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Re-regulating for inclusive labour markets

Jill Rubery

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and Working Conditions Branch

Re-regulating for inclusive labour markets

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Abstract

There is growing international evidence that current employment regulation is not providing adequate and inclusive protection due to the exclusion of those engaged in care work and the growth of nonstandard contracts, informal employment and more complex employment relationships spanning organisational boundaries. As a consequence not only are mainstream economists calling for employment deregulation but other commentators suggest that the standard employment relationship and associated regulation only favours insiders and that more attention should be paid to providing universal social protection not dependent on employment status. This paper argues for a different approach which combines more universal social protection with increased obligations on employers to extend and promote employment protection across a wider variety of employment statuses. The core arguments for this approach are first that social protection is not sustainable if employers pass on too many costs to the state and fail to make an adequate fiscal contribution to the welfare system. Second employment regulation serves multiple functions, not only income and social protection: eight different functions of employment regulation are identified and reforms proposed both to make the regulation more inclusive and to promote employer responsibility. More universal social protection and extended employment regulation rely primarily on a proactive state but some proposals are also considered for extending opportunities for workers and citizens to exercise voice and to monitor and promote enforcement of rights.

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1. Introduction¹

The clamour to change the approach to regulating labour markets has been rising from a wide range of sources and not always from the usual suspects, the mainstream economists that regard regulations as distorting the pure operation of markets. For others the problem is the narrowing of the segment of the population covered by traditional employment regulation and social protection (Stone and Arthurs, 2013; Vosko, 2010) associated with the standard employment relationship (SER) and the consequent growth in dualism (Palier and Thelen, 2011), conceptualised as an increase in ‘working on the margins’ (Vosko, 2010) or the rise of the precariat, an emergent class in itself (Standing 2011). For these writers, as well as mainstream economists, regulation is said to be working for the insiders but not the outsiders, although their perspectives differ on whether regulation is simply ineffective or itself the cause of inequality. A common policy solution is said to be to move towards more comprehensive entitlements to social protection, not dependent on employment status (Vosko, 2010; Standing, 2011). This follows developments in developing economies where new social protection initiatives have increasingly been delinked from employment status and extended to the informal sector often on a non-contributory basis (ILO, 2014; Barrientos, 2013; Martínez Franzoni and Sánchez-Ancochea, 2014).

The four main problems associated with current forms of regulation and protection can be identified as: the increasingly narrow scope of employment and social protection in many countries; the difficulty in identifying and effectively regulating the responsible employer; the lack of value attached to unpaid care work; and the increasing deprivation of human rights for those working at the margins. These are major and serious lacunae that need to be addressed. However, this paper develops an argument that the current reform proposals that focus mainly on social policy are too narrowly specified. Although the debate is highlighting current deficiencies, it also misses the macro-economic linkages between employment and social protection, as pointed out by Heintz and Lund (2012) and Martínez Franzoni and Sánchez-Ancochea (2013, 2014), and reduces the function of employment regulation to that of social protection. In doing so it lets employers off the hook by giving up on direct attempts to change employer behaviour. Employers may be incentivised to arrange employment in certain ways and constrained by global competition or global supply chains in their employment choices, but employers still make the final decisions over whom to employ and under what conditions. Policies for greater social inclusion cannot be effective unless employers are willing to employ a wider range of people and provide more jobs that conform to the notion of decent work.

The case for a more nuanced and multifaceted approach to reform is developed in four stages. First we review the debates calling for reform from a variety of disciplinary perspectives. Second, we identify some general principles for reform under three headings of reforming social policy, extending employer obligations and strengthening enforcement and monitoring. The case for this three-pronged approach is based on the acceptance of the need for some delinking of social rights from employment status while also arguing that social policy is not a substitute but a complement to employment regulations. In developing this argument we identify eight separate functions of employment regulation. In the third we outline what a reform programme for inclusive labour markets might entail for each of these functions. The conclusions considers the contribution of these proposals to the long term project of generating political momentum for progressive regulatory reform.

¹ This paper is based on a plenary presentation at the ILO’s 2013 Regulating for Decent Work Conference.

2. Employment regulation and the outsider/insider divide

The most influential and persistent argument against employment regulation stems from mainstream economics (Lee and McCann, 2011: 3). The general premise underpinning the 1994 OECD Jobs Study (OECD, 1994) and the World Bank's Doing Business Index (Botero et al. 2004), is that the most efficient markets are free of institutional constraints. Widespread evidence (Howell, 2004; Howell et al. 2007; Berg and Kucera 2008), including OECD analyses (OECD 2006), that found no direct correlation between regulation and macro employment performance and growth failed to end this debate but instead changed the terms from performance to social justice issues. Thus, although highly regulated economies were found to have comparable overall performance to deregulated economies (OECD, 2006), employment regulation was still considered harmful because it favoured insiders over outsiders. In practice these empirical findings rely on only a few studies (see Rubery, 2011 for a review) and the cross national comparisons use limited institutional data which often fail to capture the design problems that may put groups at risk of exclusion.

Despite theoretical and methodological critiques, the insider/outsider analysis has still provided legitimacy for employment deregulation during the economic crisis and beyond. For example, the European Commission (2011: 7) called for reforms 'to reduce over-protection of workers with permanent contracts, and provide protection to those left outside or at the margins of the job market'. However, the actual changes are weakening protection for marginal groups by reducing protections for temporary contracts, lowering minimum wages, limiting the extension of collective agreements and allowing firms to derogate from agreements (ETUI, 2014).

What is striking is the lack of policies to make regulations more inclusive and protect groups vulnerable to austerity measures. This is in contrast to developments during crises elsewhere: in Korea in the 1997 crisis (Lee and Yoo, 2008) unemployment protection was extended and in the 2002 Argentinian currency crisis Freeman (2009) found that strengthening employment and social protection assisted with adjustment to devaluation. In the absence of any positive policies for inclusivity, attention is better focused on contributions from law and other social sciences aimed at imagining more inclusive forms of employment and social protection.

Although Freedland (2013) has demonstrated the existence of major differences among legal regimes in the degree of SER regulation and in its influence on employment practices, the SER, in its various manifestations and meanings, has still provided the cornerstone of employment regulation in advanced countries and beyond. Two influential books have recently advocated seeking a new paradigm, rather than seeking to revive the SER.

