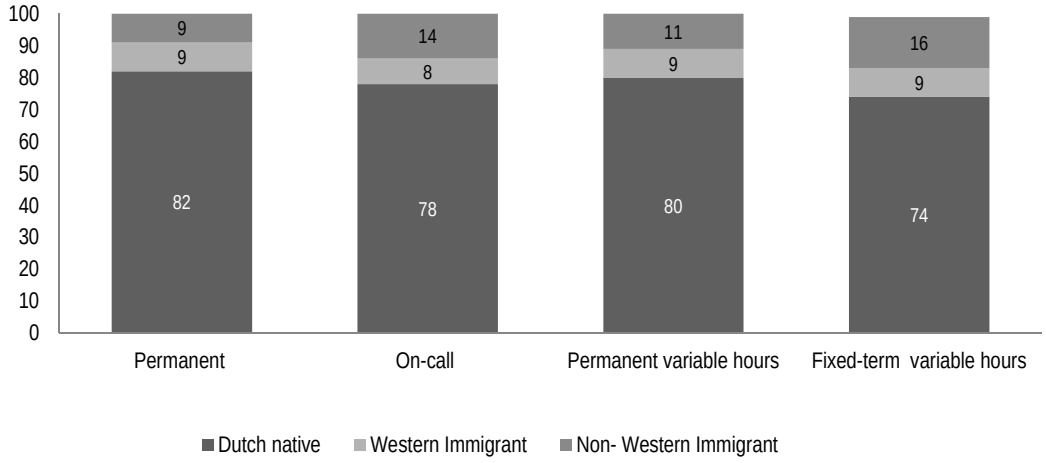
Figure 10. Educational attendance among employees working with on-call and permanent contracts (%)



Source: CBS 2015 in (Van den Brakel and Kösters 2016)

The origin of on-call workers are not significantly different with respect to permanent workers with fixed working time (figure 11). This gap is very low between permanent jobs with fixed and variable working time. In the other two on-call forms, the share of Dutch native lowers due to the rise in the share of non-western immigrants. This may be linked to these latter weak labour market position.

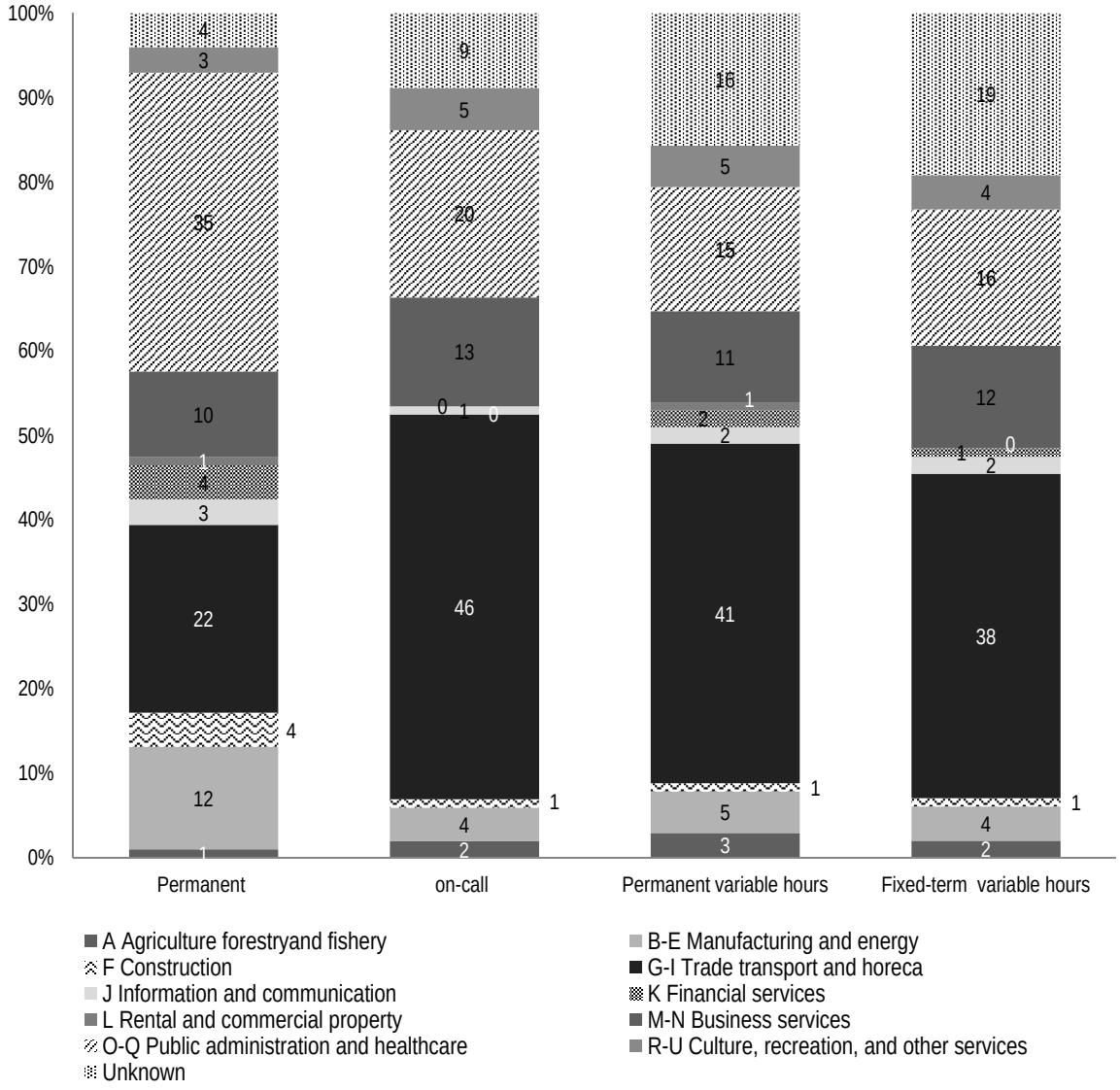
Figure 11. Origin of employees working working with on-call and permanent contracts (2015) (%)



Source: CBS 2015 in (Van den Brakel and Kösters 2016)

The distribution by industry (figure 12) shows that work with variable working hours is found more frequently in industries where the production is less steady. The production may vary seasonally, as in catering industries or agriculture, or be subjected to a more fluctuating clients' demand, as in healthcare and business service. Among workers with variable working hours, the permanent groups are more often employed in industries where the production is seasonal, while on-call and fixed-term groups in industries where the demand is fluctuating more unpredictedly.

Figure 12. Distribution of on-call workers by industry

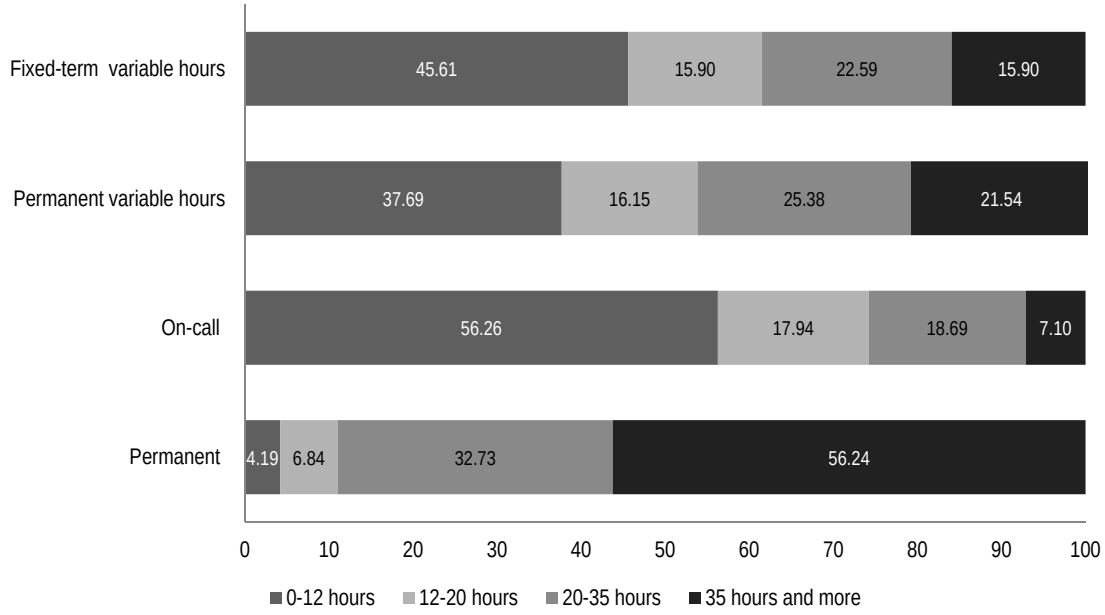


Source: Beroepsbevolking, CBS 2016

The average number of working hours per week shows a difference between on-call and permanent workers. While very short working hours are highly uncommon among permanent workers with fixed hours (4,2%), they characterize a large share of on-call workers. Among workers with variable working hours, very short hours are the least frequent in the permanent group (37,69%), more frequent the fixed-term group (45,61%) and the most frequent in the on-call group (56,26%).

These data are consistent with the fact that on-call work is often performed by women and students as a side job next to their main activity in the family or in education. However, the prevalence of short working hours is of more concern in situation where on-call work is involuntary and cannot guarantee the economic independence of individuals.

Figure 13. Weekly working hours of employees working working with on-call and permanent contracts (%)



Source: Beroepsbevolking, CBS 2016

Finally figure 14 show that on-call workers are more often than permanent workers employed in smaller companies and have shorter tenure. This is because, if the production have to be adjusted, smaller companies have a higher need than bigger companies to make use of contingent workers on-call. Moreover, the shorter tenure is a result of the nature of on-call work, where the work performance is, maybe repeated, but limited in the duration.

Figure 14. Tenure and company size of employees working working with on-call and permanent contracts (%)

Share (2015)	Permanent	On-call	Permanent variable hours	Fixed-term variable hours
Tenure				
0-6 months	3	27	11	33
6-12 months	3	18	10	17
1-2 years	6	18	16	17
2-5 years	16	22	25	18
5-10 years	24	9	17	8
10 years or longer	47	6	18	5
Unknown	1	1	3	2
Company size				
1-10 employees	8	15	20	21
10-100 employees	20	27	23	22
100 or more employees	69	46	44	39
Unknown	3	12	13	17

Source: Beroepsbevolking, CBS 2016

5. Causes of on-call work development

As with respect to the other forms of flexible employment, the contextual factors that in the last two decades accelerated the diffusion of on call work are economic and technological. On the one hand globalization and the economic crisis increased the market turbulence as well as the demand fluctuation. On the other hand, the technological progress varied continuously the skills demanded in the labour market and made the organization of work more flexible, that is the conditions (place and time) in which work is offered and demanded (Beer 2016).

However, different studies (Bolhaar, Brouwers et al. 2016) (Beer 2016) agree that, while the economic conjuncture is not the cause of the rise in flexible employment, it influenced the rise pace as well as the composition of flexible workers' group. More viable economic conditions translates in more fixed-term and temporary agency contracts and in a slower rise of on-call contracts (Bolhaar, Brouwers et al. 2016).

As claimed by de Beer about the development of flexible work in general, the main cause is institutional. The poor institutional regulation of on-call work reduces the organizational cost and risk of using this form of employment in turbulent and fluctuating markets (Euwals, de Graaf-Zijl et al. 2016).

On-call work has no defined status with respect either the contract duration or the working hours. As explained before, the main characteristic of on-call work lies in the possibility for employers to flexibly make use of on-call employees when their work is needed. Although their remunerated work is temporary and their effective working hours variable, on-call workers have an open- or a fixed-term employment, which can contain a range of (weekly) working hours or not (Beer and Verhulp 2017). The high flexibility allowed for on-call work is at the bases of its widespread use.

5.1 Employers' side

Van der Aa et al. explore the reasons given by employers to make use of flexible forms of flexible employment[10] (AA, van Buren et al. 2015). They are: nature of the work (specialist vs tedious/boring work), work volume (demand volume- if there is no work anymore the contract can be ended directly), volatility (absorb demand fluctuations in production or seasonal work), insufficient availability of own personnel (internal flexibility is not enough and take care of the temporary personnel leaves for sickness, maternity, holiday), lower costs (supposed cheaper work and lower administrative costs), lower risk related to labour law protection, recruitment advantage (temporary and longer trial period). The most relevant reason among employers is the volatility (*ziek and piek*) and it is also the most connected to the use of on-call work.

Employers´ reasons of structural use of flexible employment, intended here as situations that are always dealt with flexible employees and not own personnel, are related to the nature of: heavy, elementary, or boring work (AA, van Buren et al. 2015).

More specific reasons provided by employers to use contract forms with variable numbers of working hours: the adjustment to strong demand fluctuations with limited financial risks, to replace personnel in case of sickness, pregnancy, and holiday, to deal with unexpected and seasonal peaks (sick and peaks, *ziek en piek*, and to recruit suitable employees to employ with longer flexible contracts (Donker van Heel, de Wit et al. 2013, Dekker and de Beer 2014, Goudswaard, van Wijk et al. 2014, Euwals, de Graaf-Zijl et al. 2016).

[10] Flexible contracts considered are: agency, payrolling, posting, and self-employed without personnel. However, indirectly it can say something about the employers´ motives for on-call work.

5.2 Employees' side

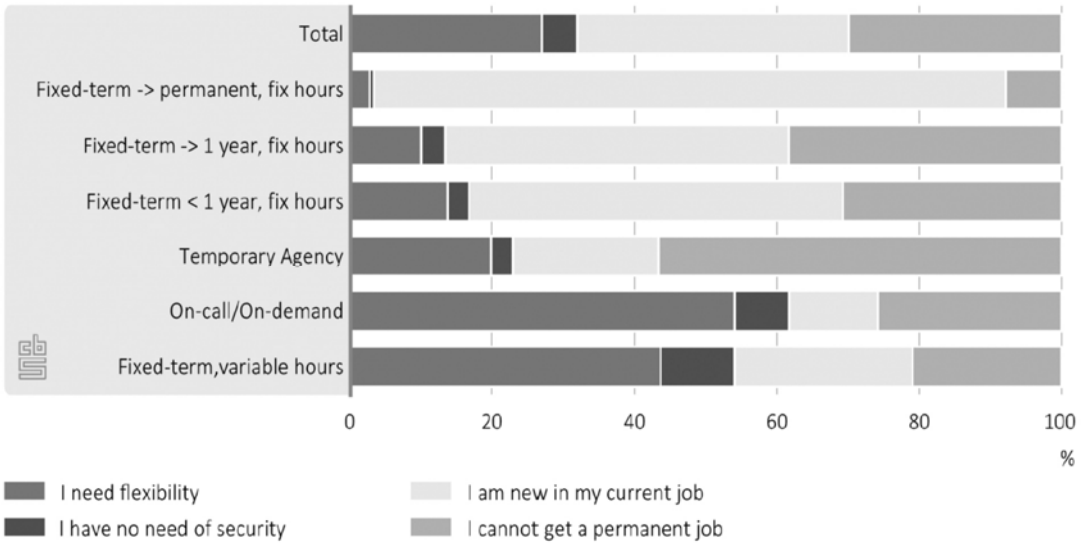
Previous research shows that the majority of employees prefer a permanent contract (CWI, 2003; (AA, van Buren et al. 2015). The main reason given by employees to work in flexible employment is an involuntary (*noodgedwongen*) choice, due to the lack of available alternatives. Others are related to the employees´ labour market availability and personal motivation, financial reasons, content of the work (AA, van Buren et al. 2015).

However, data show that the most important reason to work in a flexible job is far from being involuntary for most employees working on-call or with fixed-term contract and variable time. As shown in figure 15, more than 60% of on-call employees declare that they either need flexibility or do not need security. The same is true for just less than 60% of employees with a fixed-term and variable hours' contract.

The strong underrepresentation of involuntary choices with respect to the rest of the flexible workforce may deal with the fact that on-call and variable hours contracts are prevalent among young students still in education. It is consistent with the picture that the majority of on-call employees are young students that choose for variable hours contract to fit their main activity in education or do not need security, because they still live with their parents or receive an interest free loan from the state.

However, at the opposite side of this picture the remaining share of employees work with variable hours because they are either new on the job or they cannot find a permanent job. This is an indication that still a significant share of on-call work had these working conditions imposed.

Figure 15. Most important reason to work in a flexible job for employees aged between 15 and 75 years with a flexible employment relation

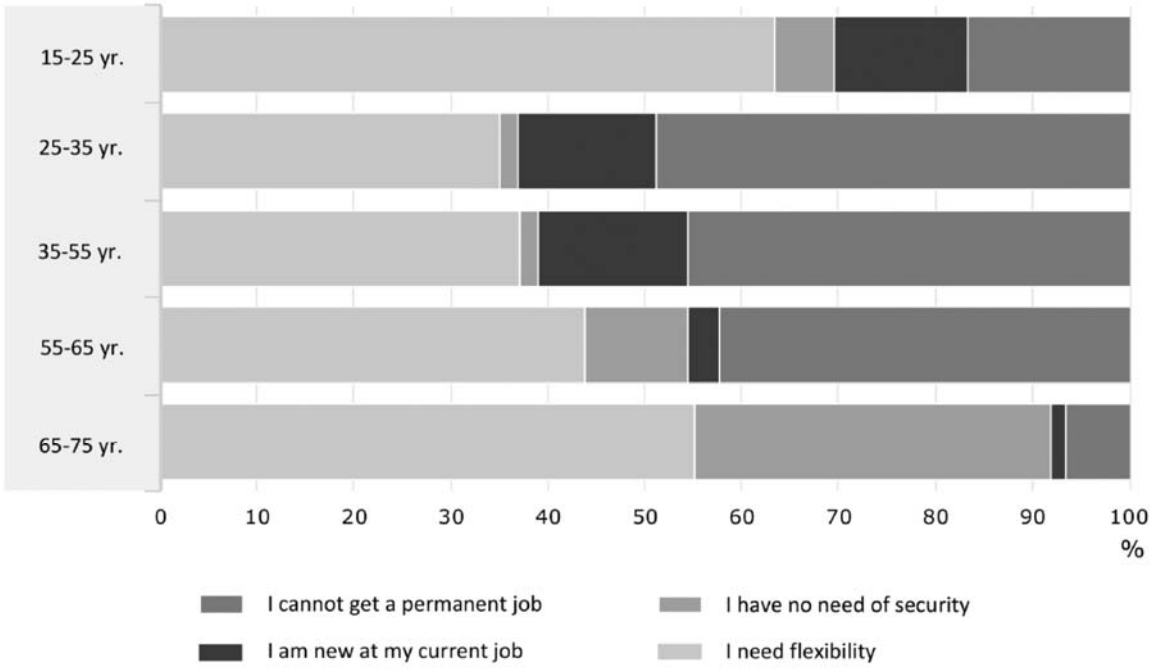


* Employees with permanent employment and variable hours not included.

Source: CBS/TNO 2015 in (Van den Brakel and Kösters 2016).

More precise information can be drawn looking at the main reason to work on-call by age in figure 16. The "involuntary" share of on-call work by age shows an inverted u shape. It is the lowest between the age of 15 and 25 years (about 30%), it rises until the age of 55 years (up to about 60%) and drop after the age of 65 years (to less than 10%).

Figure 16. Most important reason to work on-call by age[11]



Source: CBS/TNO 2015.

The data show that on-call is more often voluntary in ages where it more commonly complements other activities (study and retirement) and other sources of income (parents' support/study loan or pension benefit). In the middle-ages, when commonly the main activity is paid work, on-call work become increasingly involuntary and thus a "trap".

[11] Graph available at https://www.cbs.nl/nl-nl/nieuws/2016/39/aantal-oproepbanen-groeit-in-5-jaar-met-ruim-een-derde.

