

LABOUR RELATIONS AND COLLECTIVE BARGAINING



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COLLECTIVE BARGAINING AND NON-STANDARD FORMS OF EMPLOYMENT: PRACTICES THAT REDUCE VULNERABILITY AND ENSURE WORK IS DECENT*

Collective bargaining is widely recognized as an important tool for improving working conditions and labour relations, but can it play the same role for workers in non-standard forms of employment? This issue brief looks at the ways in which collective bargaining is used to negotiate better terms and conditions of employment for workers in temporary and part-time employment, and in forms of employment involving multiple parties, such as temporary agency work.

Introduction

Collective bargaining can be important in balancing (unequal) employment relations between employers and workers, allowing workers' voices to be heard and improving working conditions. In many countries, it plays a key role in regulating full-time, regular or 'standard' employment relationships. While these standard employment relationships remain the dominant form of employment, at least in industrialized countries, non-standard forms of employment are on the rise in many countries. Non-standard forms of employment include temporary employment (fixed-term and casual work), temporary agency work and other contractual arrangements involving multiple parties (such as labour brokers), ambiguous employment relationships, and part-time employment.ⁱ

Non-standard forms of employment are often relied upon in sectors where work is of a seasonal nature or to replace temporarily absent workers. Well-regulated and freely chosen non-standard forms of employment, such as part-time work and other non-standard employment arrangements, can provide workers with more control over their work schedules, enabling them to balance work and private life. They may also increase labour

market participation and provide opportunities for young people to gain valuable experience that may enhance their career and life prospects.

Despite these many positive contributions, some non-standard forms of employment do not provide workers with decent work. Workers may not have access to social protection, have lower levels of employment protection (contracts can be terminated more readily) and face higher risks in respect of workplace accidents or illnesses.ⁱⁱ Workers in non-standard forms of employment may face a number of challenges, including job insecurity, limited control over scheduling, high degrees of uncertainty and fluctuations in income, and erratic and unsociable working hours. Workers in part-time work, and in particular those with 'zero-hours' contracts, often need to be on-call and available for work at short notice. They seldom have any guarantee of a minimum income and have limited ability to plan their work and life. Workers in non-standard forms of employment may also face difficulties when it comes to exercising their organizational rights and the right to collective bargaining.

* This Issue Brief was written by Edlira Xhafa.

ⁱ An ILO Tripartite Meeting defined non-standard forms of employment as including "fixed-term contracts and other forms of temporary work, temporary agency work and other contractual arrangements involving multiple parties, disguised employment relationships, dependent self-employment and part-time work". Conclusions of the Meeting of Experts on Non-Standard Forms of Employment, Governing Body 323rd Session, Geneva, 12-27 March 2015.

ⁱⁱ For example, the majority of workers engaged in clean-up and decontamination work after the Fukushima accident in March 2011 were contract workers. According to the Japanese Nuclear Safety Agency, in 2009 contract workers were more likely to be exposed to high levels of radiation than regular workers (Jobin, 2011). In Illinois, data on occupational amputations for 2000-2007 show that of the ten employers recording the highest numbers of amputations, half were employment service companies or temporary employment agencies (Friedman et al., 2012).

Organizing workers in non-standard forms of employment

Workers in non-standard forms of employment, such as casual, agency or temporary work are often portrayed as ‘outsiders’, with no time to participate in union activity, or as replacing workers with standard jobs (Crush et al., 2001; Hatton, 2014). These views show the tenuous and vulnerable situations in which many workers with ‘non-standard’ jobs find themselves. They may simply not be able to join a union (by law), may fear reprisals for joining a union, or may not be able to afford union membership because of their volatile income.

Nevertheless, in many countries, unions, as social actors acting on behalf of the entire workforce and not only their members, have become increasingly concerned with the conditions of work of workers in casual, temporary and part-time work. This is driven both by a concern to protect vulnerable workers and a concern that the rise in non-standard employment will undermine existing wage and working-time standards. A number of unions have prioritized the recruitment of such workers and launched focused organizing drives (Gumbrell-McCormick, 2011; Keune, 2013; Serrano, 2014). For example, in the Netherlands, the Confederation of Dutch Trade Unions (FNV) identified sectors in which workers face particular risks as a result of non-standard forms of employment, including the postal sector, the cleaning sector, meat processing, domestic aid, the taxi sector, construction and temporary agency work, and actively recruited members in these sectors (Keune, 2015).