The first by Stone and Arthurs (2013) makes a primarily empirical case: the world has changed, fewer people are now covered by the SER and there is little appetite or possibility for its renewal. This work can be considered as the latest contribution to long standing legal debates over how to overcome arbitrary divisions between standard and non-standard employment. Deakin (1986), for example, provided an early critique of the role of employment continuity criteria in UK employment law in creating workforce divisions. Collins (1990) identified the complexities in contract law that stem from the disintegration of the vertically integrated organisation. Supiot (2001) proposed extending social rights to encompass care work and extending regulation of employee status to reduce the scope for narrowing the coverage. McCann (2012) has explored the potential for extending employment regulation to domestic workers while Freedland and Kountouris (2011) have advocated the concept of personal employment relations to extend regulation to cover many currently treated as self-employed. However, Stone and Arthurs (2013), appear to have gone further in rejecting the SER as a core framework of rights on which to build, in contrast to Bosch's

(2004) proposal to extend the SER into a flexible and more inclusive concept, more open to diversity of contracts and life course patterns.

The second book, by Vosko (2010), a political economist, also rejects what she describes as the SER-centric regulatory approach, adopted also by the ILO and the EU, to resolve the problems of increasing segmentation between standard and non-standard work. Vosko takes a more ideological position against the SER which is held to create divisions, between those in standard and non-standard work and those in paid work and unpaid care work. Efforts to rescue the SER, by extending it to forms of non-standard work or by integrating opportunities for care, only provide protection for those groups closest to the SER, thereby recreating new divisions and hierarchies. This analysis finds parallels in more directly legal scholarship, such as the work of Fredman (2004:301) who advocates ‘a shift away from the employment relationship to free-standing social rights.’

For Vosko (2010) and Fredman (2004), the SER is both a structural cause of inequality and an anachronistic form. The solution is to grant equality of status to all forms of work to ensure equal treatment across the whole workforce. Vosko regards Supiot’s proposal on care work and Bosch’s (2004) on extending SER coverage to be promising but only partial solutions. For Vosko setting a standard against which to measure deviations inevitably sets up a hierarchy but other functions a standard may serve are not directly considered, in particular its role in placing obligations on to the employer to provide regular and sufficient work. Yet to place all forms of employment into one category could allow employers increasingly to slough off their customary obligations of maintaining employment contracts over periods of slack or down time (Supiot, 2001). While Stone and Arthurs (2013) make the case that these trends are in already in train and non-reversible, for Vosko and Fredman, the privileging of continuity in the employment relationship is in itself discriminatory and divisory.

The approach to policy renewal is also very different between the two volumes: Stone and Arthurs (2013) offer no grand scheme for re-regulation, only examples of mainly micro level experiments in new forms of regulation, due to their focus on the ‘plausible’ in a context of political reluctance to re-regulate. Vosko, in contrast, provides ‘alternative imaginaries’ of a world that has addressed all the three main divisions, between precarious and standard wage work, between paid work and unpaid care work and between citizens and non-citizens, through the development of transnational global citizenship. Neither approach fits the objectives here: the plausibility emphasis in Stone and Arthurs prevents recent experiments being evaluated against a set of principles for reform. In contrast, the imaginaries in Vosko’s work, take us beyond the immediately plausible. The discussion is of principles but the concrete possibilities for action are blurred and the key actors unspecified. The state is implicitly relied on to deliver more universal rights but in Vosko’s transnational citizenship imaginary, the nation state loses power and legitimacy, with action implicitly dependent on transnational state action.

The debate on the sustainability of the SER at the core of employment regulation runs in parallel and overlaps with some other social science perspectives on the development or intensification of insider/outsider divides, also associated with the term dualism. These debates include political science analysis of insider/outsider divisions on engagement in politics (associated with Rueda (2005) and colleagues); interdisciplinary debates on transitional labour markets to reduce the impact of life stages and other causes of outsider status on life chances (Schmid and Gazier, 2002); debates in industrial relations and social policy on emerging and reinforced dualism (associated with Palier and Thelen (2010), Emmenegger (2009), Hassel (2014) amongst others); and feminist debates on the inequality in gender relations embedded in current forms of employment and social protection (associated with Vosko, 2010; Fredman, 2004; Wajcman, 1991).

Within this broad field, although difficult to classify by discipline, perhaps the best known contribution outside academia is Standing’s (2011) analysis of the rise of the precariat.

This also provides the strongest condemnation of existing approaches to employment and social protection, labelling them labourist (implying a critique of any protection attached to employment status), hierarchical (where anti-discrimination policies are critiqued as limited to ‘mainly women with positional advantages’ (op. cit.: 60)) and coercive (for example where increased conditionality attached to social protection coerces the unemployed and inactive into poor jobs). Standing’s solution is to reverse the growing obligation to work by providing all with a basic income to free citizens to make their own decisions. According to Standing, employers would then have to persuade people to work. By highlighting the erosion of rights to resist pressure to work and by imagining an alternative world in which employers have to entice people to work, Standing’s work provides some fresh and significant critiques of the current ‘work first’ mantra and undermines the notion of the Scandinavian adult worker model as an utopia.

Two key criticisms can be made of both the analysis and policy solutions, beyond that of failing Stone and Arthurs’ plausibility test. The first is that the long term social, economic and political conditions for guaranteeing a basic income adequate to protect living standards are not specified. A progressive government could bring in a reasonably generous basic income but this could still be eroded in the future, as demonstrated by the speed of cutbacks in social protection under austerity in some European countries. The second is Standing’s proposal to leave all regulation of employment to the market; by calling for full commodification of jobs, all issues of unfair practices and power relations between employees and managers are apparently resolved without the need for labourist protections, as work would be voluntary. As with Vosko, the function of protection is only that of social protection and solidarity among citizens, not the need to hold employers to account. Organisations are complex political institutions and it is implausible that the threat of labour market quits would be sufficient to ensure fair treatment without any detailed ‘labourist’ regulations.