6. Legislative developments in relation to on-call work

The Dutch legislator introduced legal measures to regulate the use of on-call work, with possibilities of derogations in collective labour agreements. The legislative developments in relation to on-call workers can be divided into three periods.

The first period precedes 1999. The legal status of on-call workers was then unclear and their legal protection weak. The minimal income protection was partly guaranteed by the principle of good employment practices (*goed werkgeverschap)* (Article 7:611 CC), of reasonableness and fairness (Article 6:248 (2) CC and via the obligation to honour legitimate expectations (Article 3:35 CC). Employers could avoid the obligation to pay wage by written agreement or collective labour agreements and thus the rule 'no work, no pay' (Article 7:627 CC) applied almost without limitations. Regarding the termination of the employment contract it was stipulated that a second fixed-term contract with the same employer within a period of 30 days gave the right to a permanent contract and could only be terminated by notice of termination (Cuypers and Verhulp 2008).[12]

The second period starts in 1999, when the Dutch Act on Flexibility and Security (hereafter: *Flexwet*) is introduced. The *Flexwet* aimed at balancing flexibility and security. The idea was to allow for more flexibility to promote the entry into employment and to gradually enhance the security afterwards.[13] Some of these measures improved the protection as well as the legal position of on-call workers and discouraged employers from using on-call work (Jacobs 2017).

Among others, the regulation on two rebuttable legal presumptions improved the legal position of on-call workers with respect to both the existence of an employment contract (Article 7:610a CC), and the number of working hours (Article 7:610b CC). In the second evaluation of the *Flexwet* carried out in 2007, it was stated that these presumptions might have a preventive effect as they possibly refrain the use of unclearly drafted labour conditions, which might weaken the position of the employee (Knegt, Klein Hesselink et al. 2007).[14] Furthermore, the *Flexwet* introduced a regulation of minimum entitlement to wages for on-call employees (Article 7:628a CC). The employer must pay a minimum of three hours' wages each time (s)he calls up an on-call employee, even if work is performed in less. This made it harder for the employer to put the risk of 'no work' on the employee (Asscher-Vonk 2010). The second evaluation of the *Flexwet* showed that the introduction of the right to a minimum of three working hours pay for each call (art. 7:628a CC) had induced employers to offer part-time or fixed-term contracts instead of on-call contracts. In the same evaluation of 2007 only 18% of the on-call workers entitled to a minimum number of hours indicated that they actually received this minimum paid (Knegt et al. 2007).

Finally, the Act introduced the so-called chain rule, which as described in section 3.1, is also applicable to both preliminary and FWO contracts. It considers contracts open-ended if they are stipulated either after three consecutive fixed-term contracts or after a maximum duration of 36 months (also defined 3x3 rule). This rule, however, was a deterioration compared to the past for two reasons. First, the minimum interval between two consecutive contracts was increased from 30 days to three months (also defined 3x3x3 rule). Second, the total duration of a series of fixed-term contracts was extended to 36 months. The *Flexwet* also fostered social dialogue on on-call work by making the law semi-mandatory. The social partners could reach agreements that lowered the minimum standards on on-call protections explained above (Schils and Houwing 2010).

Although more regulated, flexible and on-call work has hardly diminished since 1999. Instead, it fostered the practice, where employers fire their fixed-term employees, also on-call, at the end of either the third contract or 36 months. The objectives of the *Flexwet* were not achieved. Fixed-term contracts, also on-call were becoming a dead end rather than a stepping stone towards more secure forms of employment.[15]

The third period begins in 2013. In April the Dutch government negotiated with main unions and employers' organizations the so-called Social Agreement (*Sociaal Akkoord*), which formed the basis of the Work and Security Act (*Wet Werk en Zekerheid,* hereafter: *WWZ*). The *WWZ* aimed at limiting the

[12] P. 340.
[13] *Kamerstukken II* 1996/97, 25 263, nr. 3, p. 8.
[14] Knegt et al. 2007:viii
[15] *Kamerstukken II* 2013/14, 33 818, nr. 3, p. 10.

possibilities of flexible work, by amending the chain rule, the probationary period and the regulation of the competition clauses.[16] Some of the provisions entered into force on 1 January 2015, others on 1 July 2015.

As of July 15, 2015 the rules of the chain system changed to "3x2" or "3x2x6". According to the new rules, the conversion into a permanent contract still occurs after three consecutive fixed-term contracts or after a maximum duration that is reduced from 36 to 24 months. Interruptions between fixed-term contracts breaking the chain are extended from three to six months. Furthermore, by January 1, 2015 the use of probationary periods and non-competition clauses is excluded for fixed-term contracts with a duration of six months or less.

Under the *WWZ* derogations *in peius* are still possible but the possibilities are more limited than before. An example are employment contracts in which for the first six months it is possible to exclude the obligation to continue to pay wages when there is no work. This must be agreed upon in the labour contract. In the collective labour agreement it is possible to extend this term, however not unrestrictedly, for those jobs with an incidental nature and no fixed scope (article 7:628, 7 CC). This applies for example to on-call workers who work incidentally during peak times, rather than to on-call workers who work structurally. Finally, other new regulations benefiting on-call fixed-term employees are: the employers' obligation to inform the employee about the end and non-renewal of the contract (*aanzegverplichting*, Article 7:668 CC) and the statutory transition payment scheme (*transitievergoeding*, Article 7:673 CC). This scheme regulates a compensation due for the termination of employment contracts, including fixed-term contracts lasting two years of longer.

[16] The Work and Security Act radically amended also employment protection and unemployment provisions.

7. The current legal position of on-call workers

Having an employment contract is essential for a worker as only in this case all individual and collective labour and social security laws apply. The employment contract requires the fulfilment of the following requirements: the worker must perform work in exchange for wages, personally, during a certain time, in subordination of an employer (Article 7:610 CC). Besides these conditions, other relevant circumstances are assessed on a case to case basis (Pennings 2011).[17]

As for many flexible workers, also for on-call workers it can be uncertain whether they perform work under an employment contract or not. The Dutch Civil Code offsets this uncertainty with a legal presumption: an employment contract is presumed to exist if a person worked at least three months in any week of or at least twenty hours a month for the same employer (Article 7:610a CC). It is to the employer to prove that the contract is not an employment contract. This legal presumption is applicable to both types of on-call work: the employment contract FWO and when at work under the preliminary agreement.

In this section, the current legal position of on-call workers under an employment contract is discussed with special attention to how their legal protection is shaped and where it shows gaps compared to permanent workers. Since the preliminary agreement is no employment contract, both parties have no rights and obligations until the worker accepts the call from the employer. From that moment on an employment contract is established (whether or not based on the legal presumption) and the legal position of on-call workers with preliminary agreements and contracts FWO is comparable. For this reason, the legal position of on-call workers refers to FWO contracts, unless specific relevant issues concerning preliminary contracts deviate from it. It is, moreover, important to keep in mind that if on-call workers fall within the scope of a binding collective labour agreement (CLA) at sectoral level, their employers must comply with the relevant provisions. However, this is not the case for the CLAs provisions where on-call workers are explicitly excluded. Here are some examples. According to the collective labour agreement Gardening Company, the employer is allowed to use 0-hour contracts for administrative functions or functions up to pay scale 1. For all other functions the use of on-call workers is not allowed (art. 9 (4) *CAO voor het Hoveniersbedrijf*[18]). In the CLA for gas stations and laundry companies, on-call workers[19] are excluded from provisions relating to for instance supplements for working during night shifts, extra holidays, 50% holiday allowance for hours worked between 0.00 and 24 hours, special leave, unpaid leave and maternity leave (however, emergency leave, short- and long-term care leave apply), supplementary wage payment for sickness up to 100% in the first 26 weeks, death benefit, entitlement to a paid-up training day per year, participation in the pension fund (art. 6 *CAO voor Tankstations en wasbedrijven*[20]). It should be noted that statutory binding legal provisions have to be applied anyway. This is for example the case of maternity leave as long as the on-call worker falls under the personal scope of the Act on Work and care (*Wet Arbeid en zorg*). For on-call workers in the funeral industry the CLA Funeral industry applies with the exception of some provisions. On-call workers are excluded for instance from overtime supplements, training entitlements, policy for elderly and the pension arrangement (art. 1.5 *CAO Uitvaartbranche*)[21].

7.1 Probationary period

A probationary period is often agreed when the employment contract starts. During that 'acquaintance period' each of the parties is entitled to end the employment contract at any time, with immediate effect

[17] p. 88.
[18] http://www.vhg.org/media/rtf/Ondernemershelpdesk/2016_1097_Cao_voor_het_Hoveniersbedrijf_2016-2018_2.pdf
[19] On-call workers are defined in Article 6 of this CLA as: a worker who is called incidentally in case of unforeseen circumstances. It concerns loose and unregulated work without a fixed schedule of weekly performed and which is not scheduled in advance. The on-call worker has not obligation to answer a call of the employer. In our view, such on-call worker would probably work on a preliminary contract.
[20] https://cdn.salaris-informatie.nl/images/stories/CAO/tankstation/CAO-tankstations-autowasbedrijven-2015-2017.pdf
[21] http://www.lvc-online.nl/viewer/file.aspx?FileInfoID=128

and without any notice (Article 7:676 CC). Because of the weak position of employees, a clause on a probationary period must be in writing and equal for both parties (Article 7:652 CC).

On-call workers benefit from a restriction of this period if they are hired with a fixed-term contract. As mentioned in section 6, since 1st of January 2015 probationary periods cannot be included in fixed-term contracts of up to six months irrespective of the number of working hours. For-fixed term contracts shorter than two years a probationary period is restricted to one month and may be extended up to two months by CLAs (Article 7:652 (7) CC). For on-call workers with contracts longer than 2 years or permanent contracts FWO a probationary period can be agreed for two months. This is the maximum duration allowed in the Netherlands and is not extensible by CLAs.

Especially important in case of a preliminary agreement is that in subsequent employment contracts a probationary period cannot be concluded more than once with a trial clause, unless the contracts require different skills or responsibilities (Article 7:652 (8) under d CC). As the law does not specify what 'subsequent' contracts mean, it depends on the individual circumstances whether a trial clause is allowed or not. It is, however, reasonable to link the interpretation of 'subsequent' to "consecutive" as used in the chain rule (see below). If a probationary period is not in accordance with the law it is null and void, meaning that no probationary period is applicable.

7.2 Presumption on contracted working hours

There might be disputes on the number of working hours set in the contract. After all, the presumption that an employment contract exists does not effectively benefit the on-call worker if the employer faces no obligation to give work (Pennings 2011).[22] On-call contracts provide employers with the desired flexibility, however at the expense of on-call workers.

To compensate the weak legal position of on-call workers, the Civil Code regulates a second presumption, the so-called presumption of contracted working hours. The presumption is not applied only if the employer can prove that the reality was different. Article 7:610b CC provides that if the employment contract has lasted for at least three months, the contracted number of working hours is assumed to be the monthly average of the preceding three months.

Very important for on-call workers is that, the presumption does not require three months of effective work, but only that a contract existed in the same period. This entails that after three months the on-call worker is entitled to an employment contract with fixed working hours.

Parliamentary history shows that originally the presumption is intended to provide employees support when the contracted number of working hours are not clear or are structurally higher than the scope of work performed.[23] This is confirmed in case law where a contractual scheme with a fixed number of working hours on an annual basis (e.g. 624 hours) with a bandwidth up to 25% of that agreed number of hours and without any obligation to accept an offer to work more than the fixed number of hours is to be qualified as a so-called min-max contract. After all, the minimum and maximum number of working hours has been agreed unambiguously. The presumption of contracted working hours will only be relevant in case the number of hours worked is structurally higher than the maximum.[24] The presumption of contracted working hours is especially relevant in zero-hours contracts, since a successful appeal to Article 7:610b CC creates a part-time employment contract. Regarding min-max contracts, it is less obvious whether the presumption applies. After all, a scope ranging between a minimum and a maximum of hours is a clear agreement (Knipschild 2009) (Knipschild and Ridde 2015). Case law shows that the bandwidth is not relevant. Ranges between for instance 29 and 38 hours per week or 45 hours and 91 hours per four weeks are regarded as an unequivocal agreement.[25] If, however the on-call worker over a longer period works structurally more than the agreed minimum, good employment practices ex Article

[22] P. 82.
[23] *Kamerstukken II* 1996/17, 25 263, nr. 3, p. 22.
[24] Ktr. Gouda, 19 Feb. 2004, *JAR* 2004/77; ECLI:NL:RBAMS:2014:3488.
[25] ECLI:NL:RBMNE:2014:7349; ECLI:NL:RBOVE:2017:1417.

7:611 CC in conjunction with the presumption of contracted working hours ex Article 7:610b CC can result in an increased minimum number of hours.[26]

7.3 Right to be effectively given work

The question may arise whether an employer is obliged to offer work to employees working on-call (zero hours contracts and min-max contracts). The Supreme Court rejected the idea that in case of on-call work the employer is under general obligations.[27] Nevertheless, as an interpretation of the principle of good employment practices, an obligation arises if on-call workers have to comply with calls and can prove that work is available for them.

For what concerns the acceptance of calls, the law sets only few limitations favouring workers. One of these limitation is that, even if on-call workers are obliged to respond to a call, in min-max contracts they face no obligation to work above the maximum.

However, no limitations are set concerning: a minimum period between the call and the work performance, or a maximum number of calls per day. The rationale is that on-call work is used in periods of sick and peak (*ziek en piek*) and these limitations could negatively affect on-call arrangement (Roozendaal 2015).

7.4 Wage

The general rule in Dutch labour law is that wages are to be given in exchange for work performed. Therefore, in principle no remuneration is owed for the period when on-call employees are available for work (Article 7:627 CC).

In min-max contracts the employee is at least entitled to wages for the minimum number of agreed hours (guaranteed hours). Above the minimum, wage is due only during the calls. Above the maximum, hours are generally not regarded by CLAs as overtime and thus are paid without an additional allowance. This allowance applies mostly only when overtime exceeds the hours normally included in a fulltime contract.[28]

A relevant aspect of on-call contract is that the wage payment obligation can be excluded in zero-hours contracts. Whereas employers in principle are obliged to pay wages even if there is no work for on-call contracts FWO (Article 7:628, 1 CC)[29], these latter almost always contain a clause excluding any payment when workers are waiting for a call. The only limitations favoring the workers is that this exclusion is valid only if written and only in the first six months after the employment contract starts.[30] After that, wages must be paid, unless the on-call worker is accountable for the lack of work. The six-months-period can be extended in a CLA and, from being unlimited, this possibility was restricted by the *WWZ*. Since January 2015 paragraph 7 of Article 7:628 CC determines that the extension is only allowed for functions involving occasional work with variable number of hours. Furthermore, the *WWZ* allows for the minister to ban the wage exclusion and thus the use of zero-hours contracts in parts of or entire business sectors (Article 7:628 (8) CC). The introduction of such a ban in the health care sector was recently highly

[26] ECLI:NL:GHDHA:2013:3943.
[27] Dutch Supreme Court, 25 January 1980, *NJ* 1980, 264 (*Possemis-Hoogenboom*).
[28] See for instance Article 5.16 (7) CAO Verpleeg- Verzorgingshuizen en Thuiszorg 2018-2018.
[29] Article 7:628 CC stipulates in paragraph 1 that the employer must pay the agreed salary if the employee has not wholly or partly performed the contracted work, unless the wholly or partly non-performance of the contracted work is due to a cause which, reasonably, should be for the account of the employee.
[30] According to paragraph 5 of Article 7:628 CC only with regard to the first six months of the employment agreement it is possible to derogate to the disadvantage of the employee from paragraph 1 (…), provided this is done by written agreement.

debated. However, since CLAs set satisfactorily limitations to wage exclusion[31], the proposal of this ban is at the moment dropped.

Another measure introduced by the *Flexwet* in 1999 establishes a minimum pay for on-call workers. Zero-hours contracts or min-max contracts setting a max of 15 hours per week give the right to a minimum wage of three hours for each call (Article 7:628a CC). This measure enhanced mainly the position of on-call workers with zero-hours contracts, but only in case they are effectively called.[32] Derogations to this minimum pay are not allowed even if several calls in one day results in double pay.

7.5 Working Time

Three topics regarding working time are relevant for on-call workers. First, the scope of the employee's obligation to answer to the calls. Second, the right to pay during the periods of availability. Third, the right to adjust working time according to the Flexible Work Act (*Wet flexibel werken*). These issues regard only on-call employment contracts FWO and not on-call workers with a preliminary contract.

The obligation to answer every call exists as far as it creates reasonable and fair duties to employers and employees, as also in case of on-call work their relationship is governed by the principle of good employment practices (being a good employer *goedwerkgeverschap* and being a good employee *goedwerknemerschap*; Article 7:611 CC). When calling the employer must act as a good employer, and when answering the call the employee must act as a good employee.

The "good employer" does not force employees to organize their private life around the possible calls, as in the so-called 'strangulation contracts' (*wurgcontract*). He strives instead to call employees as soon as possible to give them the opportunity to organize the calls around their private life. The Working Hours Act (*Arbeidstijdenwet*/WHA) also protects on-call employees in this respect (Rayer 2014).[33] According to Article 4:1a WHA, the employer has to take into account the private situation (such as care household and caring responsibilities for children or other family members) of employees when determining the working hours, and in this case the calls. The employee has the right to be called at least four days in advance, unless s/he agrees with a shorter period (Article 4:2 WHA).

The right to pay during the period of availability was addressed by the Court of Justice of the Hague in 2017 in a dispute regarding the CLA on Taxi Transport (*CAO Taxivervoer*).[34] The Court referred to the European Directive No. 93/104/EG (Working Time Directive). It considered that the term 'working time' is here defined as any period when the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice. On the bases of this principle, the Court of Justice of the EU ruled that the employer is obliged to compensate for the period of availability under certain conditions. For instance, in the *Simap's* case the Court considered that, in so far on-call workers (in this case doctors) must physically be present at work (health center), the time spent waiting for calls must be fully regarded as working time (and, where appropriate, as overtime) within the meaning of Directive 93/104.[35] This does not hold if workers (doctors) must merely be contactable for calls. In that case, only time linked to the actual supply of work (health care services) has to be paid. Therefore, the Court of Justice of The Hague declared that the CLA Tax Delivery complies with the European law. This is because it addressed availability as working time, unless taking place at the residential address of the employee.

[31] Article 4.2 (2) CAO VVT 2016-2018 (*CAO voor de Verpleeg-, Verzorgingshuizen, Thuiszorg en Jeugdgezondheidszorg*) stipulates that the employer will not use zero-hours contracts unless in exceptional circumstances…; file:///C:/Users/Hertt101/AppData/Local/Google/Chrome/Downloads/CAO%20VVT%202016-2018.pdf.pdf

[32] ECLI:NL:GHSHE:2017:218 regarding the tax transport sector. Parties concluded an employment contract FWO for six months which was renewed for one year. Because the number of working hours was not or unambiguously defined in the contract, the on-call worker was entitled to additional pay based on Article 7:628a CC.

[33] Pp. 107-108.

[34] ECLI:NL:GHSHE:2017:218.

[35] ECLI:EU:C:2000:528.