New trade unions have been formed to represent the special interests of workers in non-standard forms of employment. In some instances, they have later merged or associated with national federations. For example, in the Republic of Korea, the Korean Federation of Construction Industry Trade Unions (KFCITU) which today represents construction machinery operators (tower crane operators, concrete mixer truck drivers and dump truck drivers, and so on) grew out of a merger between the specialized National Association of Construction Day Labourers Union (initially a union of day labourers) and the Korean Federation of Construction Trade Unions (Yun, forthcoming). In the oil industry in Nigeria, the refusal of employers to negotiate the terms and conditions of work of contract workers with the regular union led to the establishment of Contract Workers branches to represent these workers. Employers also created their own association (Labour Contractors’ Forum) to negotiate the terms and conditions of work of these workers (Aye, forthcoming).

Despite the difficulties and ambiguities involved in organizing workers in non-standard employment and representing their collective interests (Belkacem et al., 2014), unions have designed strategies that address the specific vulnerabilities these workers face. These include lobbying for changes in laws and policies; various forms of coordinated action involving the building of alliances with other organizations; and collective bargaining (Gumbrell-McCormick, 2011; Keune, 2013; Fine 2015). This issue brief focuses on the role of collective bargaining in addressing many of the challenges faced by workers in non-standard forms of employment.

How is collective bargaining reducing vulnerability and ensuring that work is decent?

What then is the role of collective bargaining – a process typically associated with workers in regular employment – in reducing the vulnerability of workers in non-standard forms of employment, while at the same time providing enterprises with the flexibility

they need? A review of the literature and of collective agreements reveals a number of innovative practices that shed light on the role collective bargaining can play in delivering decent work to these workers.ⁱⁱⁱ

ⁱⁱⁱ This review was conducted for the preparation of a report for discussion at the ILO Meeting of Experts on Non-Standard Forms of Employment that took place in Geneva from 16-19 February 2015. It includes a review of the literature and a review of clauses on non-standard workers from 39 collective bargaining agreements in 18 countries.

Industrial relations systems vary significantly from country to country in terms of level of union membership, the nature of employers' organizations, the level at which collective bargaining takes place (enterprise, sectoral, national or mixed-levels), the proportion of employees covered by collective agreements and the role of the State and labour legislation (Crouch, 1993; Traxler, Blaschke and Kittel, 2001). The examples provided are drawn from a range of countries, sectors and types of agreements. They are not intended to be prescriptive as what works in one context may not work in another. Rather they provide examples of how collective bargaining has reduced

the vulnerability of workers in non-standard forms of employment and delivered decent work.

In recent years, unions, employers and employers' organizations at different levels have engaged in collective bargaining to address the specific issues facing workers in non-standard forms of employment. This issue brief identifies five areas in which innovative clauses protecting non-standard workers have been reached: securing regular employment; negotiating equal pay; guaranteeing working hours for workers with zero-hours contracts; extending maternity protection; and making the workplace safe.

Securing regular employment

The most pressing concern has often been the job insecurity of these workers, some of whom are employed by the same company over many years under a series of temporary contracts. Unions and employers (or employers' organizations) have negotiated collective agreements which provide a measure of certainty and even job security to workers with temporary contracts

or who have worked for the same firm for many years through an intermediary. Limits have been agreed on the period after which a worker is no longer considered 'temporary', and workers on successive temporary contracts have had their employment regularized (see table 1).

Table 1: Securing regular employment

Collective agreement	Select provisions
Philippines: Indo Phil Textile Mills, Inc. and IndoPhil Textile Workers Union company agreement (2010-2015)	A temporary or casual employee performing the job of a regular employee who has worked for 156 days in any 12-month period is deemed a regular employee. ^{iv}
Canada: Crown in Right of Ontario and Ontario Public Service Employees Union collective agreement (2013-2014)	Where the same work has been performed by an employee in the Fixed-Term Service for a period of at least eighteen (18) consecutive months, except for situations where the fixed-term employee is replacing a regular employee on a leave of absence authorized by the Employer or as provided for under the Central Collective Agreement, and where the ministry has determined that there is a continuing need for that work to be performed on a full-time basis, the ministry shall establish a position within the Regular Service to perform that work.
South Africa: Road Freight Bargaining Council Agreement (2012-2013)	An employee of a temporary employment service who is provided to one or more clients within the industry for a period in excess of two months is deemed to be an ordinary employee and all relevant provisions of this Agreement are applicable to that employee
New Zealand: BOC/ Linde Engineering Employees and Engineering, Printing and Manufacturing Union collective agreement (2012-2014)	This clause does not permit the employment of temporary employees for successive engagement totalling more than six months, except where the employer, the employee and the union agree in writing to that longer duration.

^{iv} Labor Codes of the Philippines, Book VI, establishes a period of one year of service, whether such service is continuous or broken, for a worker to be considered regular employee.