Standing is also concerned with the risk of political instability if the precariat becomes increasingly excluded from social rights and disengaged with mainstream politics. This chimes with the work of Rueda (2005) and colleagues whose starting premise is that governments tend to protect the median voter, often at the expense of the outsider, giving rise to exclusion and radical political movements often on the right. These exclusionary policies are found in social democratic as well as more conservative or neoliberal regimes. Moreover, King and Rueda (2008) argue that there is an inherent tendency for capital to seek cheap labour; if labour market systems set too high minimum floors the cheap labour will be found in the more informal or non-standard sector so that all societies have their functional equivalents. This position is very close to that of mainstream economics that efforts to protect those on the margins may be counterproductive, harming those whom they are intended to help. Their claims are based on shaky data: for example a high proportion of non-standard work in Sweden (King and Rueda, 2008: p.292 and table 7) is used to justify the argument but the fact that, for example, part-time work in Sweden is more regulated, skilled and higher paid is not discussed. Rueda’s approach contrasts with the earlier transitional labour market analysis provided by Schmid and Gazier (2002) amongst others who argued that smart policy innovations could provide a win-win outcome, allowing insiders to be less trapped by requirements for continuous and long hours of employment by offering them flexibility over the lifecycle in return for opportunities for outsiders to gain work experience. This more positive approach allows for some alignment of interests between insiders and outsiders, a position also taken by Emmenegger (2009, 2010) in a critique of Rueda, who questions whether outsiders are less in favour of employment protection than insiders.

Palier and Thelen (2010) provide an alternative account of increasing dualism, in countries such as France and Germany. They see these trends as the outcome of a complementary and reinforcing process of change in closely coupled industrial relations, labour market and social protection systems. Instead of institutional complementarities promoting stability and inclusivity, as hypothesised under the varieties of capitalism perspective, these interdependencies have created the momentum towards dualism as trade

unions, employers and the state have sought to protect the core at the expense of the periphery (see also Hassel, 2014). This work neglects the changing labour force- towards for example more women and more migrants – such that the growth of dualism may reflect in part the integration of previously excluded groups, particularly women in Germany. However, these analyses do link the growth of non-standard and flexible employment to growing divides in access to social protection. This demonstrates the pivotal role played by employment in interconnecting core institutional fields in any social model including social protection, care services, family system, education systems, production and trade etc. (Rubery, 2010). These interconnections mean that any change to the social protection systems also needs to be compatible with and sustained by the employment systems (Heintz and Lund, 2012). Policies to change employment and social protection thus need to consider the connections between the different spheres which are likely to be specific to the architecture of each social model (Bosch et al. 2007, 2009).

This focus on interconnecting spheres has resonances with the final perspective on the insider/outsider debate reviewed here that is feminist scholarship. For feminists the problem is that the SER is often mistakenly considered only as a function of labour market institutions, ignoring the institutional arrangements in the family and social reproduction sphere on which the SER rests (Vosko, 2010; Fredman, 2004; Wajcman, 1991). Women’s provision of care work enables men to participate in the SER and employers to demand continuity of employment and long working hours. This analysis not only questions the desirability of retaining the SER concept but also calls for an integrated approach to reform to deliver more social protection to those who care in the domestic economy, the hidden outsiders.

3. Beyond the insider/outsider focus

These divergent debates have highlighted many shortcomings in the current system of regulation, most of which have always been present, although they may be increasing in importance. To recap, the four main issues identified that require reform and renewal of regulation of employment and social protection include:

1. the increasingly narrow scope of employment and social protection in many countries;
2. the difficulty in identifying and effectively regulating the responsible employer;
3. the lack of value attached to unpaid care work;
4. and the increasing deprivation of human rights for those working at the margins.

These four problems provide ample motivation for seeking a comprehensive reform of employment and social regulation in favour of greater inclusivity but a progressive reform agenda needs to be separated from the pervasive and potentially insidious insider/outsider rationale and a new language for reform invented to avoid contributing, even if inadvertently, to what Hirschman labelled the rhetoric of perversity (1991:11), a tactic used against progressive policies. Supporters of progressive regulations, here employment protection, are represented as either misguided or fraudulent because the regulations support relatively privileged employees to the detriment of the excluded. The wider inequalities, for example between capital and labour, may thereby be overlooked. Austerity policy measures are indeed being promoted by rhetoric of reducing protection for the over-privileged even though the changes are more likely to harm the more vulnerable (see ETUI, 2014, for the changes). Counter arguments can be made that increasing competition for all jobs may be to the disadvantage of outsiders. They are more likely to belong to groups who face difficulty in accessing employment due to discrimination and stereotyping such that, as Emmenegger (2010) argues, preferences for employment security reflect differential risks of discrimination. Outsiders such as the unemployed, women and

older workers may favour job security even if unlikely personally to achieve job security. Furthermore arguments against current protections risk promoting deconstruction of institutionalised protections without an evident political will to reconstruct security on a more inclusive basis.