Finally, the Flexible Work Act (*Wet flexibel werken*/FWA[36]) gives employees in companies with at least ten employees the right to adjust the working hours and time, that is the number of hours and when those hours have to be worked. The adjustment might be for variable or fixed periods (Article 2 (1) FWA). The employer must grant the adjustment, unless serious business or service reasons prevent it (Article 2 (5) FWA). Case law regarding a reduction of working hours shows that business interests are rarely considered to be weighty enough.[37] This is different when it comes to a request to increase the number of working hours.[38] The FWA also allows employees more flexibility in working place (Article 2 (1) FWA). For requests to change the working place, an employer has to take the employee's application into consideration. He has to discuss it with the employee if the request is not agreed. The Act does not provide that the employer needs substantial business reasons to turn down an application to change the place of work. The employer will, however, have to act in accordance with good employment practices and will have to substantiate his refusal.[39] Changes of the number of hours an employee works, of the times s/he is required to work and of his/her place of work can be requested after 26 weeks of service. An application has to be made two months before the effective date, and if the application is rejected, the employee can try again after one year. The adjustment right may be relevant for on-call employees who earn insufficient income and wish to extend their working hours or to exclude calls in moments of the weeks when they face other obligations.

Although the right extends to all employees, the nature of on-call work makes the adjustment claims unlikely to succeed. This is because in many cases on-call employees perform only when and as far as work is available. A part from this general principle, working hours might be adjusted in case an on-call worker with a FWO min-max contract is systematically asked to work above the max.

7.6 Holidays

On-call workers, like all employees, are entitled to holidays. The statutory minimum period of paid holidays in Dutch law is four weeks a year after a full year of service (Article 7:634 CC). If working hours are variable as for on-call work, the holidays are based on 'the agreed period of work per week'. The Dutch law does not require a minimum period of service to accumulate holiday entitlements. In principle, the entitlement to paid holidays are accumulated over the days on which the employee is: entitled to wages (as during work and sickness) or in agreed absence (as during long-term care leave). Consequently, on the basis of 2080 working hours per year (40 hours x 52 weeks) and a right to at least 160 hours holiday per year (40 hours x 4) an employee is entitled to one hour holiday after 13 hours worked. Most employees however enjoy substantially longer holidays based on more generous provisions included in CLAs.

The distinction between preliminary contracts and employment contracts FWO matters as there is, obviously, no accumulation of holidays in preliminary contracts nor in contracts FWO beyond calls. Although on-call workers enjoy the same right to paid holidays (Article 7:639 CC) and to holiday allowance (8% of the gross salary – Article 15 Minimum Wage and Minimum Holiday Allowance / WMM), their effective access to paid holiday is much lower than other employees in two aspects. First, in the number of days with the result that on-call workers on holiday may receive only a partial wage and allowance. Second, in the possibility of accessing holiday entitlements in kind during the period of employment. This holds especially for preliminary contracts and for contracts FWO with short working hours. This is the reason why in practice holiday allowance and wages are often directly incorporated in the wage (all-in hourly wage). Incorporation of compensation for holidays in wages conflicts with Article

[36] The Act flexible work (entry into force in 2016) is the successor of the Act adjusting working time (*Wet aanpassing arbeidsduur*) of 2000. It regulates the conditions under which employees can ask for adjustment of their working hours, workplace and working time.
[37] ECLI:NL:RBOBR:2016:5951: The employer has not or insufficiently documented that full-time work is organizationally inevitable.
[38] ECLI:NL:RBAMS:2017:771: In this case the refusal of requested extension of the number of working hours by a tour guide in a museum by the employer was justified. It was sufficiently likely that the planning of tours, without the use of freelancers, was impossible. The museum was struggling with recurring subsidies whereas expansion of the number of permanent hours would have led to more fixed costs.
[39] ECLI:NL:RBAMS:2017:3766: Employer has withdrawn the weekly homework day as part of an improvement process. At the end of this route, the employee returns to work at home, despite the employer's request to go to the office in order to continue the upward trend in performance until the end of the year. According to the judge the employer's request is a reasonable proposal and an employee can be required to accept this.

7:640 (1) CC. However, paying a compensation in exchange for holiday is not prohibited at the end of a contract and this holds especially for on-call workers with preliminary contracts and with fixed-term employment contracts.

In short, on-call workers face limitations in accessing holiday if they often work too few hours or too short time. Because of that, holidays are often compensated in the wage. Although case law considers all-in hourly wages legally valid[40], they can further hinder holiday rights of on-call workers. This is because receiving small amounts every month instead of a lump sum can make it harder for them to save enough money to effectively take holiday.

7.7 Entitlement to leave

Employees can access the statutory leave schemes regulated in the Work and Care Act (*Wet Arbeid en Zorg* /WCA). The most important are: emergency leave (for a short time, Article 4:1 WCA), short- and long-term care leave (the maximum duration depends on the weekly working hours and is respectively two and six weeks in twelve months, Articles 5:1 and 5:9 WCA), pregnancy and maternity leave (at least 16 weeks, extended in case of multiple pregnancy and *couveuse verlof* – incubator leave) and parental leave (26 times the weekly working hours). CLAs may contain different rules and other leave (as education leave). Furthermore, employers can make individual agreements with their employees.

On-call workers can access all the leave schemes insofar they are eligible. In case of an emergency during a call, such as the sudden illness of relatives, workers with preliminary or FWO contracts can claim emergency leave, which is fully paid by the employer. Outside the call, entitlement to leaves may be more relevant for on-call workers that are obliged to answer calls (FWO) than with preliminary agreements (Heeger-Hertter 2017). The same holds for pregnancy and maternity leave.

On-call workers face limitations in the short and long-term leave, when the duration depends on the number of days previously worked. Moreover, leave requests are more easy to refuse due to serious business reasons that reasonably prevail on the interest of the on-call worker (Article 5:4 WCA). Due to these limitations, workers with preliminary contracts may be discouraged from claiming their leave rights and just refuse the call. Employees with a min-max contract are comparatively more protected, since the limitations mainly apply to the flexible part of the contract.

The benefit during pregnancy and maternity leave is not paid by the employer but by social security funds (Article 3:13 WCA) and is 100% of the reference wage up to the maximum daily wage. On call-workers may face limitations as the reference wage equals the yearly earning until four weeks before the leave start.

The amount of the benefit calculated by the Institute for Employee Benefit Schemes, (*Uitvoeringsorganisatie werknemersverzekeringen* hereafter: *UWV*) and is based on the so-called daily wage. To calculate the this wage, the *UWV* looks at the social security wage earned in the period of one year ending on the last day of four weeks prior to the date of maternity leave begins.

7.8 Protection against discrimination

Relevant to on-call work is the ban of the Dutch Civil Code against discriminatory practices regarding the start, the enforcement and the end of the employment contract on the ground of working hours – discrimination of part-timers and full-timers (Article 7:648 CC) – as well as contract duration (Article 7:649 CC). These provisions can also apply to on-call (fixed-term) contracts. The law states that neither the employer, nor CLAs, may treat on-call employees unequally. Both prohibitions, however, do not apply if objective reasons justify discrimination (Burri 2009). An example of a justified unequal treatment regarding working hours is ruled by the Netherlands Institute for Human Rights and concerns the exclusion of employees with zero-hours contracts from irregular hours' compensations included in the

[40] ECLI:NL:RBAMS:2014:67.

CLA of Dutch Stages (*CAO Nederlandse Podia*). In this case an on-call worker was according to the CLA[41] excluded from an entitlement to a pay supplement for working on special hours (…). He argued that the parties to the CLA have made a prohibited distinction based on the number of working hours. The Netherlands Institute for Human Rights considered that the purpose of the distinction was to reward employees for whom the hours worked are irregular and who cannot refuse to work on those irregular hours. Regarding the necessity of the pay supplement, the Commission considered that alternative means for achieving the goal have not been found. The on-call worker may, if necessary, refuse to work for irregular hours. Therefore, his interest in granting him a supplement does not counteract the interest of employers in keeping employees they can oblige work for irregular hours. The exclusion of on-call workers is therefore proportional to the goal pursued by the CLA parties. As regards the supplement for working on special hours, the distinction made was therefore objectively justified, and thus not unlawful.[42]

7.9 Income protection during sickness

During sickness leave, employers in the Netherlands must pay salary during the first two years. The employees receive at least 70% of the previous salary in between the maximum daily salary (about 50,000 euros a year) and the statutory minimum wage during the first year – Article 7:629 CC). In a CLA, the wage can be higher.

The entitlement of on-call workers to wage depends on the contract and on the facts and circumstances. In case of preliminary contracts three situations can be distinguished. The on-call worker becomes ill: while waiting for a call, during a call, after a call is planned.

While waiting for the call, the worker is not entitled to wages, unless s/he becomes ill within four weeks after the last employment contract ended (Article 46 (1) Sickness Act, *Ziektewet*, hereafter ZW). During the call, the worker has the same rights to wage like all employees, that is wage for two years (Article 7:629 CC) or until the end of his/her fixed-term contract, if shorter. For him/her, whose contract ended before two years after the first day of sickness, a sickness benefit is paid at the same level (Article 46 ZW) by the *UWV* (Article 29 (2) sub c ZW). The on-call worker receives 70% of the previous salary. If however this amount is less than the statutory minimum wage, s/he will receive 100% during the first year. Regarding the number of hours, s/he can possibly rely on the presumption of working hours (Article 7:610b CC). After the call is planned, illness gives right to wage, unless preliminary agreements postpone the start of the employment contract to the beginning of the work performance.

The legal position in FWO zero-hours contracts is similar. In the event of sickness during a call there is an entitlement to continued payment of wages in case of prolonged illness. The amount is 70% of the wage (or 100% in the first year of sickness if 70% is less than the statutory minimum wage) which corresponds with the average number of hours worked during the reference period (three months). The duration is two years in case of a zero-hours contract for an indefinite period. In case of a fixed-term contract the *UWV* takes over the payment of sickness benefit from the employer until the end of the two-year period. Beyond call periods there is no wage right, unless the employee can rely on Article 7:610b CC (the presumption of working hours). No sickness benefits are paid by the *UWV* as an entitlement only exists after termination of the contract. The employee with a min-max contract is entitled to wage just for the minimum hours. If s/he can rely on Article 7:610b CC, then wage claims above the minimum are possible.[43]

Sick employees face obligations, such as to perform "suitable" work (Article 7:660a CC) and/or to cooperate in their re-integration program. If they fail to comply with those obligations without a good

[41] Article 23 (8) *CAO Nederlandse Podia* 2016-2017.

[42] Opinion 2012-136, available at https://www.mensenrechten.nl/publicaties/oordelen/2012-136.

[43] ECLI:NL:RBNNE:2015:3002. In this case the on-call worker worked in a min-max contract (16 to 32 hours per week). For two years, she has structurally worked average 29 hours/week. She became sick and was paid wages over 16 hours per week. Her claim of payment based on an employment contract for 29 hours/week (according to Article 7:610b CC) succeeds partially. On the basis of the circumstances of this case, the judge decided an entitlement to payment based on 24 hours a week and not to 29 hours as an entitlement to the latter would severely compromise the flexible nature of the min-max contract.

reason, employees lose the right at sickness pay (Article 7:629 (3) CC). The same applies to on-call workers.

7.10 End of an on-call contract and transition pay

The end of an on-call contract is regulated differently if the duration is fixed-term or open-ended. Each time a worker with a preliminary contract answers a call, an employment contract for a fixed period begins. It ends on the agreed date (by law, Article 7:667 CC). As of 2015 the position of fixed-term employees is improved as they have to receive, at least one month before the contract expires, a written communication about whether the contract is continued, and if so, on what terms (Article 7:668 CC). If this obligation is fully or partially unfulfilled, the employer is due damages up to one month salary. This rule does not apply to contracts for less than six months nor to contracts that expire on a given calendar-date.

As explained in sections 3 and 6, in two situations a fixed-term on-call contract automatically becomes permanent: (i) when a the fourth fixed-term contract starts or (ii) if consecutive calls last 24 months or longer. Calls are not consecutive if separated by interruptions long at least 6 months (Article 7:668a CC). CLAs can derogate *in peius* from these rules, but only limitedly. For instance, chain rules do not apply for up to three consecutive contracts ending to an agreed date and CLAs can increase this number.

A very relevant aspect for on-call work is that the chain rule does not apply to employees, if younger than eighteen years and with short working hours (12 or less) (Article 7:668a (11) CC). This exception was introduced on July 1, 2015 by the *WWZ* to avoid unnecessary burdens for employers that hire workers, who are: bound by compulsory education (*leerplicht*) and have no interest in the application of the chain rules.[44]

All provisions concerning employment protection apply also for terminating an open-ended on-call contract: the existence of a reasonable ground for termination (Article 7:669 CC), the period of notice (Article 7:672 CC), the dismissal prohibition (sickness, pregnancy, member workers' council, etc. Articles 7:670 and 670a CC) and the transition pay (Article 7:673 CC).

Since 1st of July 2015 every contract ended by the employer (unless due to retirement or for a serious cause) obliges him to give a transition pay (*transitievergoeding*) to the employee. The right to the statutory transition pay also applies to employees with a fixed-term contract of two years or longer (Article 7:673 CC). Transition pay amounts to 1/6 of the last-earned average month's pay for the first twenty half-years of service and ¼ of the last-earned average month's pay for each additional half-year of service. In case of successive fixed-term employment contracts with the same employer, the transitional pay depends on the total duration of the contracts (Article 7:673 (4) CC). If the duration of consecutive calls exceeds two years, on-call workers with either a fixed-term contracts FWO or a preliminary contract have a right to transition pay.

However, if the employer calls an on-call worker within 6 months after the payment of the transition pay, the contract does not lead twice to a transition pay. Article 7:673 (5) CC regulates that a transition pay previously paid will be deducted from the later transition pay.

7.11 Non-competition clause

Non-competition clauses (in Dutch *concurrentiebeding*), often coupled with a penalty clause (in Dutch *boetebeding*) limit for a certain period of time the possibilities of employees to work for their employers' competitors at the end of the employment contract. This clause protects legitimate interests of the employer (protection of know-how and goodwill built by the employee during the employment) but may severely hamper employees' career opportunities and employability. Therefore non-competition clauses are only valid if agreed in written permanent contracts (Article 7:653 CC) and only under special

[44] *Kamerstukken II* 2013/14, 33818, nr. 3, pp. 12-15.

circumstances in fixed term contracts (e.g. when 'legitimate business interests' are at stake, which should be explicitly specified). These conditions can hardly be fulfilled in case of preliminary contracts.

Non-competition clauses in on-call work enhance disproportionately the weakness of employees, as the clauses hinder the ability of employees to access other work to gain sufficient income. Nonetheless, non-competition clauses are quite often found in on-call employment contracts, especially in call centres (Kraamwinkel and Patijn 2012).[45] Until now, no case law addresses the validity of non-competition clauses in on-call contracts, but their compatibility with the poor legal position of on-call workers is highly questionable.

7.12 Statutory social security and on-call contracts

The Dutch social security system provides on-call workers with a certain level of protection against social risks as unemployment, work disability, insufficient income, and old age.

On-call workers are insured against unemployment only if they have an employment contract (Unemployment Benefit Act – *Werkloosheidswet, WW*) and against work disability only in weeks when they work (Sickness Act, ZW – see also par. 7.9 – and the Work and Income according to the Labour Capacity Act – *Wet werk en inkomen naar arbeidsvermogen, Wet WIA*).

In case of insufficient income on-call workers can rely on assistance (Participation Act -*Participatiewet - PW*).[46] The *PW* is the safety net of the Dutch social security system and applies a comprehensive means test, assessing both income and capital.[47] Some groups of on-call workers might avoid requesting social assistance when the means test would involve a high risk. For example older on-call workers owning a property might be obliged to sell their property as this is considered own capital.

Finally, on-call workers, living legitimately in the Netherlands, are insured against loss of income due to old age (General Old Age Pensions Act - *Algemene Ouderdomswet - AOW*). The benefit increases by 2% for each year of residence before retirement age. Below, the right to unemployment benefits is further discussed, as on-call workers do not have different eligibility conditions compared to other employees, but face higher limitations in fulfilling them.

7.12.1 Unemployment benefits: amounts and duration

The eligibility for unemployment benefits conditions are (i) a loss of a relevant number of working hours (in short: at least five hours) and (ii) a week requirement (having worked in 26-out-of 36 weeks before the first day of unemployment (Articles 16 and 17 Unemployment benefit act, *Werkloosheidswet*, hereafter: WW). The unemployment benefit is received if there are no grounds for exclusion justifying its refusal (Article 19 WW). The benefit is wage-related (Article 1b WW) and amounts to 75% of the daily wage in the first two months and to 70% afterwards (Article 47 WW). The duration is three months and can be extended up to 24 months provided the claimant has a long employment history and a recent firm bond with the labour market (worked during at least four of the five years before).

These requirements mean that at the end of a preliminary agreement, there is no right to an unemployment benefit if no work was performed. Even is the claimant was called and s/he performed work, s/he is eligible for unemployment benefit only if the conditions mentioned supra are met. The nature of the on-call contracts makes meeting this fulfilment harder. For instance, if claimants work for many employers, the loss of working hours considers each employment relationship separately. If an on-call employee works for example at A for an average of 20 hours and at B for an average of four hours and the contract at B is terminated, the loss is four working hours (out of 24) and does not meet the five-hours condition.

[45] P. 35

[46] Art. 11 PW.

[47] The means test is comprehensive as it implies that income of the partner and of other persons living at the same address (without a tenancy agreement) is taken into account as well as (income from) capital. If the sum of all incomes at that address is sufficient – less or no assistance will be provided. Art. 19(1) PW.

Also the week requirement is particularly hard to meet for employees working irregularly and with weeks without calls, especially if they work for more employers. This is because only the weeks worked for the contract that is terminated count for the benefit eligibility (Article 17a (2) WW). Furthermore, for min/max or zero-hours contracts, the daily pay at the bases of the benefit is a yearly average and does not consider the presumption of working hours in Article 7:610b CC.

8. Derogations and best practices in Collective Labour Agreements

This paragraph provides a limited analysis of measures in a few CLAs, it highlights best practices and substantial differences with the legislation. With regard to the differences, no distinction is made between types of employment contracts. The reason of CLA analysis is that, as mentioned in Section 2.8, the Civil Code allows the social partners to derogate from legal rules in CLAs (*driekwartdwingend recht*), to adapt the provisions to the sectors also for the Work and Care Act (WCA). Derogations may be more favorable as well as detrimental to employees.

Best practices can especially be seen in the area of leave. An investigation by the Ministry of Social Affairs and Employment (*Ministerie van Sociale Zaken en Werkgelegenheid*)(Been, de la Croix et al. 2016) of 99 of the largest CLAs[48] examining the impact of a change of the law in 2015, shows that payment during pregnancy and maternity leave is supplemented for employees which means that the amount of benefit is the actual wage of the female employee and not just the statutory duty to pay daily wages. 38 out of 99 CLAs add up the maximum daily pay paid by the *UWV* to 100% of the income. Furthermore, 11 out of 99 CLAs provide a longer maternity leave than the statutory 16 weeks. Whereas the extended duration of the leave might be in of interest for all (female) on-call workers, the first is only relevant for those who are earning more than the maximum daily wage. Short-term care leave also is often supplemented in CLAs. This was the case in 35 of 99 CLAs.

Three examples show substantial differences in CLAs with legislation. They deal with the chain rule; extra pay for working during inconvenient hours; and duration and pay of the emergency leave.

With regard to on-call employees with a fixed-term contract, the chain rule in Article 7:668a CC is relevant. Paragraph 2 states that successive employment contracts between an employee and different employers count in the chain of employment contracts, provided the employers can be considered as successors in respect of the work performed.[49] The aim of this provision is to avoid so-called 'turning door agreements' (*draaideurovereenkomsten*[50]). However, paragraph 6 allows for CLA' deviations to the detriment of the employee. A report on 61 CLAs concluded in 2015 (Ministerie van Sociale Zaken en Werkgelegenheid 2016) shows that deviation from the statutory framework is used in 17 out of 61 CLAs: these CLAs provide that temporary agency employment contracts prior to a fixed-term contract do not or do not entirely count in the chain of fixed-term contracts.