This has often been complemented by commitment to greater consultation over work organization and agreement to conditions justifying recourse to non-standard forms of employment, such as seasonal work, or a temporary increase in production. The social partners have in some instances also included

provisions limiting temporary contracts to an agreed proportion of the regular workforce. They have also agreed to labour clauses requiring subcontractors to apply the same terms and conditions of employment (table 2).

Table 2: Regulating work organization

Collective agreement	Select provisions
Germany: Südwestmetall and IG Metall pilot agreement in the metal industry (2012)	Works councils have greater co-determination rights and the right to call for negotiations to regulate the use of temporary agency workers by a works agreement. Topics for such an agreement can range from the purpose and area of deployment and the volume of temporary agency work to the permanent employment of such workers.
South Africa: Motor Industries Bargaining Council agreement (2010-2013)	After August 2013 no more than 35 per cent of an employer's core workforce may consist of temporary employees
Colombia: Ecopetrol and Union Sindical Obrera (United Workers Union) company agreement (2009-2014)	Contracting and subcontracting firms undertaking activities directly related to the oil industry must pay their [contract] workers the same salary (in money and in kind) and benefits contemplated in this Convention.

Negotiating equal pay

Unions, employers and/or employers' organizations have also used collective bargaining to progressively minimize wage differentials between workers performing the same work but with 'regular' and 'non-standard' contracts of employment. In some instances, they have also negotiated equal pay, particularly in the case of temporary agency workers (see table 3). The negotiation of equal pay has helped to ensure that recourse to temporary agency work and fixed-term contracts is not only driven by cost considerations and

has facilitated solidarity between those working in the same workplace.

In Germany, where the TAW agreement at the national level derogates from industry standards in accordance with the European Directive^v, in 2010 IG Metall negotiated with the German steel industry in North Rhine-Westphalia, Lower Saxony and Bremen an agreement which, for the first time, established that temporary agency workers are paid the same as workers on standard contracts.

Table 3: Negotiating equal pay

Collective agreement	Select provisions
India: Coal India Ltd. and Indian National Mineworkers Federation (INMF) and others, wage agreement for contractor workers engaged in mining operations (2012-2016).	Where the existing wage rate of any employee based on [a collective] agreement or otherwise is higher than the rate for contract workers, the higher rate shall be protected and treated as the minimum wage rate for contract workers.
Norway: Norsk Industry (Federation of Norwegian Industry) and Fellesforbundet (the United Federation of Trade Unions) sectoral agreement (2012-2014)	Employees in manpower or temporary work agencies shall have the same wages and working conditions that apply in the enterprise leasing such labour for the duration of the leasing period in accordance with the Working Environment Act.
Mauritius: Total Mauritius Ltd. and Chemical, Manufacturing and Connected Trades Employees Union company agreement (2014-2016)	All employees performing work of same value should be equally remunerated, including casual and contractual workers with a fixed-term contract of employment.

^v Directive 2008/104/EC1 on temporary agency work provides the possibility to derogate from the principle of equal treatment: (a) for temporary agency workers who have a permanent contract of employment with a temporary-work agency and receive continued pay between assignments (Article 5(2)); (b) through collective agreements (Article 5(3)); or c) by determining a qualifying period for equal treatment in Members States without universal collective agreements (Article 5(4)).

Addressing the scheduling of hours

Collective bargaining has also served as an important tool in addressing the scheduling issues facing part-time workers, particularly those with zero-hours contracts, by securing a minimum number of hours and reasonable scheduling notice. In New Zealand, for example, innovative collective agreements were

concluded in 2015 between Unite Union and a number of different fast-food companies, including McDonald's, Burger King and Restaurant Brands, that do away with 'zero hours' and introduce secure and regular shifts (see table 4).^{vi}

Table 4: Addressing the scheduling of hours

Collective agreement	Select provisions
New Zealand: McDonalds and Unite Union company agreement (2015-2017)	Workers will not be scheduled to work: <ul style="list-style-type: none"> (i) a shift that is less than three hours; (ii) more than two shifts per day; (iii) more than eight hours per day; (iv) more than 40 hours per week; (v) after 12 consecutive hours from the time work started on one day; (vi) on a sixth or seventh day in any week; and (vii) without a break of 9 hours between the end of work started on one day and the start of work the following day.
New Zealand: Restaurant Brands Limited and Unite Union collective agreement (2015-2017)	Rosters shall be published and made available on a Tuesday. The roster will confirm the employee's hours of work for the following seven days and provide initial notice of the employees' hours of work for the succeeding period of seven days. The minimum shift duration is three hours for any day, unless an employee is required to attend an official meeting or training session in which case a one-hour minimum applies. In exceptional circumstances, and after consultation with the union and the employee concerned, Pizza Hut may roster shifts of a minimum duration of two hours.