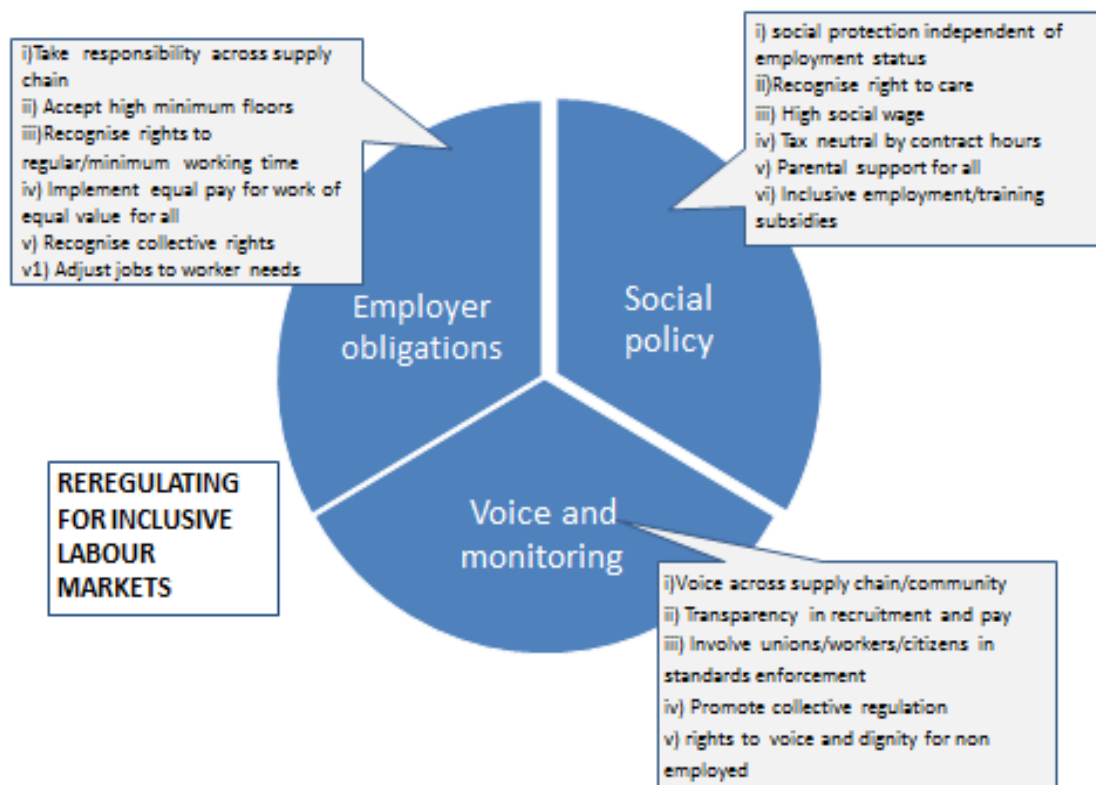
A broader approach to reform is needed which includes not only developing better forms of protection for those in precarious jobs but also policies that seek to halt or reverse the trend to precarious employment. To address only the former is to effectively ignore employers' responsibility as the core agents that decide on the terms of employment engagement, even in a globalised world. In segmentation theory it is employers' selection, investment and retention decisions that create segmented or divided labour markets (Osterman 1984, 1994, Rubery 1978, 2007). These divisions may be influenced by various forms of social stratification but it is employer actions that reinforce and reproduce these divisions by, for example, restricting employment opportunities for those who do not conform to the ideal-type underpinning the SER concept of an independent and fully fit adult. The increased slipperiness of the concept of the employer (see Weil, 2012; Marchington et al. 2005; Prassl, 2015) is also not a reason to reduce efforts to control and shape employers' influence over employment arrangements. Instead, there may be a need for more joint employer responsibility across a supply chain or franchise network (Weil, 2012; Marchington et al. 2005). The more employment is controlled by clients operating outside the national jurisdiction, the more difficult it is to use national regulations to promote decent work conditions, but this argument should be used to further strengthen international efforts at regulation. These are not addressed in detail within this paper, but the notion of limited scope for national action by employers may also be exaggerated, particularly in the developed world where both highly regulated and deregulated economies continue to compete in global markets. Moreover studies of more deregulated liberal market economies suggests that the outcome is not to create uniform low level employment conditions but to increase the dispersion of employment conditions and rewards, indicating the exercise of employer discretion in the distribution of quasi rents (Simón, 2010).

This argument suggests that a reform agenda needs to include not only social policy enacted mainly by the state but also obligations on employers. These obligations may be enacted by the state or through collective bargaining or both. Whatever the mechanism – and in the UK context it would have to be largely state enacted at least initially – ways need to be found of not only developing new rights but also promoting voice, enforcement and monitoring of rights and regulations. This three pronged approach is represented in Figure 1.

Three key themes run through this proposed strategy: disentanglement of social rights and protections from employment status; extension of rights at work to non-standard and marginal workforce groups; promoting transparency in employment arrangements to facilitate monitoring and pressure for fair treatment. The first two themes can be considered general principles and reinforce the notion that the proposals for new forms of social protection as alternatives to employment relations, as found for example in Standing's and Vosko's work, only address part of the needs for reform and take employers out of the picture when it is their strategies and actions that are the prime motors of dualism and insecurity. Furthermore by separating out social policy proposals from new obligations on employers, the potential for both extending SER-type employment and reducing the penalties for those not in an SER-type relationship are made clearer. This moves the approach beyond Stone and Arthurs search for incremental and small scale changes that may include both types of developments. The focus on transparency as the third theme is partly a response to the absence of obvious opportunities to promote more collective responses. The European Union has recently stressed the importance of transparency in providing the knowledge base on which equal pay claims can be pursued. Increasing awareness of inequalities can stimulate new collective responses to unfair pay, such as the strikes of fast food workers and other low income works in the US in the wake of the debates on inequality following the Occupy movement (Milkman, 2013). It is,

in fact, hard to imagine how inclusive labour markets can develop without greater transparency and the use of that knowledge to hold employers more publically to account.

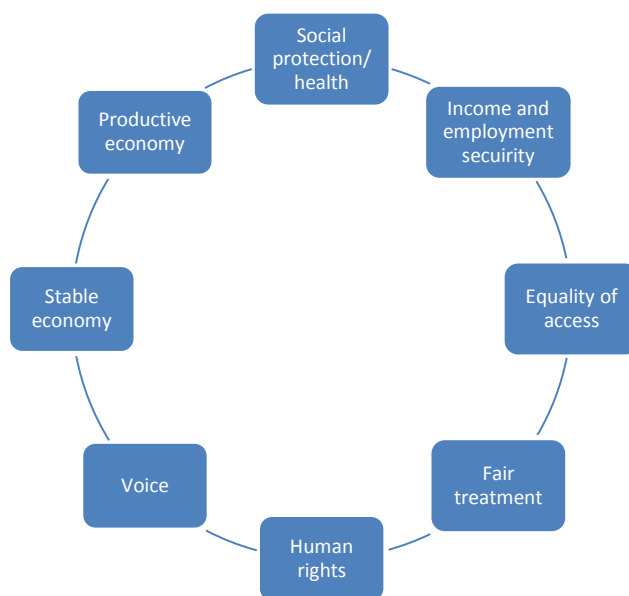
Figure 1. A policy framework for inclusive labour markets



Source: author's own model

A key rationale this three pronged approach is that employment plays a pivotal role in the economic and social system such that the function of employment protection includes but is by no means confined to that of providing social protection. Employment not only shapes the everyday experience of many citizens but also acts as the interface between the production and social reproduction (Rubery, 2010). It is the combination of the centrality of employment with its multifaceted nature that requires a more multifaceted reform agenda. Indeed there are at least eight different functions for employment regulation as indicated in figure 2 which need to be addressed in any reform agenda.

Figure 2. The multiple functions of employment regulation



Source: author's own model

The first is to shape access to social protection for employees during periods of non-employment and it is this interface which generates many of the exclusionary effects of the SER (Vosko, 2010; Standing, 2011). A major issue is thus to develop more universal social protection and thus more widespread decommodification. However, as recent contributions have identified (Heintz and Lund, 2012, Martínez Franzoni and Sánchez-Ancochea, 2013), formal employment also provides the fiscal base on which welfare states are built and universal protection may not be sustainable where employment arrangements become primarily based on informal employment outside the tax system. The problem of social protection cannot therefore be solved without employment reform and these two way interactions between employment and social protection need to be recognised.