The legal provision of the chain rule has two more paragraphs allowing for deviations from the general rule. First, it is stated in paragraph 5 that a CLA can provide for consecutive fixed-term contracts up to a maximum of six (instead of three in the statutory legislation) with a total duration of four year (instead of two). Second, a CLA – according paragraph 6 – can declare the chain-rule not applicable to employment contracts concluded solely or mainly for the purpose of the employees' education. The latter deviation is, of course, hardly the case with on-call workers.[51] Regarding the provision in paragraph 5, the following conditions must be met. Deviation is allowed in the branch of temporary agency work (sub a). In the other branches deviation is only possible if for specific functions, in case the intrinsic nature of business operations requires more time than two years or more fixed-term contracts than three (sub b). The report by SZW mentioned above shows that in 30 CLAs (applicable to 47% of the employees) explicit provisions have been made on the number of contracts in case of employees with a fixed-term contract.[52]

[48] These CLAs cover 85% of employees in the Netherlands who are covered by a CLA.
[49] It is not necessary for the employer to have insight into the capacity and suitability of the employee.
[50] *Draaideurovereenkomsten* are agreements that – for the goal of preventing the conversion into an employment contract for indefinite time – the employee performs the same work on the basis of fixed-term contracts alternatively via the employer and a temporary employment agency.
[51] Derogations for special groups are made in 13 CLAs (which are applicable to 32% of the employees) out of 61 CLAs. Most derogations relate to employees who have an employment contract in the context of a training. An example is the CLA Bakery company (article 4.6 *CAO Bakkersbedrijf*) where an open-ended contract only arises if the duration of fixed-term contracts exceeds 72 months or the number of fixed-term contracts is more than six.
[52] P. 66.

In nine CLAs (applicable to 17% of the employees) out of the 30 CLAs the duration of two years is extended to four or more years.

Social partners can agree in CLAs upon allowances for working during inconvenient hours, thus hours not fitting within the ordinary working hours.[53] For this reason extra pay is usually granted, in particular for working in the evening, at night, during weekends and on public holidays. One of the examples is the Saturday allowance. 78 out of 100 CLAs contain a right to such an allowance. Here we can see an exclusion of especially on-call workers from that allowance, however this is seldom, as this occurs only in six CLAs (Kuiper, de la Croix et al. 2014).

Emergency leave is in principle paid but this can be waived in a CLA. This is the case in three out of 99 CLAs in the Netherlands. Emergency leave is not paid in the CLAs of *Philips*, *Recreatie* and *Schilders-, Afwerkings- en Glaszetbedrijf*.[54] This applies to all employees, not only to on-call workers.

[53] The definition of customary working hours is partly dependent on the economic sector under which a company falls. Furthermore the norm for normal working hours seems to be changing in recent years. Social partners are increasingly focusing on the flexibility or working time, i.e. widening and / or varying working hours. This can affect the hours for which the surcharge is paid and the amount of the surcharge.
[54] http://cao.minszw.nl/pdf/174/2016/174_2016_13_236666.pdf; Article 22 (4) CAO *Recreatie* 2016-2017; Article 8.8 cao Philips 2015-2016; Article 49 (1) CAO *Recreatie* and *Schilders-, Afwerkings- en Glaszetbedrijf* 2016-2019.

9. Enforcement of rights – upholding of obligations

If an on-call worker considers his/her rights to be violated s/he can appeal to the civil sector of the District Court. The administrative sector deals with issues from an administrative decision (for instance the right to an unemployment benefit or a disability benefit). Before filing an appeal at the administrative sector, the individual who challenges a decision must however first file an objection with the administrative authority that adopted the challenged decision (Article 7:1 General Administrative Law Act/ GALA). The time limit is six weeks. In both court sectors, the case will mostly be handled and decided by a single judge (the *kantonrechter* or the *bestuursrechter*).It is relatively simply to have the case heard: the litigant has the right to argue his/her own case and does not need a lawyer to represent him/her in court. There are certain time limits to be respected. For example in the civil sector the deadline for claiming a transition pay is quite short: three months. Lawsuits cost money, such as registration fee (*griffiegeld*) which is due. There is a right to legal aid enshrined in the Dutch constitution.[55] Despite that the person seeking access to justice must pay for some of the costs him/herself. Especially civil lawsuits can take a long time and this might refrain on-call workers from starting a lawsuit against the employer.

[55] Art. 18 of the Constitution (*Grondwet*) (1) everyone may be legally represented in legal and administrative proceedings. (2) Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament.'

10. Impact of on-call work

An important reason to look at the impact of on-call work is to investigate whether working with a flexible number of hours is associated to particular risks vs benefits. This is done for workers, their organizations, and society at large.

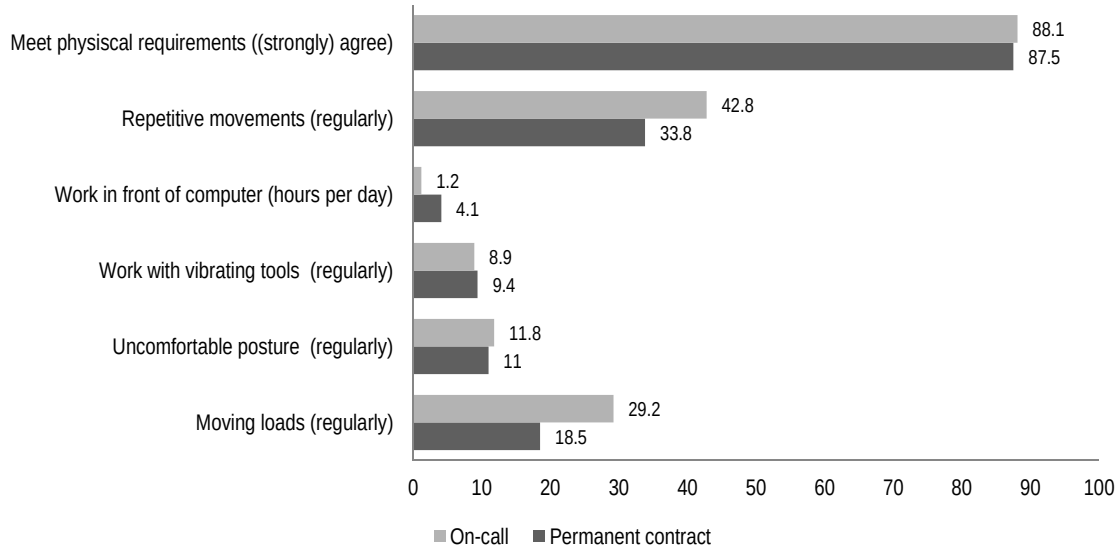
10.1 On on-call workers

On-call workers are hired to support the production process when peaks and leaves endanger the ability of an organization to satisfy the demand. Not having a stable number of working hours expose them to possible risks and benefits. Possible risks concern, for example, low income and unhealthier working conditions (Houwing 2016). Possible benefits concern, for example, better possibilities to balance work with private life.

The impact of on-call work for workers is investigated looking at different dimensions related to the job quality, health, and income position. Those dimensions are systematically compared with permanent employees and the significant effects linked to working flexible hours are discussed.

Job quality can be measured on different work aspects. The first addressed here is physical workload. As shown in figure 17, on-call workers report more often than permanent workers that their work requires regularly to move weights (29,2% vs 18,5%) and repetitive movements (42,8% vs 33,8%). On the contrary, on-call workers report to spend only 1,2 working hours per day in front of a computer screen against the 4,1 hours reported by permanent workers.

Figure 17. Physical workload among permanent and on-call employees (2011) (%)

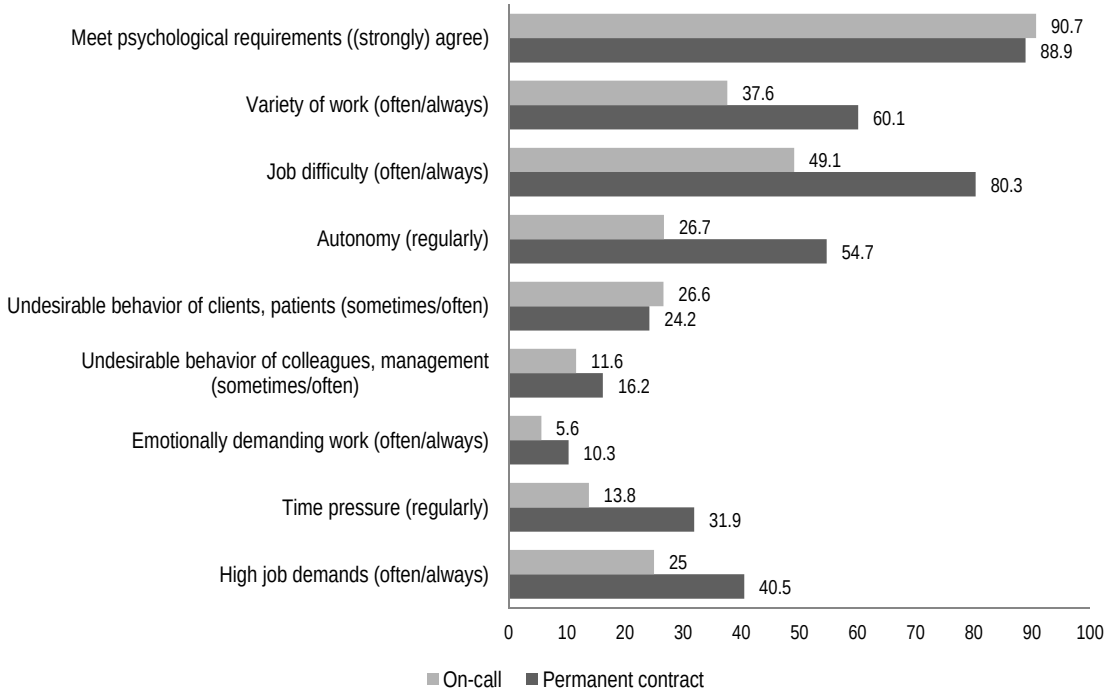


Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

The exposure to physical workload reported by on-call workers is like the level reported by temporary agency workers. Fixed-term workers instead report more similar requirements to permanent workers (see appendix). Despite the higher workload, on-call workers do not report a lower fit to the physical requirements than permanent and fixed-term workers. This may be linked to the fact that on-call workers are in average much younger and thus better equipped to meet those higher requirements.

Figure 18 depicts the psychosocial workload between on-call and permanent workers. As the rest of flexible workers (see appendix), on-call workers report lower workload tasks (25% vs 40,5%), time pressure (13,8% vs 31,9%), emotional demands (56,6% vs 10,3%) than permanent workers. The average on-call workload is particularly lower, also with respect to the rest of flexible workers, for dimensions measuring the autonomy (26,6% vs 54,7%), the complexity (49,1% vs 80,3%), and the variety (60,1% vs 37,6%) of work (Hooftman, Hesselink et al. 2013).

Figure 18. Psychosocial workload among permanent and on-call employees (2011) (%)

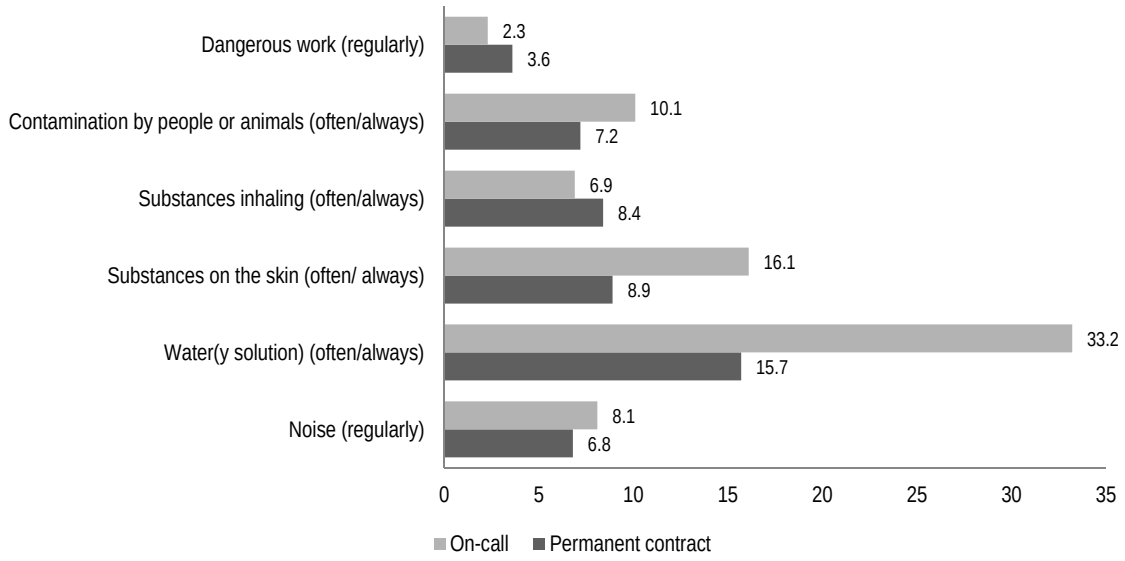


Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

The lower psychosocial workload linked to less challenging tasks of on-call work is partially compensated by the higher exposure to undesirable behaviors of clients and patients (26,6% vs 24,2%). This exposure is connected to the fact that on-call workers are more frequently employed in industries offering personal services, as hospitality and healthcare. Also in this case, the workload faced by on-call workers is more similar to the level expressed by temporary agency workers than to the level expressed by fixed-term and permanent employees (see appendix and Hooftman, Hesselink et al. 2013).

The job quality linked to on-call work is lower also for different dimensions concerning risky environmental factors. As shown in figure 19, on-call workers are more often than permanent employees exposed to contamination by people or animals (10,1% vs 7,2%), to substances on the skin (16,1 vs 8,9%), watery solutions (33,2% vs 15,7%), and to a slight extent noise (8,1% vs 6,8). This has to do with the higher concentration of on-call work in the healthcare, agriculture and fishery, as well as horeca sectors. Unlike in earlier job quality dimensions, for on-call workers the exposure to risk environmental factors is higher than for permanent and flexible workers, including in temporary agency jobs (see appendix).

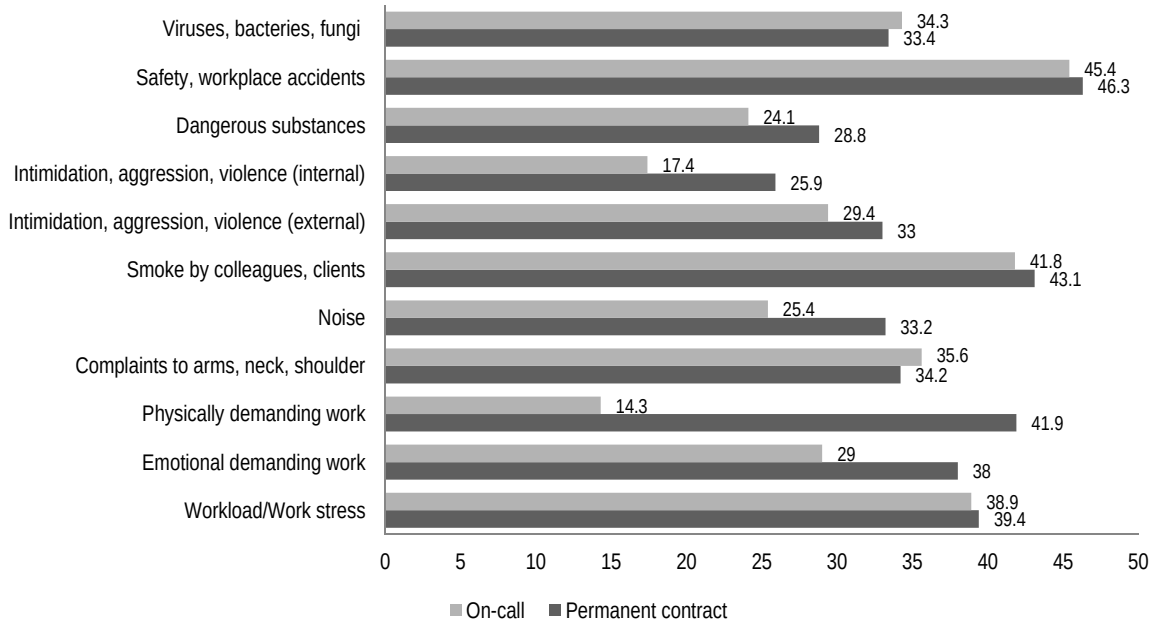
Figure 19. Environmental factors among permanent and on-call employees (2011) (%)



Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

The job quality linked to on-call work is also the lowest with regards to the regulations against work-related risks in figure 20. On-call workers are systematically less satisfied with the adequateness of health and safety measures than permanent workers, and to a great extent than the rest of the flexible workforce. This gap is especially high with respect to the regulation concerning the risks to which on-call workers are exposed the most (physical workload-14.4% vs 41.9%- and environmental factors-24.1% vs 28.8%) and the external and internal social working environment.

Figure 20 Satisfaction concerning health and safety measures among permanent and on-call employees (2011) (%)



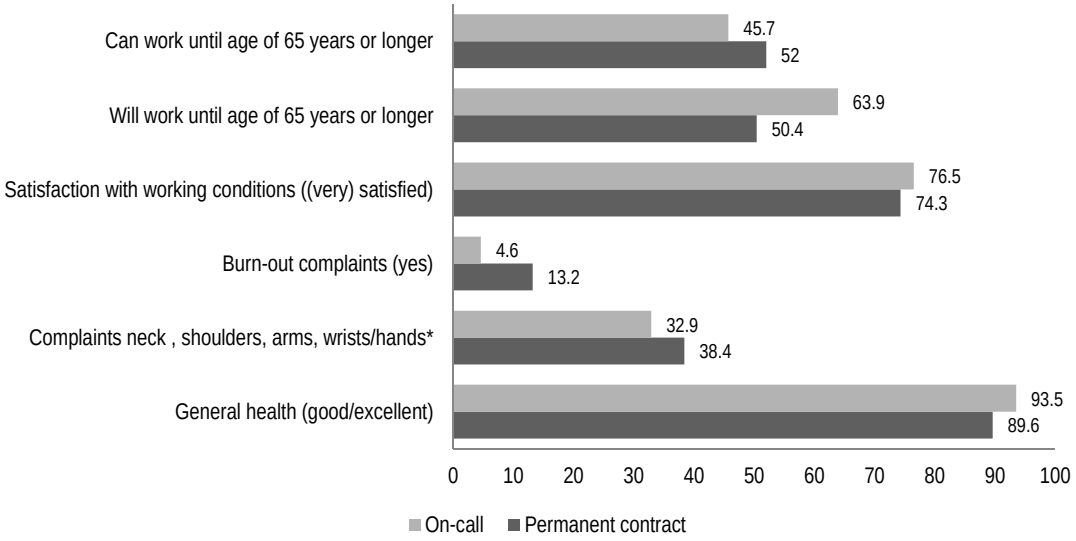
Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

Concerns over external social risks may be linked to the fact that on-call workers work more often in personal services and feel not adequately protected from forms of abuse by customers/patients. Furthermore, since on-call work is contingent within organizations, concerns over internal risks may reflect that on-call workers are less socially embedded and thus feel higher need for formal protective regulations than the rest of the workers. The higher exposure to internal and external forms of abuse may explain why, despite having a less challenging jobs, on-call workers are less satisfied than permanent employees with regulations against emotionally demanding jobs (29% vs 38%).

Being more exposed to physical workload and risky factors concerning both the use of substances as well as the social environment, working on-call may have negative externalities on health and wellbeing of employees. Some indications on this effect are provided in figures 21 and 22.

In general (figure 21) on-call workers report more positive general health than people working on a permanent contract (93,5% vs 89,6%), slightly higher satisfaction with their working conditions (76,5% vs 74,3%) and more willingness of working until the age of 65 years or above (63,9% vs 50,4%). On the same line, on-call workers report less often physical complaints in the upper body (32,9% vs 38,4%) and burn-out (4,6% vs 13,2%). This is linked to their younger age, which makes them in average healthier and more positive concerning their future working career. In spite of their positive health, on-call workers reports a lower perceived ability to work until and above the age of 65 years (45,7% vs 52%). They may perceive their future health and employability endangered by a continuous exposure to high physical workload and environmental risks.

Figure 21. Health and wellbeing among permanent and on-call employees (2011) (%)

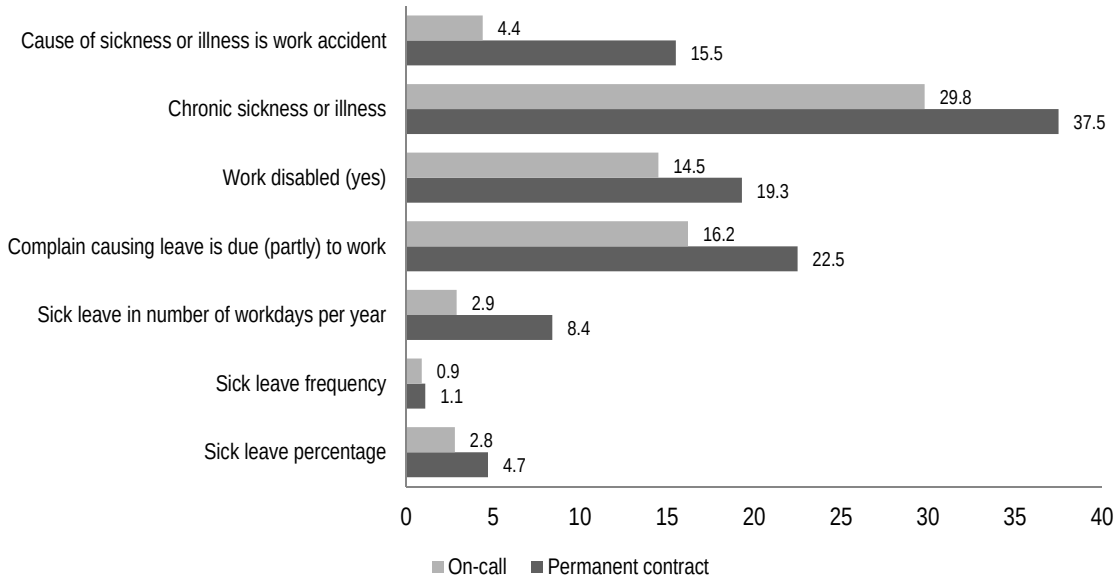


Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

*At least 1 time in the last 12 months

Data reflect the better health of on-call workers also looking at the incidence of sickness and disability in figure 22. While the frequency of sick leave is similar between on-call and permanent workers (0,9 vs 1,1 times), the former report significantly less often chronic sickness and illness (29,8% vs 37,5%), sickness leaves, work disability. Moreover, when they do so, the leaves are much shorter (2,9 vs 8,4 working days per year) and they less frequently indicate that the sickness or illness is caused by a work accident or is work-related.

Figure 22. Sickness and disability among permanent and on-call employees (2011) (%)

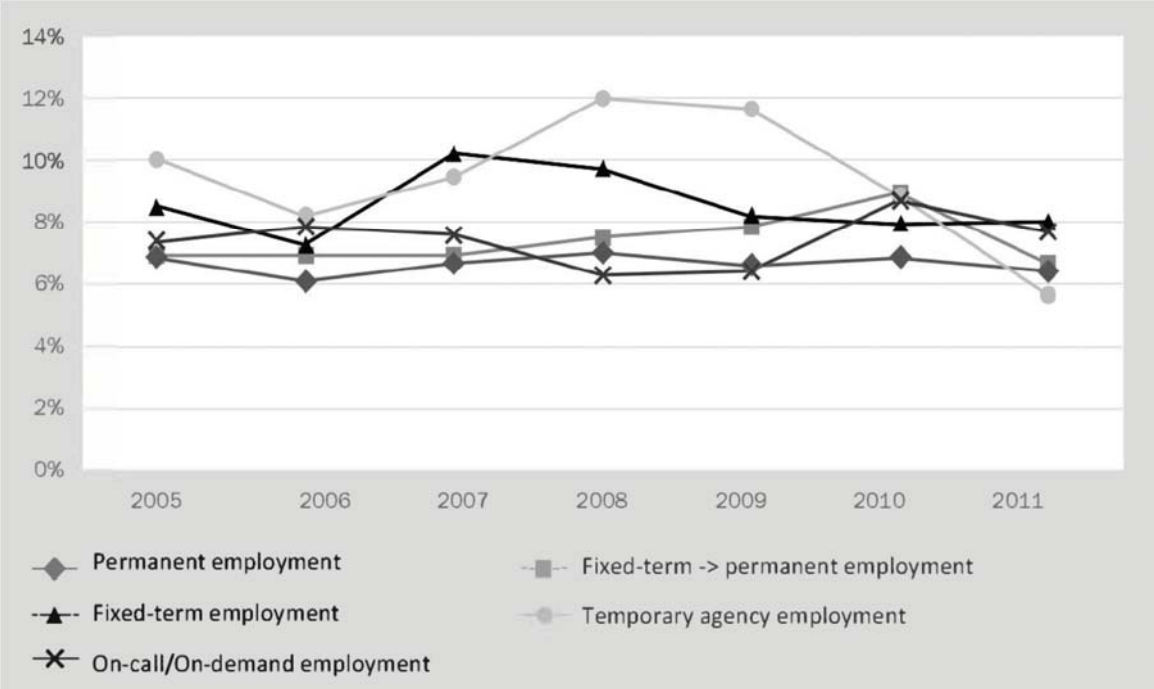


Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

Beside their younger age and thus better health, these data may also reflect a bias. As explained earlier, sickness in between calls does not entitles to sick leave if preliminary and not FWO contracts are applied. In this case, sick workers can refuse the call and may not included in the statistics. Therefore, these data may underestimate the real incidence of sickness among on-call workers.

Figure 23 measures the trend concerning the incidence of work accidents across work contracts between 2005 and 2011. While the trend concerning permanent employees is low and stable, it is higher and fluctuating for more flexible forms of employment. The incidence among on-call workers is slightly higher (around 8%) than permament workers until 2007 when it becomes the lowest (6%). After 2009 however, work accidents among on-call workers rose significantly and in 2011 on-call work is, together with fixed-term employment, the group with the most frequent work accidents. The higher risk of on-call work is linked to its higher contingency. Workers experience their job intermittently and are less embedded in the working environment. This might makes them less informed about safety measures as well as the work process and in turn more likely to incur in an accident. The upward trend may be connected to the fact that, after the economic crisis on-call work is rising and is used also for core and not only contingent tasks in organizations. As core tasks require specific skills that they have few time to acquire, on-call workers may be more exposed the to higher risk of work accident.

Figure 23. Percentage of work accidents by type of contract between 2005 and 2011



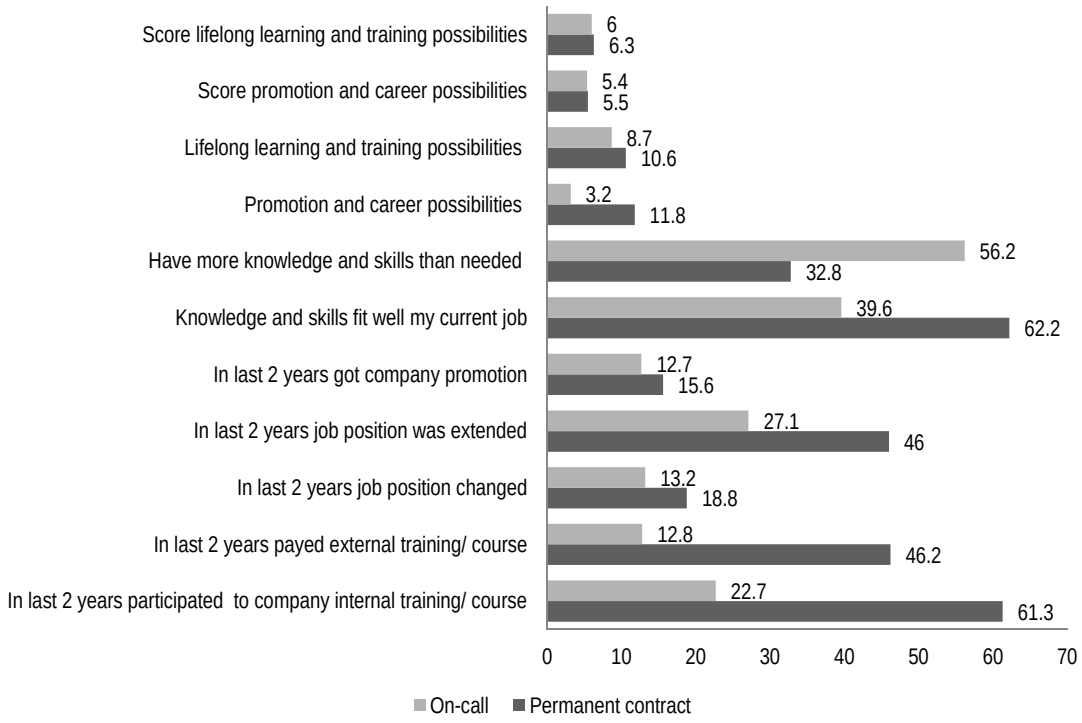
Source: NEA, CBS/TNO 2005-2011 in (Hooftman, Hesselink et al. 2013)

Another important aspect of job quality is employability. It is less connected to health outcomes, but has high impact on the future employment and career prospects. As shown in figure 24, on-call workers scores (from 0 to 10) lower than permanent workers. On-call workers are less often involved in lifelong learning and training (8,7% vs 10,6%) as well as in promotions and career possibilities (3,2% vs 11,8%). Since on-call workers are employed intermittently during peaks and leaves, employers face no incentive to offer training, as it risks to benefit the competitors. This is reflected in the much lower participation of on-call workers in internal training/course (22,7% vs 61,3%) in the last 2 years. The gap is also wide for external training/courses paid by the workers themselves (12,8% vs 46,2%) in the last 2 years. This may be connected to the fact that working for a variable and often short number of hours, on-call workers have less income available for developing their skills.

Furthermore, being part of the contingent personnel, they report less often than "core" employees: company promotions (12,7% vs 15,6%), extension of the job position (27,1% vs 46) and changes of the job position (13,2% vs 18,8%) in the last 2 years. This gap in employability is similar to the gap affecting temporary agency workers, but much higher than the gap concerning fixed-term employees (see appendix).

Finally on-call workers report much lower fit than permanent workers between their knoowledge, skills and their job (39,6% vs 62,2%). This occupational mismatch is mainly due to overeducation and overskills. It can be explained by combining the less complexity and less variety of tasks and the fact that those tasks are performed by young people, to a great extent in secondary and tertiary education.

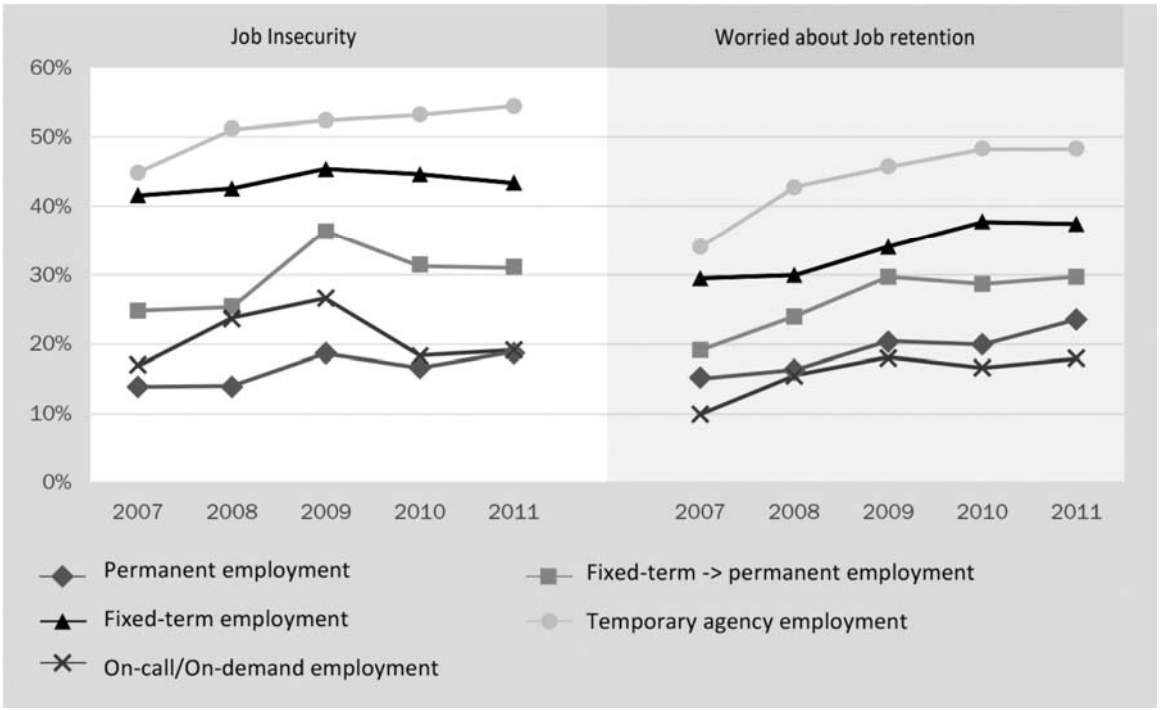
Figure 24. Employability among permanent and on-call employees (2011)



Source: NEA, CBS/TNO 2011 in (Hooftman, Hesselink et al. 2013)

The final aspect of job quality concerns the risk of losing one's job. Looking at Figure 25, the trends depicting the perceived job insecurity and worries about job retention are similar between on-call and permanent employees. In short, unlike other flexible groups, they perceive a very low risk that, about job retention, is even lower than permanent workers. This is linked to the fact that, working for variable working hours, on-call workers are normally exposed to external flexibility. Whether they have an employment contract or not, they perform work and get paid only when there is an organizational need. This flexibility hinders employers from firing them, especially in the looser forms (preliminary contracts). This is because on-call work is a pool, available to adjust the personnel to the demand with very limited costs.

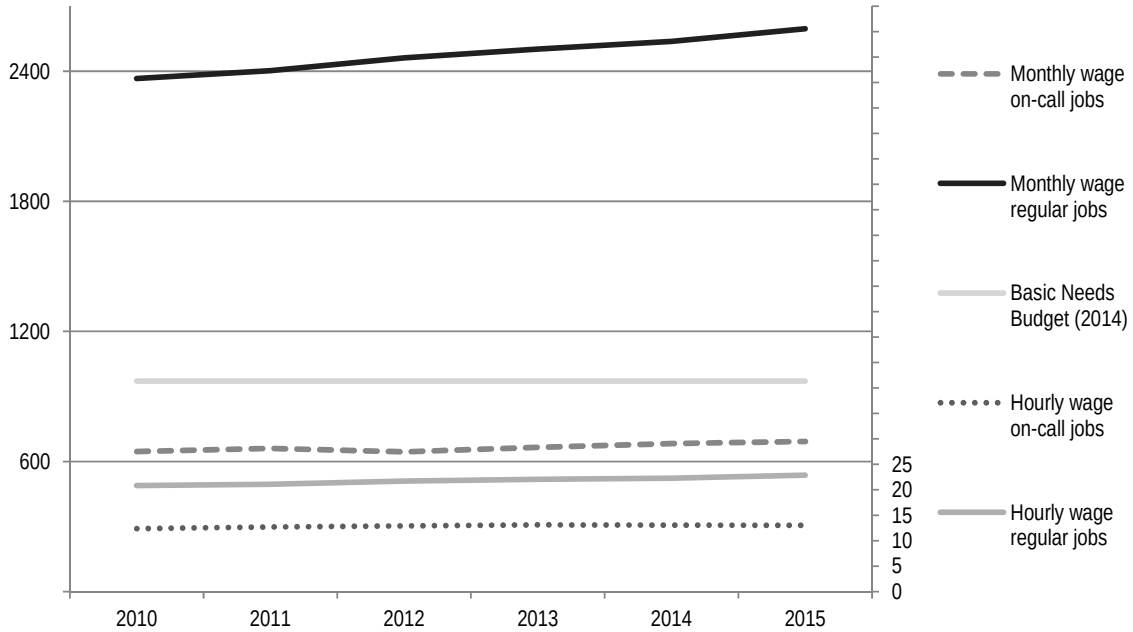
Figure 25. Trends in risk of job insecurity and worries for job retention (2007-2011)



Source: NEA, CBS/TNO 2007-2011 in (Hooftman, Hesselink et al. 2013)

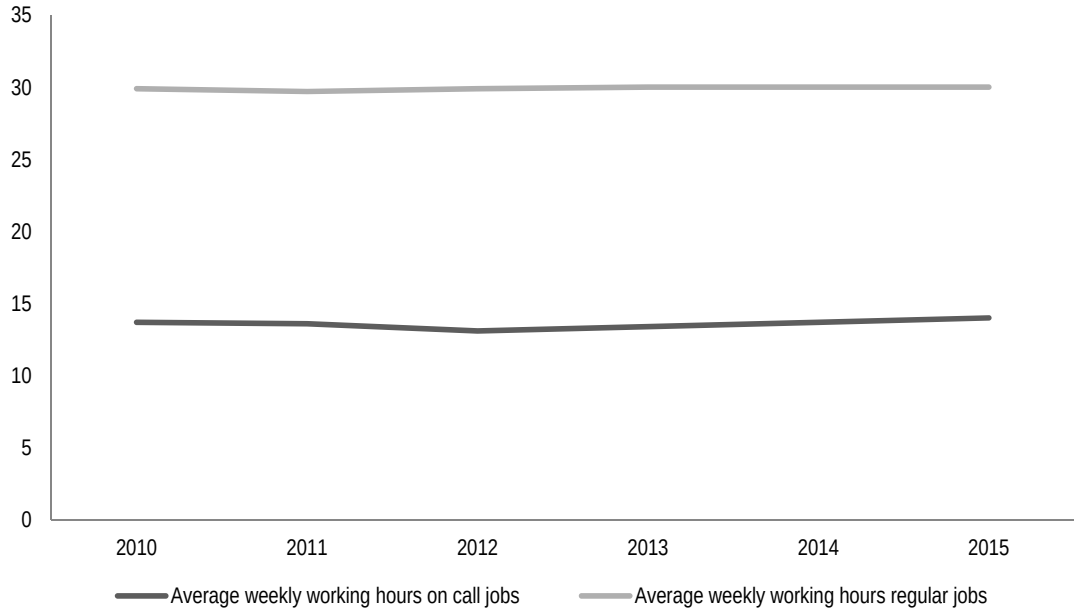
Working for a variable number of hours, on-call workers experience irregular earnings. Moreover, having more often low skilled tasks, shorter tenure, and younger age than permanent employees, their hourly wage may be lower as well. The income position of on-call and permanent workers is compared using the information in figure 26 and 27.