A second objective of employment regulation, still within its role in social reproduction, is to provide for income security. Again there may be strong divides between standard employment with guaranteed hours and more insecure non-standard jobs subject to variable hours. Social protection may offer some guarantees through for example in-work benefits but the costs of these benefits to the state depends again upon employer actions.

Rights of access to employment are a third objective as labour market exclusion maybe considered the outcome of employers' selective hiring policies. Rights to non-discrimination, for example, can provide important protection against exclusion and marginalisation. A fourth objective is to secure fair treatment throughout the employment hierarchy – that is both fair conditions and fair processes. Current insiders benefit directly but it is outsiders who may be most at risk of unfair conditions and arbitrary management if they are able to find employment. Reforms need to focus on how to extend fair treatment to currently marginalised and non-standard workers and how to rethink regulation to adjust to employment under inter-organisational networks or partnerships and fissured employer responsibilities (Weil, 2012; Marchington et al.2005). A fifth objective is to ensure respect for human rights including rights to non-discrimination and to dignity (Sayer, 2007). A more inclusionary regulatory system might need to guarantee human rights to those outside of employment, who may be subject to undue pressure and coercion from state agents when claiming benefits (Chan and Bowpitt, 2005). A sixth objective for regulation is to ensure rights to voice and representation but a reform agenda needs to focus on making these rights more inclusive in workplaces and beyond.

The final two objectives for employment regulation relate to the macro economy through its role in promoting economic stability and long term productivity growth. These stability and productivity growth objectives may be seen as reinforcing the position of insiders as it is they, for example, who are able to benefit from work sharing during recessions and to contribute through their tacit knowledge and skills to productivity growth. The issue for reform is to identify how far these benefits can be extended and generalised but without rejecting the overall objectives of stability and high productivity.

A reform agenda thus needs to address the exclusionary problems associated with the standard employment relationship but also needs to be more ambitious. The continuing centrality of both employers and employment arrangements to the social model requires policies to hold employers more to account and to promote more inclusive employment arrangements as well as providing more universal social protection.

4. Applying the framework.

To develop these arguments further Table 1 provides an overview of a reform agenda across all eight objectives for employment regulation. For each specific objective the current deficiencies with respect to inclusion are first identified. The final three columns set out possible social policy reforms, possible extensions to employer obligations and possible ways of improving compliance and monitoring of regulations. This latter point is important given the decline in union presence in workplaces and evidence that regulation impacts are not only indeterminate (McCann et al. 2014) but also likely to be reinterpreted through a managerial lens when implemented without checks and balances (Deakin et al. 2011). New strategies to promote enforcement of rights may also need to draw on support from some of the new social movements that extend outside of the workplace, such as living wage campaigns, where the aim is to increase the general control on employers of low wage labour.

The purpose is to provide a template for reform based on general principles, not detailed proposals, as feasible reforms depend on the specific national context. The objective is to identify potential directions for reform towards more inclusive employment and social systems based on arguments concerning the current deficiencies of existing regulations with respect to inclusivity. Many of the proposed reforms have not been tried and tested, so that this review may be regarded as speculative. However, this is also the case with other sets of proposals within the insider/outsider debates, whether these are the efficiency benefits of deregulated labour markets (for the mainstream economists) or the social benefits of promoting social protection over employment protection. In outlining these possible directions for policy development, some examples of specific regulatory measures or approaches that follow the lines of reform suggested are, nevertheless, discussed.

4.1 Access to social protection and health

The origins of the intertwining of employment status and social protection vary across countries. For example, the regularisation of employment in the UK has been linked to employers' need to comply with social protection regulations and schemes (Deakin and Wilkinson 2005). Where social protection follows insurance principles these links are the strongest and the potential for gaps in coverage and or inequalities between social insurance benefits and social assistance the largest. The linkages to employment records may extend to duration, continuity, working time and employment contract status (Leschke, 2007a,b) with outcomes reflecting country specific eligibility criteria and employment patterns. For example in a four country study Leschke (2007a) found wide variations in the shares of the ILO unemployed entitled to social benefits. Some countries link benefits to citizenship, for example for pensions in Denmark and the Netherlands (Ginn, 2004) although the citizenship

pension in overall social provision has declined. Universality of social benefits may be improved by limited contribution requirements or by credits for time spent as primary carer for children. The latter applies to the state pension in the UK but only gives access to a low flat rate pension.

The precise gaps in protection for non-standard workers or those providing unpaid care work vary significantly across countries but three reform principles for generating greater inclusivity can be suggested. First, the state mandated social benefits should be high, to avoid inegalitarian top ups to state benefits (for example maternity pay or pensions) by selective employers. Some earnings-related element to state-based benefits might be less inegalitarian than flat rate benefits and market top-ups. Second, eligibility should be independent of employment status; a key example here is the UK's National Health Service. Insurance-based health services may also grant access to those without employment status, as is common in Europe, though this may maintain, for example, women's dependency on a male breadwinner. Disentangling social protection from employment status should raise the status attached to care work but this is more likely to be effective through individual not family entitlements. The third principle is that reforms should maintain and even improve employer contributions to welfare funding. An example where universal social protection systems have been jeopardised by labour market trends is Costa Rica; employers only paid towards the welfare system for formal employees so that the fiscal base to support social protection was eroded (Martínez Franzoni and Sánchez-Ancochea, 2013). In the UK exemptions to contributions for those employing workers on low wages may also be encouraging the growth of short hours low paid employment as well as limiting the fiscal support for the welfare state. It may be better to consider taxing the employer on its wage bill than linking contributions directly to individuals and employment contracts.²

4.2 Income and employment security

Income security depends on both employment security and social protection. Outsiders or marginal workers are often denied sufficient wage income so that high social benefits are important for income protection. So too, however, are wage levels and guaranteed work hours, an issue thrown into debate in the UK due to the rise of zero hours contracts (Resolution Foundation, 2013). The unemployed have difficulties taking zero hours jobs as income may be insufficient and variable and quitting the job may lead to benefit penalties. Although employees can enjoy some income protection through in-work benefits, the risk is that employers may pass responsibility for guaranteeing adequate income onto the state, either by paying a low wage or by varying hours to fit demand (Rubery and Grimshaw, 2014). Extending rights to guaranteed hours- possibly averaged over more than a week – may protect both employees and the state while still providing for scheduling flexibility where needed.