Figure 26. Average hourly and monthly wage for on-call and regular jobs (in Euros)



Source: CBS, 2010-2015 in (Hoff, Wildeboer Schut et al. 2016)

Figure 27. Average weekly working hours for on-call and regular jobs

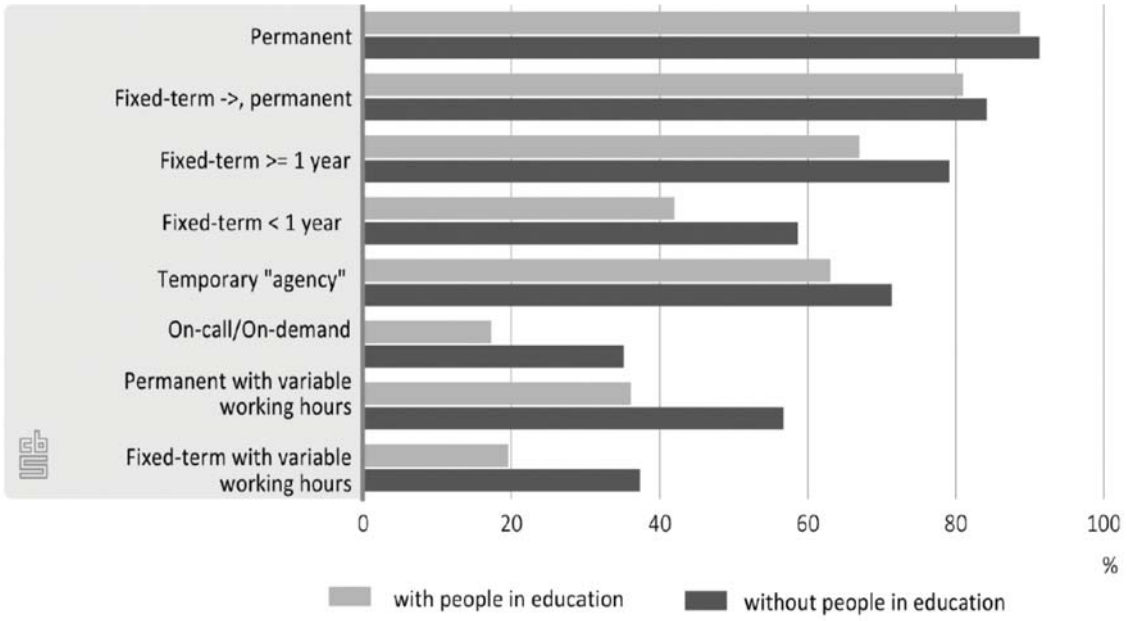


Source: CBS, 2010-2015

The negative impact of lower skilled tasks, lower tenure and age of on-call workers is shown in the gap in the hourly wage between on-call and regular jobs (blue and red lines in figure 26). Age impacts earnings also because the statutory minimum wage is lower until the 21 years. Furthermore, the earning level may be negatively affected also by the effective number of hours worked. As shown in figure 27, between 2010 and 2015 in on-call jobs is in average performed only about 15 hours of work compared to the 30 in regular jobs (see also section 4). Returning to figure 26, the negative impact of the on-call very short working hours is shown in the gross monthly wage. While the wage trend concerning on-call jobs is stable and just above 600 euros, the trend of regular job is increasing and goes above 2500 euros. Another important consideration is that the average gross monthly wage of on-call jobs is insufficient to fulfil the average basic needs. The basic needs budget is represented by dotted light-blue line in figure 26 and is calculated for a 1-person household in 2014 (Hoff, Wildeboer Schut et al. 2016).

The low wage, the unpredictability of working hours and the limited measures to protect their incomes may endanger on-call workers' economic independence. As shown in figure 28, the three groups with variable working hours (on-call, permanent, and fixed-term contract) have the lowest share of economically independent individuals. The gap is the highest with respect to permanent workers, but as well consistent with temporary workers.

Figure 28. Share of economically independent employees by type of contract in 2014

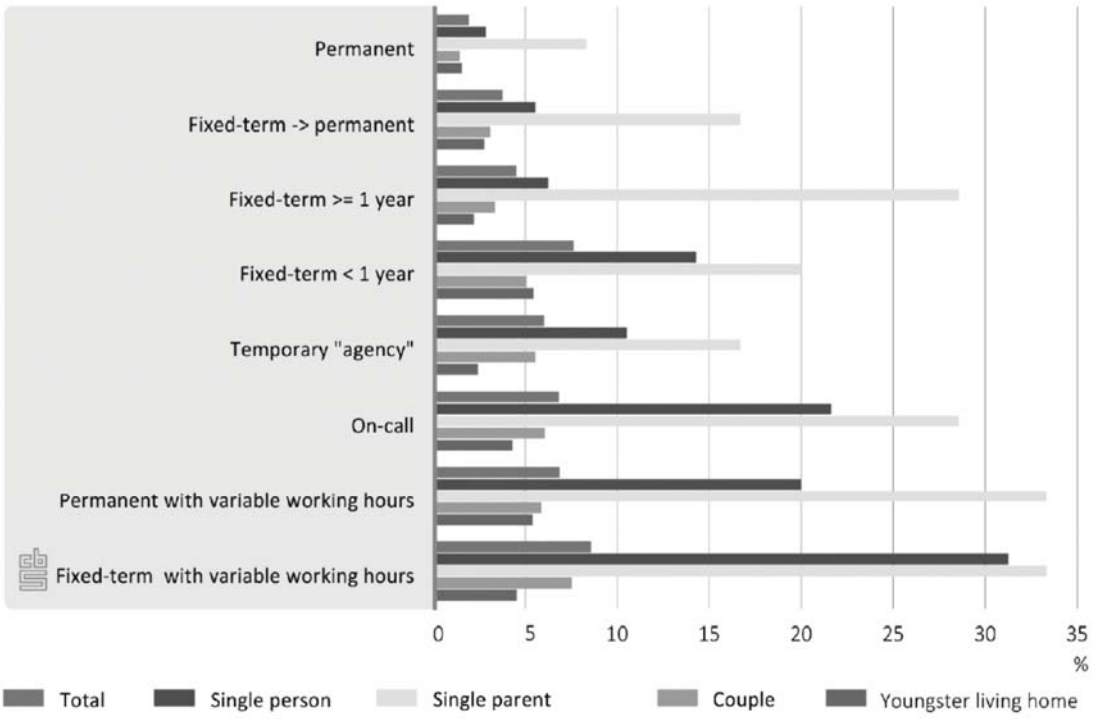


Source: CBS 2014 in (Van den Brakel and Kösters 2016).

Among the three groups with variable working hours, the economic independence is higher for the permanent group and lower for the fixed-term and the on-call group, with the former slightly above the latter. This may be due to the higher concentration within the permanent groups of FWO contract, providing higher guarantees in terms of minimum hours and pay. Unlike other workers, those three groups show a wide gap in the economic independence of workers in and outside education. Excluding workers still in education, the economic independence rise drastically for all the three groups (almost doubles for on-call and permanent). If the lower economic independence of people still in education is often compensated by the family support and by study loans, more problematic is that more than 40% of the permanent group and more than 60% of the fixed-term and on-call groups are not economically independent.

As household is an important source of redistribution among its members, the economic situation of on-call workers is investigated according to their household position. As shown in figure 29, the share of employees at risk of poverty is higher for the three groups with variable working hours with respect to the permanent workers with fixed working hours. However, the total risk of poverty (light-blue bars) between groups with fixed and variable working hours does not vary as much as the economic independence shown above.

Figure 29. Share of employees at risk of poverty by type of contract and position in the household in 2014



Source: CBS 2014 in (Kösters and van den Brakel 2015)

This limited variance in the total risk of poverty across forms of employment hides huge differences across different household positions. The gap between the permanent workers with fixed working hours and the three groups with variable working hours is highest for workers living in single person or single parent households and much lower elsewhere.

Among the three groups with variable working time, the pattern is similar. The risk of very high among single persons, and highest among single parents (especially for the fixed-term group). It is among workers living with a partner and for youngsters living at home, where the irregular earnings of on-call workers are more often supplemented by other streams of income (partners or other members).

These data show that the economic impact of on-call work depends on the household circumstances. The impact can be dramatically negative if on-call work is the only, irregular source of income, especially in households with children. Conversely, the impact can be much milder if on-call work supplements other streams of income in the household.

10.2 On organisations and society

At the moment of writing no research contribution addresses specifically the impact of on-call work on organisations and society in the Netherlands. Nonetheless, considerations can be made combining the information so far provided about on-call work and the research findings about the impact of flexible work in general.

The poor regulation of on-call work makes it a suitable instrument to adapt the production process to the market volatility. Despite beneficial in the short-term, research on the link between flexible work and innovation gives a hint that on-call work may have negative externalities on the medium/long-term. Different contributions depict weak and divergent relationships between the share of flexible employment

and innovation (Zhou, Dekker et al. 2011, Preenen, Vergeer et al. 2013, Preenen and Verbiest 2015). This is because, according to Prenen & Verbist (2015), the relationship critically depends, not on the quantity, but on the way in which organizations manage flexible human resources. They argue that, to the extent that organizations promote their skills' development, commitment and motivation then flexible workers are a source of innovation. Among the organizational aspects, particularly strong and significant is the positive effect on product innovation of offering a challenging work environment and of integrating flexible workers in the organizational culture.

On-call workers, being in average very young, represent a source of "fresh blood" that, from a theoretical perspective, can be beneficial to the organizational innovation (Zhou, Dekker et al. 2011). Nevertheless, the use of on-call work for contingent and elementary work may vanish this beneficial effect. Offering challenging work means autonomy and responsibilities, while integrating in the organizational culture implies regular contacts with permanent employees and, as shown in the previous section, this is not what on-call workers in average experience. They in fact often report undemanding jobs, job requirements under their skill level, and a poor embedment/integration in the work as well as social environment. The poor work integration of on-call workers was already discussed as causing poor familiarity with the working process and in turn a higher incidence of work accidents. In this context, the poor integration is also a limit to the capacity of on-call workers to be a source of organizational innovation. This is because if workers are not familiar to the work organization and products of their organization, they will face serious limits in innovating them. At societal level, the increasing employment of on-call work (Dekker and de Beer 2014) may endanger the ability of the Dutch productive system to innovate and may in turn hinder its competitiveness and economic growth.

Other societal aspects linked to on-call work are connected to the high incidence of work accidents and to the impact on social inclusion. On the one hand, voluntary on-call work, especially in the form of preliminary contracts, may have a positive impact on work-life reconciliation and promote more inclusive labour markets. On the other hand, on-call work, especially involuntary, showed critical aspects in terms of poverty risk, worse job quality, and weak social security positions, which may endanger the social participation of workers working with variable hours. This is especially true for individuals, especially older, that rely on on-call work as main source of household income and for whom access to social security is much more limited.

11. Conclusions

11.1 Legal aspects

The proportion of the so-called flexible work relations in the Dutch labour force is steadily increasing and this evolution is even more pronounced for on-call work. Different aspects of precariousness are related to on-call work, in particular due to the insecurity of the work demand, the related insecure income, often linked to (minor) entitlements to social benefits. It would therefore at first sight seem that legal statutory interventions aimed at preventing a further growth of precarious forms of flexible work would have tempered the expansion of on-call work. However, since the Act on Flexibility and Security (*Wet Flexibiliteit en zekerheid* or *Flexwet*) was adopted in 1999, the share of workers with a flexible employment has strongly increased and this is particularly true for on-call work. In this sense, the objectives of the *Flexwet* have not been realised.

The *Flexwet* introduced four important statutory legal provisions specifically relevant for on-call workers. As regards the presumption of the existence of an employment contract (Article 7:610a CC) and the presumption of the number of working hours (Article 7:610b), there has been very little litigation up to now. When the *Flexwet* was evaluated in 2007, it has been submitted that these presumptions might have a preventive effect. Such effect partially depends on both employers and on-call workers being aware of these rights. The shorter tenure of on-call workers compared to permanent workers might not induce on-call workers to gain knowledge about their rights. In addition, as young workers are overrepresented in this group, they lack more often experience relating to a position as a worker compared to permanent workers. Unfortunately, there are no recent data available on the application in practice of these two presumptions.

The second evaluation of the *Flexwet* showed that the introduction of the right to a minimum of three working hours pay for each call (Article 7:628a CC) had induced employers to offer part-time or fixed-term contracts instead of on-call contracts. However only a minority of on-call workers said that they actually were paid this minimum of three hours pay for each call. Recent data lack on whether this tendency still exists. In theory, the right to a minimum number of three paid hours for each call can potentially benefit on-call workers, in particular with zero-hours contracts.

The precariousness of some aspects of on-call work can be reduced or increased by collective agreements. No derogation is allowed from the right to a minimum of three hours pay for each call (Article 7:628a(2) CC). The same is true for the two other presumptions (Articles 7:610a and 610b CC). To our knowledge, no evaluation of the impact of CLA provisions on on-call work has been carried out recently, the latest dates from 2006.

The three most important legal provisions for on-call workers have not been amended by the Act on Work and Security (*Wet Werk en zekerheid*) which entered into force in 2015. However, the so-called chain rule (*ketenregeling*) was amended. When there are more than three consecutive employment contracts between the same or closely related parties; or with a total duration exceeding 24 months, the most recent contract converts automatically into a permanent contract (art. 7:668a CC). This aim of this provision is limiting the number of successive fixed-term contracts and the duration of the chain. This rule has in particular consequences for on-call workers who have a preliminary agreement with an employer (*voorovereenkomst*). When work is performed, a fixed-term employment contract enters into force and thus the limitations on successive fixed-term contracts apply.

However, quite some derogations to this chain rule are allowed. The derogation concerning the employment contract with a worker who is younger than 18 years old and works not more than 12 hours a week (Article 7:668a(11) CC) is particularly relevant for on-call workers belonging to this group. As on-call workers are in majority younger workers, this is a rather large group. Another derogation applies to older workers who are entitled to an old age state pension. The duration of successive fixed-term contract before a permanent contract enters into force is 48 months (Article 7:668a(12) CC). However, the older workers are less often working on call. Given the introduction in the Civil Code of the (amended) chain rule only in 2015, it is too early to have any data on the effect of this legal provision that in practice

affects on-call workers. However, according to an evaluation recently performed by VAAN-VvA (Houweling et al. 2016, p. 61) the objective of the Act on Work and Security to strengthen the legal position of the workers in fixed-term contracts by faster converting these to open-ended contracts has not been achieved. The fact that employers rather do not offer open-ended contracts at the end of a fixed-term contract might affect in particular on-call workers working with preliminary agreements.

The precariousness of on-call workers is particularly evident in diverse situations. Here, we highlight only a few. The work and income security is particularly risky for on-call workers with a preliminary contract who are confronted with illness before an employment contract starts. They are at that time not entitled to sick pay and there is no coverage of statutory social security as far as benefits are linked to their employment contract.

In addition, even if they have an employment contract, on-call workers who work for a small number of working hours build up little pension rights and social security coverage, such as unemployment benefits. The same is true for workers (either permanent or with fixed-term contracts) with small working hours. However the precariousness is probably even more obvious for on-call workers due to the fluctuating work demand which is a main feature of on-call work. On-call workers totally depending for their income on this form of flexible work are in a risky position.

It is important to note that individual contracts of on-call workers might be quite detailed and lengthy. Sometimes these contracts restrict in a far-reaching way the individual freedom of on-call workers, even if they have a weak legal position. This seems for example to be the case with non-competition clauses in employment contracts with a future work obligation (FWO) of on-call workers working at call centres. The legal validity of such clauses has not yet been subject to judicial review.

The low income security linked to on-call work can also have consequences for access to justice. Litigation might be costly (even if there is a right to legal aid), lengthy and in case of conflicts between an employer and an on-call worker, most workers will probably look for another job instead of suing the employer. This might explain why there is so little litigation on on-call work. However, both the unions and NGO's might assist on-call workers in case of conflicts. A group action is possible, even if there is no individual plaintiff (Article 3:305a CC). In addition, the Netherlands Institute for Human Rights can deliver a (non-binding) opinion in case of a complaint relating to discrimination, harassment or sexual harassment of on-call workers as the Dutch equal treatment legislation applies to such situations. As on-call workers are more frequently exposed to undesirable behaviour of clients and patients than permanent workers, the free and short procedure of the Institute can provide remedies in practice. The employer has the obligation to provide a discriminatory and harassment free working environment and the follow-up policy of the Institute show that their opinions are followed in the great majority of the cases.

11.2 Socio-economic aspects

The socio-economic characteristics of on-call workers support the argument that, in average, individuals work for variable number to either complement their main activity outside paid work or as a results of a very weak labour market position. This is also reflected by the fact that employees report in almost equal parts voluntary and involuntary motives for having on-call arrangements.

Two main groups within the "voluntary" on-call workers may be identified. First, young people willing to complement their main activity in education with a side job. Second, women in need for flexibility to reconcile work with main responsibilities in the household. The groups of "involuntary" include more often low-skilled adult and older workers at the margins of the labour market. From this perspective, on-call work in the Netherlands can represent either a first step into the labour market, a bridge between work and household, or a "trap" among irregular and intermittent jobs. The identification of these three groups is highly useful to interpret the impact of working on-call on employees' job quality, health, and income situation. In fact, impacts vary greatly depending on whether on-call work is a first step, a bridge, or conversely a trap. A non-Dutch origin does not seem to be significantly more common among workers with variable hours, except for non-Western origin.

Before discussing the impacts across the three groups, some aspects of job quality and income situation raise general concerns about the precariousness of on-call workers. First, the exposure to risky environmental factors and the incidence of work accidents among on-call workers are the highest with respect to all other employment forms. The exposure to risky factors relate to the nature of work in the industries where on-call work is more frequent (catering, healthcare, agriculture). Moreover, the very short job tenure of on call-workers is associated to poorer working conditions and to an insufficient access to information over safety and health measures. The higher exposure and the insufficient information, together with the irregular development of the on-call workers' expertise, makes on-call employees more at risk of incurring in an accident with respect to the regular personnel. This also explain the reason why on-call workers often perceive health and safety measures insufficient.

Second, on-call work is associated to a worse social environment. The fact that on-call workers report more often undesirable behaviour of clients and patients and insufficient protective measures against abuse within and outside the organization is also related to their very short tenure. On the one hand, the short tenure prevents them from familiarizing with the organization policies concerning the relationship with clients and developing an expertise on that. On the other hand, the short tenure makes on-call workers more exposed to internal abuses, since it limits their social embedment and makes the abuses unlikely to be sanctioned.

Third, on-call work has a negative impact on the income situation. The low-skilled tasks, short tenure, and younger age of on-call workers limit greatly their hourly wage. Moreover, their irregular and very short weekly hours make on-call workers' monthly wage insufficient to cover their basic needs.

Other aspects concerning the impact of on-call work on job quality may vary across the three groups of on-call workers identified above. The heavy physical workload, repetitive movements, and undemanding tasks can have more limited consequences on health outcomes of the two "voluntary" groups. This is because women and young people work on-call as a side-job, in average for a limited number of weekly hours. On the contrary, on-call work can have serious consequence on the physical as well as psychological wellbeing if it is carried out as main activity or career. The same is true for the very limited development of employability reported by on-call workers. Among the voluntary groups, young people develop their future employability while attending education. Among involuntary workers (partially among women as well), the lack of skills' development is an obstacle to their future employment security and contribute to make on-call work a trap.

The negative impact of on-call work on income situation varies across the three groups as they are associated to different household positions. The two voluntary groups more often live in households where they do not provide the main source of income. Therefore, the impact of irregular hours and earning on the poverty risk of these two groups is far milder than in the involuntary group. Instead, when the involuntary on-call workers live in a single-person household, on-call irregular earnings represent their main income source and place them at a very high risk of poverty, especially if they have to support children. The high risk of poverty of on-call workers in single-person households is thus particularly relevant in combination with the ongoing trends of rising household disruptions. This is because, the disruption may turn on-call from a complementary to the only income source of the household and impair its financial independence.

12. Policy recommendations

An important step for reducing decent work deficits in on-call work in the Netherlands would be to undertake an external evaluation of the Work and Security Act and the Flexibility and Security Act, with specific attention being paid to the legal position of on-call workers. The provisions to be assessed could include the presumption of the existence of an employment contract (Article 7:610a CC), the presumption regarding the number of working hours (Article 7:610b), and the right to a minimum of three working hours pay for each call (Article 7:628a CC). Assessing the practical impact of the chain rule in Article 7:668a CC on on-call workers who have a preliminary agreement with an employer would also be relevant.

Further, employers could be required to inform on-call workers in writing (including electronically) of their rights, in particular those deriving from the above-mentioned presumptions, as well as the right to a minimum pay for each time the worker is called in to work. Campaigns to improve awareness of on-call workers of their rights would also be instrumental in helping to prevent occupational accidents, discrimination, as well as violence at work – including (sexual) harassment. The Labour Inspectorate could play a key role in this regard.

Additional research is needed in order to identify under which conditions the precariousness of on-call work – and in particular those in involuntary on-call work – could be diminished by policies, legislation and targeted measures. In that regard, comparative research on the regulation of on-call work in EU28 countries would provide useful insight into the problems encountered and best practices in addressing them.[56] The focus should be placed on identifying possible measures to increase security in working hours, including prohibiting or severely restricting zero hours contracts and min/max contracts with a very large range of hours.

Other measures could include the prohibition of non-competition clauses in on-call employment contracts with a future work obligation (FWO). This prohibition could be complemented by a legal right to compensation for workers to whom invalid non-competition clauses have been applied. Additional aspects worth investigating include an assessment of applicable legislation and internal regulations at company level as regards the legal position of on-call workers – and possibly workers engaged in other forms of flexible work – in relation to employee participation in workplace-level social dialogue. The advantages and disadvantages for on-call workers and employers of establishing pools of on-call workers, as these exist in the health sector, could also be assessed, and possible good practices could be identified. For instance, employers sometimes have to pay a fee when hiring on-call workers from a so-called flexpool. A fund could be set up and funded with part of the fees paid to enable on-call workers to undertake specific training activities.

A review of collective agreements, including of possible derogations applicable to on-call workers, is also suggested. Collective agreements could indeed play an important role for the protection of these workers, for instance through the inclusion of specific provisions aiming at the prevention of occupational accidents for seasonal and casual workers, or those with very short hours of work. Research is needed in particular on the impact of the exclusion of on-call workers, in many collective agreements, from the right to pay supplements for night work or inconvenient hours, with an assessment of the risk that, as a consequence, on-call workers progressively replace permanent workers.

The implementation of pilot projects aimed at reducing the precariousness of on-call workers could also prove valuable, for instance in the platform economy (e.g. Foodora, Deliveroo, Fooddrop, Uber, Thuisbezorgd) and for professional domestic care (e.g. Helpling, Book a Tiger).

Finally, improving access to justice would be a key element of any reform aimed at improving the employment and working conditions of on-call workers. As these workers generally have a low income and pursuing a legal action is often costly, unions and NGOs could make a wider use of group actions (pursuant to art. 3:305a CC) in order to assist on-call workers when their rights are violated. For instance,

[56] The ILO's research project on on-call work in the industrialized world is an important step in enabling policymakers to draw lessons of how to regulate on-call work. A summary report synthetizing the findings of five national studies, including this one, will be published by the ILO at the end of 2018.

trade unions or other groups could launch a group action on the basis of art. 3:305a CC to challenge the legality of non-competition clauses in on-call employment contracts.

13. Appendix

Table 1. Characteristics of permanent and flexible employees aged between 15 and 75 years, 2015

	Permanent	Fixed-term --> permanent fix hours	Fixed-term >=1 year fix hours	Fixed-term <1 year fix hours	Temporary (agency)	On-call	Permanent variable hours	Fixed-term variable hours
Total (*1000) (2016)	5143	262	187	175	248	551	129	215
Share (2016)	%							
Gender								
Man	52,85	51,89	43,58	44,15	62,01	44,11	50,00	46,86
Woman	47,15	48,11	56,42	55,85	37,99	55,89	50,00	53,14
Age groups								
15-25 years	6,75	21,65	30,73	46,28	23,30	66,92	46,92	61,09
25-35 years	21,40	40,55	37,43	23,94	31,18	11,96	14,62	12,97
35-45 years	23,69	19,59	12,85	10,64	18,28	5,05	10,00	7,53
45-55 years	28,05	14,43	12,29	10,64	16,85	6,36	13,08	7,95
55-65 years	19,29	4,12	5,59	6,38	8,96	5,61	10,77	5,86
65-75 years	0,79	0	1,12	2,13	1,43	3,93	4,62	4,60
Origin (2015)								
Dutch native	82	77	77	74	69	78	80	74
Western Immigrant	9	10	11	10	12	8	9	9
Non-Western Immigrant	9	13	11	16	19	14	11	16

Education level								
Low	17,91	15,46	21,79	34,04	27,96	42,43	32,31	41,00
Middle	42,44	42,27	33,52	39,89	49,10	43,36	45,38	40,17
High	38,56	41,92	43,58	25,00	21,15	13,46	20,00	17,57
Unknown	1,07	0,69	0,56	1,06	1,79	0,93	2,31	1,26
Attend regular education			2015					
Yes	10	17	33	40	18	60	47	56
No	90	83	67	60	82	40	53	44
Weekly working time								
0-12 hours	4,19	3,44	13,41	27,13	10,75	56,26	37,69	45,61
12-20 hours	6,84	5,84	10,06	13,30	7,53	17,94	16,15	15,90
20-35 hours	32,73	33,33	35,75	29,26	27,60	18,69	25,38	22,59
35 hours and more	56,24	57,73	40,22	30,85	53,76	7,10	21,54	15,90

Source: EBB, 2016

Table 2. Incidence of contract types by tenure, company size, and industry between 2014-2015

Share (2015)	Permanent	Fixed-term --> permanent fix hours	Fixed-term >=1 year fix hours	Fixed-term <1 year fix hours	Temporary (agency)	On-call	Permanent variable hours	Fixed-term variable hours
	%							
Tenure								
0-6 months	3	35	21	46	40	27	11	33
6-12 months	3	22	23	19	18	18	10	17
1-2 years	6	23	26	15	17	18	16	17
2-5 years	16	16	23	13	15	22	25	18
5-10 years	24	2	5	4	5	9	17	8
10 years or longer	47	2	2	2	3	6	18	5
Unknown	1	0	0	1	1	1	3	2

Company size								
1-10 employees	8	12	8	14	7	15	20	21
10-100 employees	20	28	19	22	16	27	23	22
100 or more employees	69	55	67	53	63	46	44	39
Unknown	3	5	6	12	14	12	13	17
Industry (SBI 2008) (2014)								
A Agriculture forestryand fishery	1	1	1	2	2	2	3	2
B Mining and quarrying	0	0	0	0	0	0	0	0
C Manufacturing	11	10	6	7	20	4	5	4
D Energy/Power supply	0	0	0	0	1	0	0	0
E Water utilities and waste management	1	0	0	0	1	0	0	0
F Construction	4	4	3	3	7	1	1	1
G Trade	15	17	19	22	6	26	21	21
H Transport and storage	5	6	4	5	8	4	8	4
I Horeca	2	4	7	7	3	16	12	13
J Information and communication	3	4	2	3	2	1	2	2
K Financial services	4	3	2	2	5	0	2	1
L Rental and commercial property	1	1	1	1	0	0	1	0
M Specialized business services	6	8	4	5	2	3	4	4
N Rental and other business services	4	9	6	9	5	10	7	8
O Public administration and public services	8	3	4	3	8	0	2	2
P Education	8	8	10	5	3	5	2	4
Q Health and care	19	13	23	14	4	15	11	10
R Culture, sport, and recreation	1	1	2	2	1	3	3	2
S Other services	2	2	3	1	1	2	2	1

T Household services	0	0	0	1	0	0	0	1
U extra-territorial organizations	0	0	0	0	0	0	0	0
Unknown	4	5	5	10	19	9	16	19

Source: CBS 2014-2015 in (Van den Brakel and Kösters 2016)

Table 3. Share of employees reporting high physical workload by type of contract in 2011

Physical workload	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
Moving loads (regularly)	18,5	20,7	22,2	23,8	29,2
Uncomfortable posture (regularly)	11	9,1	8,9	13	11,8
Work with vibrating tools (regularly)	9,4	9,6	6,8	17,4	8,9
Work in front of computer (hours per day)	4,1	3,7	2,9	3,5	1,2
Repetitive movements (regularly)	33,8	34,6	39,9	46,3	42,8
Meet physical requirements ((strongly) agree)	87,5	90,5	89,3	85,2	88,1

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Table 4. Share of employees reporting risky environmental factors and safety risk by type of contract in 2011

Environmental factors and safety	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
Noise (regularly)	6,8	6,6	5,3	13,4	8,1
Water(y solution) (often/always)	15,7	18,5	19,1	13	33,2
Substances on the skin (often/ always)	8,9	10,9	11,4	9,6	16,1
Substances inhaling (often/always)	8,4	7,5	6	11,2	6,9
Contamination by people or animals (often/always)	7,2	6,1	7,8	3,3	10,1
Dangerous work (regularly)	3,6	3,3	2	4,4	2,3

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Table 5. Share of employees reporting high psychosocial workload by type of contract in 2011

Psychosocial workload	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
High job demands (often/always)	40,5	35,9	30,6	30,5	25
Time pressure (regularly)	31,9	25,2	23,8	24,2	13,8
Emotionally demanding work (often/always)	10,3	7,3	8	4,6	5,6
Undesirable behavior of colleagues, management (sometimes/often)	16,2	15,1	14,4	16,2	11,6
Undesirable behavior of clients, patients (sometimes/often)	24,2	23,5	24,1	17	26,6
Autonomy (regularly)	54,7	40,8	31,8	28	26,7
Job difficulty (often/always)	80,3	73,5	62,1	61,8	49,1
Variety of work (often/always)	60,1	60,8	48,5	36,1	37,6
Meet psychological requirements ((strongly) agree)	88,9	90,9	91,3	89,2	90,7

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Table 6. Information about HRM practices affecting employees' employability by type of contract in 2011

Employability	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
In last 2 years participated to company internal training/ course	61,3	48,1	38,9	29,9	22,7
In last 2 years paid external training/ course	46,2	36,8	26	16,6	12,8
In last 2 years job position changed	18,8	19,3	15,2	12,4	13,2
In last 2 years job position was extended	46	35,8	26,2	24,4	27,1
In last 2 years got company promotion	15,6	16,9	10,6	11,2	12,7
Knowledge and skills fit well my current job	62,2	56,6	46,9	45,8	39,6
Have more knowledge and skills than needed for current job	32,8	36,4	45,3	50,3	56,2
Promotion and career possibilities (1 out of the 3 most important aspects)	11,8	15,7	8,2	3,6	3,2
Lifelong learning and training possibilities (1out of the three most important aspects)	10,6	20,9	16,8	9,1	8,7
Score promotion and career possibilities	5,5	6,1	5,1	4,4	5,4
Score lifelong learning and training possibilities	6,3	6,7	6	4,7	6

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Table 7. Share of employees reporting good general health and health-related complaints in 2011

Health and wellbeing	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
General health (good/excellent)	89,6	92,6	92	87	93,5
Complaints neck , shoulders, arms, wrists/hands*	38,4	34,7	35	32,2	32,9
Burn-out complaints (yes)	13,2	11,5	12,4	14,8	4,6
Satisfaction with working conditions ((very) satisfied)	74,3	78,5	68,4	60,9	76,5
Will work until age of 65 years or longer	50,4	55	59,1	54,9	63,9
Can work until age of 65 years or longer	52	49,8	48,7	46,5	45,7

Source: NEA, 2011 (Hooftman, Hesselink et al. 2013)

*at least 1 time in last 12 months

Table 8. Information about incidence, frequency, duration, and work-related cause of sickness and work disability by type of contract in 2011

Sickness and disability	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
Sick leave percentage	4,7	2,9	2,8	3,8	2,8
Sick leave frequency	1,1	1,1	1,2	0,9	0,9
Sick leave in number of workday per year	8,4	5,2	4,4	7,2	2,9
Complain causing leave is due (partly) to work	22,5	21,6	20,2	25,2	16,2
Work disabled (yes)	19,3	15,7	14,2	11,5	14,5
Chronic sickness or illness	37,5	29,9	29,1	29,1	29,8
Cause of sickness or illness is work accident	15,5	9,8	12,6	15,7	4,4

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Table 9. Share of employees reporting adequate health and safety measures by type of contract in 2011

Adequate health and safety measures (%)	Permanent contract	Fixed-term --> permanent	Fixed-term	Temporary (agency)	On-call
Workload/Work stress	39,4	43	38,1	36,9	38,9
Emotional demanding work	38	36	30,6	29	29
Physically demanding work	41,9	32,8	28,9	31,4	14,3
Complaints to arms, neck, shoulder	34,2	36,3	32,7	28,4	35,6
Noise	33,2	29,5	27,5	34,2	25,4
Smoke by colleagues, clients	43,1	39,4	38,8	43	41,8
Intimidation, aggression, violence (external)	33	31,5	30,6	31,1	29,4
Intimidation, aggression, violence (internal)	25,9	21,9	23,4	24,3	17,4
Dangerous substances	28,8	26,5	25,1	26,6	24,1
Safety, workplace accidents	46,3	44,9	43,2	40,9	45,4
Viruses, bacteries, fungi	33,4	34,8	33,9	26,3	34,3

Source: NEA, 2011 in (Hooftman, Hesselink et al. 2013)

Short bio of the authors

Dr. **Susanne Burri** is Associate Professor at Utrecht School of Law, in the Netherlands. Susanne's main theme of academic research is equality law in European, Dutch and International law. Her research focuses also on the reconciliation of work, private and family life; flexible work relations and part-time work; adjustment of working time and working hours. Susanne works with Utrecht University since 1993. She defended her Ph.D. thesis in 2000. In her thesis *Part-time Work, Equality and Gender in a European and National Legal Perspective* she analysed the conceptualisation and codification of the principle of equality in relation to part-time work in Dutch, European and international law, paying specific attention to the concept of indirect discrimination. Susanne publishes widely on these issues in English, Dutch and French and is often invited for lectures. In the periods 2001-2004 and 2006-2007 she was awarded for excellent research by Utrecht School of Law. Susanne participates currently in the research programme on family relations and law of Utrecht School of Law: the Utrecht Centre for European Research into Family law: (see: http://ucerf.rebo.uu.nl/en/) and participates in the Future of Work Project (https://www.uu.nl/en/research/future-of-work). See for a list of publications and lectures (most on invitation) since 2000: http://www.uu.nl/staff/SDBurri/0.

Susanne is currently also the specialist coordinator in gender equality of the European's Commission European network of legal experts in gender equality and non-discrimination. In this network, European 35 countries are represented. She was the coordinator of the European network of legal experts in the field of gender equality from 2007 to 2014. In this function, she has assisted the European Commission in monitoring the implementation of directives on gender equality and pregnancy and parental leaves first for DG Employment and Social Affairs and since 2011 for DG Justice and Consumers, Unit D1 Equal treatment legislation. She has coordinated the work of national experts representing the 28 Member States, three EEA countries and candidate countries on thematic publications, ad hoc requests, a bi-annual law review (the European Gender Equality Law Review, now the European Equality Law Review), organized events gathering the whole network in Brussels etc. She has co-authored many of the network's publications. See for information on the network and its publications:

http://ec.europa.eu/justice/gender-equality/tools/legal-experts/index_en.htm

http://www.equalitylaw.eu/

Susanne's research and educational activities include research commissioned by third parties, (e.g. the European Parliament).

Dr. **Susanne Heeger** is since 2011 lecturer at the Utrecht University Law School (The Netherlands) where she teaches courses in labour law and social security law. She participates in the Future of Work Project (https://www.uu.nl/en/research/future-of-work), the research program on family law (http://ucerf.rebo.uu.nl/en/) and the FP7 research project 'bEUcitizenship' on European citizenship (http://beucitizen.eu/). In 2013 Susanne worked as Policy Advisor by the Legislative, administrative and legal affairs department (WBJA) of the Ministry of Social Affairs and Employment. In 2012 she obtained her PhD in law. The topic of her dissertation was to what extent a social security system like the Dutch could take differences in life cycles into account by financing leave through savings. Her research experience and interest lie in the field of labour market, social security and life cycle and regard e.g. the reconciliation of paid work with other activities, such as care and education, also from a comparative law perspective. From 2005 to 2006 she conducted field research in district courts. From 2004 to 2013 she was a guest lecturer on health law course at the University Medical Centre Utrecht. In 2004, she completed Law school at the University of Utrecht.

Dr. **Silvia Rossetti** is post-doctoral researcher at the Utrecht School of Governance, Utrecht University (The Netherlands) (https://www.uu.nl/staff/SRossetti), where she is involved in the Future of Work Project (https://www.uu.nl/en/research/future-of-work). Her expertise relies in labour market institutions and their life course outcomes.

In 2015 she obtained her Doctoral degree in Political and Social Sciences at the European University Institute (Italy). Her PhD project investigated the institutional conditions under which the state, social partners and organisations align their effort to extend working life in The Netherlands, Germany, and Italy. In 2008 she obtained a master's degree (M.A., cum laude) in Labour Studies from the University of Milan, Faculty of Political Science. In 2007 she obtained a master's degree (M.Sc., cum laude) in International Comparative Social Policy Analysis from the Faculty of Sociology of the Catholic University of Leuven (IMPALLA program at CEPS-INSTEAD, Luxembourg). Research of both master thesis investigated the link between flexible employment relations and retirement in a comparative perspective. In 2005 she obtained her bachelor's degree (B.A., 110/110) in Organization and Human Resources, Faculty of Political Science, University of Milan.

Silvia has published her PhD thesis, various papers at international conferences and workshops. Her research allowed her to gain a deep understanding of the Dutch institutional context. Between 2013 and 2015 she visited the Department of Sociology of Public Governance, Institute for Innovation and Governance Studies of the University of Twente, Enschede (The Netherlands). In 2010 she stayed for one month at the Amsterdam Institute for Advanced Labour Studies (AIAS) of the University of Amsterdam (The Netherlands) to investigate the Dutch Collective Labour Agreements Database. In 2009 she was involved in the Flexicurity Research Program for which she stayed at the University of Tilburg, Tilburg (The Netherlands) for two months.

References

AA, R. v. d., et al. (2015). Motieven van werkgevers en werknemers voor flexibele contractvormen. Dynamiek op de Nederlandse arbeidsmarkt. De focus op flexibilisering. K. Chkalova, A. Goudswaard, J. Sanders and W. Smits. Den Haag, Centraal Bureau voor Statistiek**:** 115-127.

Algemene Bond Uitzendondernemingen (2016). Flexpocket: feiten en cijfers over flexibele vormen van arbeid en dienstverlening. Lijnden, ABU.

Asscher-Vonk, I. (2010). Rechtvaardigheid in de arbeidsrelatie. Nijmegen, Valkhof Pers.

Been, W. M., et al. (2016). Arbeid en Zorg 2015. Een onderzoek naar cao-bepalingen gerelateerd aan de Wet modernisering regelingen voor verlof en arbeidtijden. Den Haag, Ministerie van Sociale Zaken en Werkgelegenheid.

Beer, P., de and E. Verhulp (2017). Dertig vragen en antwoorden over flexibel werk. Rebalancing labour between market and regulation. Amsterdam, University of Amsterdam, Amsterdam Institute for Advanced labour Studies.

Beer, P. d. (2016). Onzeker werk. Achtergronden, gevolgen en strategie ten aanzien van flexibel werk. Amsterdam, De Burcht.