Job security regulations underpin income protection in many countries, although mainly for the so-named insiders. Resistance to reduced job protection will be stronger where social protection is weak and benefits low. Employment protection guards against arbitrary and unfair treatment of individuals and helps share the costs of cyclical downturns or restructuring. Protection against the former could well be extended to all workers, regardless of contract or length of employment as already happens, for example, in the UK for sex or racial discrimination. The issue over whether job loss compensation should be linked to employment duration is more complex. The individual with longer tenure has invested more

² In Germany low income jobs known as mini jobs also provide workers and employers with subsidies; as the income is exempt from tax, the workers do not have to pay social contributions and the employer has been able to set a low hourly wage until the introduction of the national minimum wage in 2015. However, unlike the UK, the employers have to pay a higher rate of social contributions for these workers, thereby maintaining the fiscal base for the welfare state and reducing the subsidy.

in that particular job than someone who has just joined. The question of rights in a job and in a workplace thus extends beyond the question of fairness in selecting between a tenured and a newly arrived worker. Moreover a long tenured person may face more risk of non-employment (Tinsley, 2012). On the other hand the recent employee may have waited a long time for this opportunity, had little time to benefit from it and may be a more productive worker. These considerations point to a mixture of protections, ranging from high social benefits, improved access to employment (in line with the flexicurity debate in Europe) but still some higher compensation for those with longer tenure.

4.3 Equality of access to employment

Employers are the gatekeepers to employment; their hiring, selection and retention strategies determine access to employment. Interrupted employment due to unemployment, care work or even part-time work often result in long term scarring effects (Gangl, 2006; Olsen and Walby, 2004). Moreover training or qualifications undertaken at non-standard times may be insufficient to secure new careers. Indeed the key barrier to re-entry often lies in employer attitudes towards those following non-linear careers. This contrasts with the European flexicurity debate which regards motivating employees to retrain as the main issue.

Most current constraints on employer hiring are non-discrimination laws, in Europe now covering gender, ethnicity, religion, sexual orientation and age. Changing age norms in recruitment is vital to enable non-linear careers but requires active interventions to change social norms with respect to age. Accreditation of retraining programmes might improve signals to employers but in the UK employers appear to pay limited attention to qualifications or training (UKCES, 2011). Labour market structures need to be more flexible to adjust to stages of the life course and more open to those displaced from employment. The current concern is with employability and workers fitting the market but markets also need to fit the workers (Schmid, 2010). That is employment needs to adapt to the circumstances of the individual (Deakin, 2009: 28), if the objective of more involvement of carers, older workers and the partially disabled in employment is to be achieved (Deakin, 2009).

Additional social support may be needed for the partially disabled and for those providing care. For carers, there is a need for alternative care provision and for leave provisions to enable interruptions without loss of employment position (Supiot, 2001). These kinds of support are particularly important for women but Standing has argued that this support is currently available only for women with 'positional advantages'. However, the alternative to such support is to reinforce gender difference by forcing women into fragmented careers due to child birth. There are nevertheless strong arguments for some paid leave for childbirth being provided to all, as those not in employments should not be under pressure to seek employment for a period following childbirth. As Blofield and Martinez Franzoni (2015) found, where paid leave is given to non-employees this has particularly progressive consequences in countries with high shares of informal and self-employed workers. There are also strong arguments for extending rights to leave to men as well as women to improve work life balance, reduce gender stereotyping by employers and to encourage sharing of care work.

4.4 Fair treatment

Fairness has a distributive and a processual dimension. Non-standard or marginalised workers face problems on both counts. Inclusive labour markets require a high minimum wage floor applicable to all contract types. Where wage differentials between organisations for low skilled jobs are low, incentives to outsource are also reduced (Grimshaw et al. 2012). The informal economy is outside the direct impact of regulation but recent research has found a strong lighthouse effect with legal minimum wages influencing pay in the informal

economy, although mainly for the higher paid informal workers (Boeri et al. 2013; Ham, 2011).

Fairness can relate to pay relativities or income needs. Movements in several countries have promoted standards based on living wages not minimum wages (Reich et al.2014). Living standards provides a basis for connecting standards in employment to social protection standards for those outside employment. However, the issue of how to reward for additional responsibilities, skill or effort still has to be resolved at the workplace.

Minimum standards are also needed to regulate flexible work (Rubery and Grimshaw, 2014). These could include rights to minimum work periods, to prior notice of changes to schedules etc. The trend away from the SER can only be reversed by actions to control employers' use of the flexible employment form or by changing the incentives for flexible working, for example by requiring premiums to be paid for flexible labour to compensate for lack of security. This could be said to apply in the Australian practice of setting a higher minimum wage for casual workers but this is mainly compensation for lack of other benefits such as paid leave and vacations. This may be more effective than the assumption in the UK that because casual workers are legally entitled to these benefits they will receive them which is certainly not always applied in practice (CIPD, 2013). However, there is also a case for a premium to reflect simply flexibility in scheduling and hours not just compensation for lack of other benefits.

Problems of fair treatment at work extend through the employment hierarchy, not only at the bottom. With respect to fair pay, the main legal regulation is the principle of equal pay for work of equal value but this at present applies only between men and women and is not a general principle applied at the workplace, though the European temporary agency work directive provides for equality in pay with directly employed workers after twelve weeks working at a client's establishment. There may be a case for extending this right to all within a workplace, organisation or even supply chain in order to develop a wide constituency to benefit from fair pay principles. The need for regulations to promote proportionate and fair pay between types of jobs and workers has grown with the trend towards individualised pay which has not only provided employers with more discretion but has also reduced knowledge of pay differences thereby making it more difficult to monitor for fair treatment. Regulations requiring pay transparency may lead to employers exercising more constraint when setting individualised pay. This is suggested by the experience in Sweden where more individualised pay bargaining in Sweden has not led to widening income inequality, possibly because of greater pay transparency and gender pay audits in Sweden (Anxo and Ericson, 2012). Extending the equal pay for work of equal value principle could promote a more general commitment to fair pay but measures to increase fairness within organisations still need to be combined with high minimum floors to reduce disparities across firms and sectors.

In complex networked organisations it may be unclear where responsibility for fair process actually lies (Marchington et al.2005). Workers of all contract statuses, except the genuinely self-employed, need to be covered by workplace grievance procedures to protect agency workers against unfair treatment by a client. Co-responsibility for employees across collaborating employing organisations, as applies for example in the US (Earnshaw et al. 2002; Weil, 2012) may be preferable to treating subcontracted staff as the sole responsibility of the subcontractor. The US has a concept of joint employer responsibility and interestingly the new German national minimum wage regulations put the onus for compliance across the supply chain on the client.