Bolhaar, J., et al. (2016). De flexibele schil van de Nederlandse arbeidsmarkt: een analyse op basis van microdata. CPB Achtergronddocument. Den Haag, Centraal Planbureau.

Broughton, A., et al. (2016). Precarious employment in Europe: patterns, trends, and policy strategies. Directorate-General for Internal Policies. Policy Department A: Economic and Scientific Policy. Brussels, European Parliament.

Burri, S. (2015). Challenging Perspectives on Work/Life Balance Issues in EU and Dutch Law. Labour And Social Rights. An Evolving Scenario, Proceedings of the Twelfth International Conference in Commemoration of Prof Marco Biagi. T. Addabbo, W. Bromwich, T. M. Fabbri and I. E. Senatori. Turin, Giappichelli**:** 155-190.

Burri, S. D. (2009). The Netherlands. Precarious employment in a context of flexicurity. Gender and the Contours of Precarious Employment: Developing Common Understandings Across Space, Scale and Social Location. L. Vosko, M. McDonald, I. Campbell and (Eds.). London en New York, Routledge Cavendish 127-142

Chkalova, K., et al. (2015). Dynamiek op de Nederlandse arbeidsmarkt. De focus op flexibilisering. Den Haag, Centraal Bureau voor Statistiek.

Countouris, N. (2016). The changing law of the employment relationship: comparative analyses in the European context, Routledge.

Cuypers, D. and E. Verhulp (2008). Dismissal Law Proposals and the Flexicurity Strategy. Social Responsibility in Labour Relations. F. Pennings, Y. Konijn and A. e. Veldman. Alphen aan den Rijn, Kluwer Law International**:** 331-350.

Dekker, F. and P. de Beer (2014). Flexibele arbeid. De rol van werkgevers. Amsterdam, De Burcht.

Donker van Heel, P., et al. (2013). Contractvormen en motieven van werkgevers en werknemers. Ecorys onderzoeksrapport. Rotterdam, Ecorys.

Euwals, R., et al. (2016). Flexibiliteit op de arbeidsmarkt. CPB Policy Brief Den Haag, Centraal Planbureau.

Goudswaard, A., et al. (2014). De toekomst van flex. Een onderziek van TNO naar strategieën van Nederlandse bedrijven. Hoofdoorp, TNO.

Heeger-Hertter, S. (2017). Arbeid en zorg. Flexibele Arbeidsrelaties. E. Cremers-Hartman. https://www.navigator.nl/document/inodf8a5f8cf490d3c9de6b5a7fd69f09cfd?ctx=WKNL_CSL_402

Hemerijk, A. and I. Marx (2010). A Long Goodbye to Bismarck? The Politics of Welfare Reform in Continental Europe, Amsterdam University Press.

Hilbers, P., et al. (2011). De flexibele schil- Overeenkomsten en verschillen tussen CBS- en UWV- cijfers Sociaaleconomische trends. Den Haag, Centraal Bureau voor Statistiek

Hoff, S., et al. (2016). Armoede in kaart 2016. Den Haag, Sociaal en Cultureel Planbureau.

Hooftman, W., et al. (2013). Flexwerk en de kwaliteit van de arbeid. Arbobalans 2012, Kwaliteit van de arbeid, effecten en maatregelen in Nederland. Hoofdoorp, TNO**:** 61-90.

Houweling, A. R., et al. (2015). Arbeidsrechtelijke themata. Den Haag, Boom Juridische uitgevers.

Houwing, H. (2016). Hoe precair is flexibele arbeid? Onzeker werk. Achtergronden, gevolgen en strategie ten aanzien van flexibel werk. P. de Beer. Amsterdam, De Burcht. **nov. 2016**.

Jacobs, A. T. J. M. (2017). The Netherlands, http://www.kluwerlawonline.com/document.php?ids=IELL2004110,IELL2004112,IELL2004113,IELL2004114,IELL2004115,IELL2004116,IELL20150045,IELL20150046,IELL20150047 (laatst geraadpleegd op 17 februari 2017).

Knegt, R., et al. (2007). Tweede evaluatie Wet flexibiliteit en zekerheid Hoofddorp, Hugo Sinzheimer Instituut Universiteit van Amsterdam, TNO.

Knipschild, E. (2009). "De voordelen en risico's van een min-maxovereenkomst." ArbeidsRecht(2009): 55.

Knipschild, E. and T. Ridde (2015). "De voordelen en risico's van een min-maxovereenkomst anno 2015, 2015/22, Deventer: Kluwer." ArbeidsRecht **2015**(22).

Kösters, L. and M. van den Brakel (2015). "Armoederisico voor flexwerkers." Economisch Statistiche Berichten **100**((4722): 687).

Kraamwinkel, M. and M. Patijn (2012). "Onzeker werk: de grens is bereikt. Acht maatregelen voor beter werk." Socialisme & Democratie **2012**(3).

Kremer, M., et al. (2017). Voor de zekerheid. De toekomst van flexibel werkenden en de modern Organisatie van arbeid. Den Haag, WRR.

Kuiper, N. Y., et al. (2014). Toeslagen bijzondere uren in cao's in 2013. Den Haag, Ministerie van Sociale Zaken en Werkgelegenheid.

Ministerie van Sociale Zaken en Werkgelegenheid (2016). CAO-afspraken 2015. Den Haag, http://cao.minszw.nl/pdf/174/2016/174_2016_13_237282.pdf.

Pennings, F. (2011). The Protection of Working Relationships in the Netherlands The Protection of Working Relationships. A comparative study. F. Pennings and C. e. Bosse. Alphen aan den Rijn, Wolters Kluwer. **83-108**.

Preenen, P., et al. (2013). De relatie tussen inzet van flexmedewerkers en innovatie: Het gaat niet om hoeveel, maar om hoe Dynamiek op de Nederlandse. Dynamiek op de Nederlandse arbeidsmarkt. De focus op flexibilisering. R. van Gaalen, A. Goudswaard, J. Sanders and W. Smits. Den Haag, Centraal Bureau voor Statistiek**:** 83-100.

Preenen, P. T. Y. and S. Verbiest (2015). De relatie tussen inzet van flexmedewerkers en innovatie: Het gaat niet om hoeveel, maar om hoe Dynamiek op de Nederlandse. Dynamiek op de Nederlandse arbeidsmarkt. De focus op flexibilisering. R. v. d. AA, D. van Buren and T. Viertelhauzen. Den Haag, Centraal Bureau voor Statistiek**:** 87-113.

Rayer, C. W. G. (2014). Wetgeving en beleid voor flexibele arbeid. Deventer, Wolters Kluwer

Roozendaal, W. L. (2015). Oproepwensen en oproepplichten: wat is een goede reden een oproepkracht net op te roepen? . Commentaar bij Hoge Raad, 10-4-2015. ECLI:NL:HR:2015:923 (werknemer/Connexxion Openbaar Vervoer N.V.), AR-updates Arbeidsrecht 2015-0345.

Schils, T. and H. Houwing (2010). "Sectoral variation in collectively agreed employment protection: Evidence from Dutch flexicurity." European Journal of Industrial Relations **16**(2): 137-152.

Van den Brakel, M. and L. Kösters (2016). Inkomenspositie van flexwerkers. Centraal Bureau voor Statistiek Sociaaleconomische trends. Den Haag, Centraal Bureau voor Statistiek.

Zhou, H., et al. (2011). "Flexible labor and innovation performance: evidence from longitudinal firm-level data." Industrial and corporate change **20**(3): 941-968.

Conditions of Work and Employment Series

No. 1 Quality of working life: A review on changes in work organization, conditions of employment and work-life arrangements (2003), by Howard Gospel

No. 2 Sexual harassment at work: A review of preventive measures (2005), by Deirdre McCann

No. 3 Statistics on working time arrangements based on time-use survey data (2003), by Andrew S. Harvey, Jonathan Gershuny, Kimberly Fisher & Ather Akbari

No. 4 The definition, classification and measurement of working time arrangements (2003), by David Bell & Peter Elias

No. 5 Reconciling work and family: Issues and policies in Japan (2003), by Masahiro Abe, Chizuka Hamamoto & Shigeto Tanaka

No. 6 Reconciling work and family: Issues and policies in the Republic of Korea (2004), by Tae-Hong Kim & Hye-Kyung Kim

No. 7 Domestic work, conditions of work and employment: A legal perspective (2003), by José Maria Ramirez-Machado

No. 8 Reconciling work and family: Issues and policies in Brazil (2004), by Bila Sorj

No. 9 Employment conditions in an ageing world: Meeting the working time challenge (2004), by Annie Jolivet & Sangheon Lee

No. 10 Designing programmes to improve working and employment conditions in the informal economy: A literature review (2004), by Dr. Richard D. Rinehart

No. 11 Working time in transition: The dual task of standardization and flexibilization in China (2005), by Xiangquan Zeng, Liang Lu & Sa'ad Umar Idris

No. 12 Compressed working weeks (2006), by Philip Tucker

No. 13 Étude sur les temps de travail et l'organisation du travail: Le cas du Sénégal. Analyse juridique et enquête auprès des entreprises (2006), by Alfred Inis Ndiaye

No. 14 Reconciling work and family: Issues and policies in Thailand (2006), by Kyoko Kusakabe

No. 15 Conditions of work and employment for older workers in industrialized countries: Understanding the issues (2006), by N.S. Ghosheh Jr., Sangheon Lee & Deirdre McCann

No. 16 Wage fixing in the informal economy: Evidence from Brazil, India, Indonesia and South Africa (2006) by Catherine Saget

No. 18 Reconciling work and family: Issues and policies in Trinidad and Tobago (2008), by Rhoda Reddock & Yvonne Bobb-Smith

No. 19 Minding the gaps: Non-regular employment and labour market segmentation in the Republic of Korea (2007) by Byung-Hee Lee & Sangheon Lee

No. 20 Age discrimination and older workers: Theory and legislation in comparative context (2008), by Naj Ghosheh

No. 21 Labour market regulation: Motives, measures, effects (2009), by Giuseppe Bertola

No. 22 Reconciling work and family: Issues and policies in China (2009), by Liu Bohong, Zhang Yongying & Li Yani

No. 23 Domestic work and domestic workers in Ghana: An overview of the legal regime and practice (2009), by Dzodzi Tsikata

No. 24 A comparison of public and private sector earnings in Jordan (2010), by Christopher Dougherty

No. 25 The German work-sharing scheme: An instrument for the crisis (2010), by Andreas Crimmann, Frank Weissner & Lutz Bellmann

No. 26 Extending the coverage of minimum wages in India: Simulations from household data (2010), by Patrick Belser & Uma Rani

No. 27 The legal regulation of working time in domestic work (2010), by Deirdre Mc Cann & Jill Murray

No. 28 What do we know about low-wage work and low-wage workers (2011), by Damian Grimshaw

No. 29 Estimating a living wage: a methodological review (2011), by Richard Anker

No. 30 Measuring the economic and social value of domestic work: conceptual and methodological framework (2011), by Debbie Budlender

No. 31 Working Time, Health, and Safety: a Research Synthesis Paper (2012), by Philip Tucker & Simon Folkard

No. 32 The influence of working time arrangements on work-life integration or 'balance': A review of the international evidence (2012), by Colette Fagan, Clare Lyonette, Mark Smith & Abril Saldaña-Tejeda

No. 33 The Effects of Working Time on Productivity and Firm Performance: a research synthesis paper (2012), by Lonnie Golden

No. 34 Estudio sobre trabajo doméstico en Uruguay (2012), by Karina Batthyány

No. 35 Why have wage shares fallen? A panel analysis of the determinants of functional income distribution (2012), by Engelbert Stockhammer

No. 36 Wage-led or Profit-led Supply: Wages, Productivity and Investment (2012), by Servaas Storm & C.W.M. Naastepad

No. 37 Financialisation and the requirements and potentials for wage-led recovery – a review focussing on the G20 (2012), by Eckhard Hein & Matthias Mundt

No. 38 Wage Protection Legislation in Africa (2012), by Naj Ghosheh

No. 39 Income inequality as a cause of the Great Recession? A survey of current debates (2012), by Simon Sturn & Till van Treeck

No. 40 Is aggregate demand wage-led or profit-led? National and global effects (2012), by Özlem Onaran & Giorgos Galanis

No. 41 Wage-led growth: Concept, theories and policies (2012), by Marc Lavoie & Engelbert Stockhammer

No. 42 The visible face of Women's invisible labour: domestic workers in Turkey (2013), by Seyhan Erdoğdu & Gülay Toksöz

No. 43 In search of good quality part-time employment (2014), by Colette Fagan, Helen Norman, Mark Smith & María C. González Menéndez

No. 44 The use of working time-related crisis response measures during the Great Recession (2014), by Angelika Kümmerling & Steffen Lehndorff

No. 45 Analysis of employment, real wage, and productivity trends in South Africa since 1994 (2014), by Martin Wittenberg

No. 46 Poverty, inequality and employment in Chile (2014), by Sarah Gammage, Tomás Alburquerque & Gonzálo Durán

No. 47 Deregulating labour markets: How robust is the analysis of recent IMF working papers? (2014), by Mariya Aleksynska

No. 48 Growth with equity in Singapore: Challenges and prospects (2014), by Hui Weng Tat & Ruby Toh

No. 49 Informality and employment quality in Argentina, Country case study on labour market segmentation (2014), by Fabio Bertranou, Luis Casanova, Maribel Jiménez & Mónica Jiménez

No. 50 Comparing indicators of labour market regulations across databases: A post scriptum to the employing workers debate (2014), by Mariya Aleksynska & Sandrine Cazes

No. 51 The largest drop in income inequality in the European Union during the Great Recession: Romania's puzzling case (2014), by Ciprian Domnisoru

No. 52 Segmentation and informality in Vietnam: A survey of literature, Country case study on labour market segmentation (2014), by Jean-Pierre Cling, Mireille Razafindrakoto & François Roubaud

No. 53 A chronology of employment protection legislation in some selected European countries (2014), by Mariya Aleksynska & Alexandra Schmidt

No. 54 How tight is the link between wages and productivity? A survey of the literature (2014), by Johannes Van Biesebroeck

No. 55 Job quality in segmented labour markets: The Israeli case, Country case study on labour market segmentation (2014), by Shoshana Neuman

No. 56 The organization of working time and its effects in the health services sector: A comparative analysis of Brazil, South Africa, and the Republic of Korea (2014), by Jon Messenger & Patricia Vidal

No. 57 The motherhood pay gap: A review of the issues, theory and international evidence (2015), by Damian Grimshaw & Jill Rubery

No. 58 The long journey home: The contested exclusion and inclusion of domestic workers from Federal wage and hour protections in the United States (2015), by Harmony Goldberg

No. 59 The (missing) link between wages and productivity in the Philippines: what role for collective bargaining and the new two-tier wage system? (2016), by Melisa R. Serrano

No. 60 Negociación colectiva, salarios y productividad: el caso uruguayo (2015), by Graziela Mazzuchi, Juan Manuel Rodríguez y Eloísa González

No. 61 Non-standard work and workers: Organizational implications (2015), by Elizabeth George & Prithviraj Chattopadhyay

No. 62 What does the minimum wage do in developing countries? A review of studies and methodologies (2015), by Dale Belman & Paul Wolfson

No. 63 The regulation of non-standard forms of employment in India, Indonesia and Viet Nam (2015), by Ingrid Landau, Petra Mahy & Richard Mitchell

No. 64 The regulation of non-standard forms of employment in China, Japan and the Republic of Korea (2015), by Fang Lee Cooke & Ronald Brown

No. 65 Re-regulating for inclusive labour markets (2015), by Jill Rubery

No. 66 Minimum wage setting practices in domestic work: An inter-state analysis (2015), by Neetha N.

No. 67 The effects of non-standard forms of employment on worker health and safety (2015), by Michael Quinlan

No. 68 Structural change and non-standard forms of employment in India (2016), by Ravi Srivastava

No. 69 Non-standard forms of employment in some Asian countries: A study of wages and working conditions of temporary workers (2016), by Huu-Chi Nguyen, Thanh Tam Nguyen-Huu & Thi-Thuy-Linh Le

No. 70 Non-standard forms of employment in Uganda and Ghana (2016), by Christelle Dumas & Cédric Houdré

No. 71 The rise of the "just-in-time workforce": On-demand work, crowdwork and labour protection in the "gig-economy" (2016), by Valerio De Stefano

No. 72 The introduction of a minimum wage for domestic workers in South Africa (2016), by Debbie Budlender

No. 73 Productivity, wages and union in Japan (2016), by Takao Kato

No. 74 Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers (2016), by Janine Berg

No. 75 Non-Standard forms of employment in Latin America. Prevalence, characteristics and impacts on wages (2016), by Roxana Maurizio

No. 76 Formas atípicas de empleo en América Latina: Incidencia, características e impactos en la determinación salarial (2016), by Roxana Maurizio

No. 77 Firms' demand for temporary labour in developing countries: Necessity or strategy? (2016), by Mariya Aleksynska & Janine Berg

No. 78 Remembering rest periods in law (2016), by Naj Ghosheh

No. 79 Initial effects of Constitutional Amendment 72 on domestic work in Brazil (2016), by the Institute for Applied Economic Research (IPEA)

No. 80 Coverage of employment protection legislation (EPL) (2016), by Mariya Aleksynska & Friederike Eberlein

No. 81 Emplois atypiques et résultats sur le marché du travail au Cameroun, en République Démocratique du Congo et au Tchad (2016), by Benjamin Fomba Kamga, Vincent de Paul Mboutchouang & Gaston Brice Nkoumou Ngoa

No. 82 Impacto de las reformas legislativas en el sector del empleo del hogar en España (2016), by Magdalena Diaz Gorfinkel

No. 83 Redistributing value added towards labour in apparel supply chains: tackling low wages through purchasing practices (2016) by Doug Miller & Klaus Hohenegger

No. 84 Resultados de las reformas jurídicas relativas a las trabajadoras y los trabajadores domésticos en Uruguay (2016), by Alma Espino González

No. 85 Evaluating the effects of the structural labour market reforms on collective bargaining in Greece (2016), by Aristea Koukiadaki & Damian Grimshaw

No. 86 Purchasing practices and low wages in global supply chains Empirical cases from the garment industry (2016), by Mark Starmanns

No. 87 Sectoral collective bargaining, productivity and competitiveness in South Africa's clothing value chain: manufacturers between a rock and a hard place (2017), by Shane Godfrey, Trenton Elsley & Michaelle Taal

No. 88 Mapping Employment Dismissal Law: A Leximetric Investigation of EPL Stringency and Regulatory Style (2017), by Benoit Pierre Freyens & J.H. Verkerke

No. 89 Social dialogue and economic performance – What matters for business, a review (2017), by Damian Grimshaw, Aristea Koukiadaki and Isabel Tavora

No. 90 The International Labour Organization and the Living Wage: A Historical Perspective (2017), by Emmanuel Reynaud

No. 91 Managing Social Risks of Non-Standard Employment in Europe (2017), by Günther Schmid & Johannes Wagner

No. 92 Migrants and cities: Research on recruitment, employment, and working conditions of domestic workers in China (2017), by Liu Minghui

No. 93 Salario mínimo y empleo: evidencia empírica y relevancia para América Latina, (2017), by Mario D. Velásquez Pinto

No. 94 Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy (2017), by Hannah Johnston and Christopher Land-Kazlauskas

No. 99 Unstable and On-Call Work Schedules in the United States and Canada (2018), by Elaine McCrate

No. 101 Zero-Hours Work in the United Kingdom (2018), by Abi Adams & Jeremias Prassl

No. 102 On-call and related forms of casual work in New Zealand and Australia (2018), by Iain Campbell