4.5 Human rights

In principle some human rights such as rights to non-discrimination often apply to all in employment and with immediate effect, that is without qualifying periods or employment status requirements. However many countries lack effective enforcement of these rights. Improving enforcement may require measures to reduce complaint costs, that is not only through better grievance procedures without fees but also protecting against job loss and exclusion through poor references. Another group perhaps even more vulnerable to lack of dignity and respect are those in receipt of benefits. Requirements on public officials to treat claimants with respect could be a necessary partial corrective to the increasing pressure on claimants to behave in particular ways determined by the state and imposed by ‘street-level’ bureaucrats (Lipsky, 1980). Independent complaint systems need to be established or reinforced but will only be effective with a change if the rhetoric around ‘welfare scroungers’ can be changed. Those responsible for care should also be protected from coercion to take employment, if the quality and availability of care is in doubt. Research suggests that in the UK not enough attention is paid to the matching of jobs to available care arrangements for lone parents (Whitworth, 2013).

4.6 Voice

Rights to voice and representation for marginalised workers are both a mechanism for enforcing rights but also rights in themselves. Marginalised workers may face three types of representation gaps; there may be no institutional provision for voice at the workplace, they may be ineligible to participate if employed by another organisation, a temporary work agency for example, or they may face barriers participating due to part-time or unsocial hours or to language problems (for example if migrants). Each gap requires different reform strategies. Extending information and consultation rights to all in the workplace is straightforward but where there are stakeholder rights in corporate governance, defining stakeholders and their interests is more complex. The need to extend beyond those on SER-type contracts is clear but the extension could include all those working at a common workplace or even those working along the supply chain.

To fill institutional gaps new mechanisms may be needed not only inside the workplace but also outside the workplace- that is across communities or supply chain as in the US Justice for janitors’ campaign (Erickson et. al. 2002). Other examples include the living wage campaigns in the UK (ACAS, 2013) and the US (Reich et al.2014). These external voice and representation mechanisms may focus on issues of fair conditions for community groups or may seek to establish standards for an occupation, that is setting external standards for employers to follow. Vosko and Thomas (2014) found that the involvement of unions and other workforce groups was important in enforcing minimum employment standards in non-unionised workplaces in Ontario.

The most difficult issue is to provide voice and representation for the unemployed and others outside wage work such as carers. Organisations for the non-employed can emerge or be supported but retaining links with occupational or professional associations or trade unions to facilitate re-entry to work through support for updating skills and maintaining social contacts.

4.7 Stable economy

Employment regulation may assist in stabilising the economy over the business cycle by reducing incentives to employers to lay off workers and encouraging work sharing, thereby reducing the downward multiplier as people are laid off and reduce consumption. Although these policies favour insiders, the alternative of more rapid employment adjustment may

simply intensify the downturn in demand, as found over the recent financial crisis when the degree of employment change was highly variable across countries linked to regulation (Messenger and Ghosheh, 2013). Thus, practices which directly benefit insiders may protect overall employment, and limit the downturn. Nevertheless, work sharing mechanisms could be extended to those in non-standard jobs or outside employment at the point when the downturn starts. Furthermore if the downturn is associated with particular sectors, measures to stabilise the economy should not be used to postpone indefinitely necessary sectoral adjustments to changed conditions. Employment regulation may also underpin macro institutional arrangements. For example regulation theory (Boyer 1979) has emphasised the role of collective wage setting institutions in securing regular rising real wages in the post second world war period and thereby underpinning the mass consumption market in the Fordist period (Boyer, 1979). The SER system likewise reduced the costs of welfare state development by ensuring that employers paid for labour even when demand for labour decreased (Supiot, 2001). Thus the issue of equity across individuals or groups is not the only issue for social justice; the stability of the employment and social welfare system also impacts on the volume of jobs available and the capacity of the state to provide social assistance.

Some proposals to unify protection across employment statuses may risk further commodification of labour. Thus, in seeking to improve conditions for flexible workers it is important not inadvertently to spread flexibility through the whole employment system, indirectly increasing welfare state costs as well as individual insecurity. The UK's proposed universal credit system falls into this category. Employers could rethink their offers of guaranteed hours to any groups of low paid staff (Rubery and Grimshaw, 2014) as the new system will allow them to pass more of the costs of variable demand on to the state. Their employees may be eligible for state-funded top ups if the volume of paid work hours decreased.

4.8 Productive economy

Arrangements which promote investment in the workforce on the one hand and commitment by the employed workforce on the other hand can be expected to foster long term productivity growth. Marsden (1999) sees these as mutual benefits of the SER, thereby underpinning its widespread usage and long term survival. Insider employees not only develop the appropriate skills but also the tacit knowledge that provides them with an edge over less expensive outsiders in any implied or actual competition for their jobs. Long term employees can also be considered to develop a form of property stake in their company and their profession as they have invested time and effort in the company and derive much of their social identity from that investment.

A key issue is whether there is scope for extending the share of jobs where there can be mutual benefits from insider-type employment relationships, that is whether more commodified employment relationships is an irreversible trend towards more disposable labour or whether if employers were exposed to more 'beneficial constraints', (Streeck, 1997), in the form of employment regulations, they might rediscover longer term employment relationships and develop employee capacities to enhance productivity instead of cost cutting at current productivity levels. This approach sees regulation as a means to extend regular or better paid employment to stimulate higher productivity in a wider range of jobs and organisations. This contrasts with the pessimistic mainstream perspective (Lindbeck and Snower, 2002) where efforts to extend insider status to jobs where this is not market-led lead to job destruction, increasing unemployment or informal employment. The optimistic perspective assumes that encouragements to employers to invest in employees- perhaps through more ambitious individualised learning accounts schemes than those found so far in Europe (Cedefop, 2009)- would extend quality employment provided these initiatives were not limited to those in SER-type status. For example long term employment relations can be extended to more women by providing rights to paid leave and to flexible working to allow

retention of their employment position, ensuring continued opportunities to utilise skills and develop potential. Where women workers are forced to leave the labour market or change employers, this always results in frequent occupational downgrading (Connelly and Gregory, 2008) or longer than necessary economic inactivity.

The role of quality employment relationships in underpinning long term productivity enhancement provides workers with their main source of leverage in the employment relationship. This leverage based on the dependence of employers on specific employees and their knowledge and commitment also generates segmentation between those in an employment relationship and those outside the organisation. To the extent that the principle of disposable labour spreads through the employment system and replaces the notion of mutual dependency, the outcome is likely to be lower overall productivity and national income, although profits may still rise. Employment regulation which provides a platform for the development of mutual dependency (Marsden, 1999) thus also feeds in to more macro struggles over the declining wage share and living standards.

5. Conclusion

The growing international claims that current employment regulation is not fit for purpose and needs reforming appear compelling. There are clear needs to address issues of narrow coverage, especially in developing countries and in relation to women's work, to extend coverage to those on non-standard contracts and to find ways to provide rights under the more complex employment relationships spanning organisational boundaries. The more disadvantaged social groups are facing increasing pressure to engage in work, regardless of job quality and without adjusting job tasks and scheduling to meet the person's needs. However, these valid critiques of current practices does not warrant the abandonment of the SER-type regulation, understood here as regulation to constrain the actions of employers and require them to provide some guarantees of continuity, hours and income and some mechanisms for employee fair treatment and voice. The argument made here is that holding employers to account must be central to any reform agenda for otherwise not only may the conditions of work deteriorate but more of the costs of decommodification of labour may be passed to the state or to families. Instead of more flexible employment, policies are needed to extend and reinforce SER-type relationships, alongside new higher legal minimum standards and mechanisms to reduce the penalties for not being on an SER-type contract. Indeed SER-type relationships are still dominant at least in their weak forms in OECD countries and more needs to be done to reinforce and renew the guarantees associated with these contracts to reduce the scope for employers to pass labour costs on to the state. In a world of weak unions and increased power to employers it is important to find new ways for workers and citizens to exercise control; here we have stressed new regulations requiring transparency in relation to employment practices on the grounds that this provides citizens with important knowledge and that if transparency became embedded as a social norm it may be more difficult to reverse than other progressive policy actions.

The argument is also made that this reform agenda can be pursued without subscribing to the insider/outsider rhetoric. Indeed, moves towards a deinstitutionalised and competitive labour market might reduce mutual dependency between employers and workers. As this interdependency provides the basis for long term productivity growth short term profits and shareholder values may be prioritised over long term developments and the interests of wider stakeholders. There is thus a need to preserve, develop and extend the benefits to society that stem from this mutual dependency within the employment relationship while at the same time providing more universal rights and support to those in need of work and income.

Figure 1 above provides an overview of the three-pronged approach to reform, across social policy, employment policy and mechanisms for voice and monitoring. This need to act

on both developing employment relationships and disentangling social protection from employment status is more evident also once the functions of employment regulations are recognised as multifaceted, involving macroeconomic, social reproduction and fairness at work objectives. Efforts to embed fairness in workplace practices should not be abandoned simply because employers have become more hidden from view. Likewise where social protection is tied to employment status, opportunities should be found to either disentangle these rights or offer the non-employed similar rights. The role of actors also needs to be addressed. Putting forward a progressive reform agenda is undoubtedly dependent on a progressive state, but the complexion of the state may change or may be forced to change by international pressures. These problems beset any progressive reform policies but to increase the likelihood of effective implementation, attention needs to be paid to new enforcement mechanisms and practices such as transparency requirements, promoting public awareness of universal rights and minimum standards and establishing principles of accountability across the supply chain.

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Annex

Table 1. A reform agenda for inclusive labour markets across eight dimensions to employment regulation

	Insider/outsider problem	Social policy reforms	Extending the SER	Improving voice, enforcement, and monitoring
Social protection/health	Exclusion of non standard workers and carers	Disconnect access and contributions from employment status	Consider taxing wage bill so contributions not linked to employment status or earnings.	Universal benefits increase take up/awareness
Individual income and employment security at work	Evasion through non standard work	In-work benefits to be coupled with high minimum wage/ guaranteed hours provisions	High minimum wage plus rights to guaranteed hours –across supply chain. Protection against arbitrary dismissal for all.	Publicity re universal minimum standards plus collective community action
Access to employment	Discrimination against non linear careers/ those needing workplace adjustmentsLack of support for care and carers	Support for disabled in getting to work/ at workplace Accreditation of training for unemployed/returners. Support for care through childcare/ paid leave etc- also for non employed	Enforcement of non discrimination in recruitment including age-related Adjustment to schedules etc for carers at point of recruitment not linked to tenure. Adjustments for partially disabled etc.	Reinforce opportunities to challenge failures to adjust to worker needs and discrimination on grounds of age,
Fair employment conditions	Variation of conditions by contract and employer. Exclusion from grievance procedures. Increased inequality in rewards	Remove benefit sanctions for those who quit due to unfair conditions.	High minimum standards across supply chain. Co-employer responsibility for standards in networked organisations. Non standard workers included in grievance systems at workplace. General rights to regular/minimum working hours and to equal pay for equal value	High minima lower incentives to fragmentation Increase transparency in pay and working time to facilitate monitoring Allow for claims against co-employers. Community based living wage campaigns to promote high minimum standards

	Insider/outsider problem	Social policy reforms	Extending the SER	Improving voice, enforcement, and monitoring
Rights to non-discrimination and dignity at work	More disadvantaged- benefit recipients/ migrants etc. .subject to discrimination/lack of respect	Policies to reduce harassment/coercion on benefit recipients. Good quality care a precondition for carers being expected to seek wage work.	Protect those taking grievances/quitting jobs against penalties (e.g. tied labour due to visa rules)	Reduce costs (financial/ employment) of taking complaints. Independent complaints system for benefit recipients.
Rights to voice and representation	Workers/ subcontractors excluded Non employed lack voice	Opportunities for voice among non-employed- carers and benefit recipients	Information and consultation rights/ stakeholder rights for all workers in workplace/ across companies and supply chains	Transparency and high minimum standards to empower citizens and worker groups. Institutions for voice for the non employed and marginally employed.
Stabilise employment	Protection for those in work and often in permanent full-time work, not for others	Social policy subsidies for all at workplace. In- work benefit systems should not allow employers to pass on costs of demand fluctuations	Extend work sharing to all contract types to receive subsidies.	
Promote productivity growth	Exclusion of non-standard workers from training and high productivity work systems	Training subsidies for all including non-employed	Promote higher productivity workplaces and extend higher quality employment relationships/ training opportunities to wider range of workplaces/ workers Extend leave arrangements/ rights to employee-oriented flexibility to reinforce employment relationship for more workers	Enforcement of rights to leave, flexibility and training.

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