Extending maternity protection

Some innovative agreements have also provided labour protection that goes beyond wages and other working conditions. For example, in Denmark, a country where collective agreements play a key role in regulating

labour markets and delivering labour protection, collective bargaining has been used to improve maternity protection for agency workers (see table 5).

Table 5: Addressing the scheduling of hours

Collective agreement	Select provisions
Denmark: Dansk Erhverv (Danish Chamber of Commerce) and Handels og Kontorfunktionærernes Forbund (Union of Commercial and Clerical Workers in Denmark) sectoral agreement (2014-2017)	Shortening of the qualifying period for agency workers to access maternity benefits from nine months in the same job to 1,443 hours employment within a three-year period.
Italy: Assosomm (Italian association of work agencies) and trade unions: CGIL, CISL, UIL, Felsa-Cisl, Nidil-Cgil, Uiltemp TAW sectoral agreement (2014-2017).	Maternity protection: <ul style="list-style-type: none"> • One-off payment of €2,250; • Childcare contribution: €100 per month up to the child's third year.

^{vi} Collective agreements between Unite Union and McDonalds, Burger King, Restaurant Brands Limited and Wendy's for 2015-2017.

Making the workplace safe

The social partners have also addressed occupational safety and health issues in collective agreements by regulating the type of jobs that can be outsourced to workers in non-standard employment and specifying the training required, thus limiting the exposure to risk of workers with non-standard contracts.

Legal measures in some countries have supported these outcomes by clarifying responsibility for health and safety in the workplace. For example, in the Republic

of Korea, the Occupational Safety and Health Act No. 3532, 1981 (amended by Act No. 10339 of 4 June 2010 and Act No. 10968 of 25 July 2011) stipulates that the principal employer is responsible for preventing industrial accidents in cases where his/her own workers and contractors' workers are working in the same place. This has brought main employers to the bargaining table and resulted in a number of multi-employer collective agreements in the construction sector (Yun, forthcoming).

Table 6: Ensuring adequate training and making work safe

Collective agreement	Select provisions
Spain: Fifth National Collective Bargaining Agreement for Temporary Agency Workers (2008-2010)	Temporary work companies will allocate an annual one per cent of the payroll to cover the occupational safety and health training needs of workers hired to be assigned to user enterprises.
Republic of Korea: Metal Industry Employers' Association and Metal Workers' Union industry agreement (2013-2014)	The employer should supervise in-company subcontractors [basically temporary agency workers] in order to prevent occupational accidents and illness and provide the relevant education in accordance with the Act on Occupational Health and Safety.
Mauritius: Building and Civil Engineering Contractors' Association, and the Construction, Metal, Wooden and Related Industries Employees' Union and the Private Enterprises Employees' Union multi-employer agreement (2011, undetermined)	Where an employee has less than 12 months continuous service, she/he should not be exposed to any hazardous job unless and until he/she has received appropriate training from a competent person.

Factors contributing to collectively negotiated outcomes

A number of factors support the collective negotiation of such innovative outcomes. Some of these address the regulatory obstacles that may prevent non-standard workers from enjoying collective bargaining rights. For example, statutory procedures for union recognition may fail to count 'non-standard' workers when establishing whether representation thresholds have been met or specify a minimum level of employees for the establishment of a bargaining unit (Davies, 2014).^{vii}

One such factor that contributes to collectively negotiated outcomes is an enabling legal framework that ensures the effective recognition of the right to collective bargaining, so that this can be used as a tool to afford inclusive labour protection both for regular employees and workers in non-standard forms

of employment. This requires measures to ensure that union representatives, employers and employers' organizations can be recognized as bargaining representatives and are able to negotiate collective agreements that cover such workers. This may mean taking into account the proportion of non-standard forms of employment in a bargaining unit when considering whether representation thresholds for recognition have been met (Davies, 2014).

A second factor is social dialogue. Social partners at various levels have developed instruments and frameworks of cooperation which promote and support collective bargaining for non-standard workers. With the support of local authorities, trade unions and employers in Vallès Occidental in Catalonia, Spain,

^{vii} For example, in the United Kingdom, if voluntary recognition fails, then statutory recognition procedures come into effect. Under Schedule A1 of the Trade Union and Labour Relations Consolidation Act, a trade union may not apply for statutory recognition in a workplace with less than 21 workers. Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1.

have developed a framework of cooperation for company agreements that foster competitiveness while reducing unemployment and non-standard employment. These agreements assist the transition of temporary workers to permanent employment and facilitate greater working time flexibility (Regalia, 2013: 454). In Belgium, framework conditions agreed in cross-sectoral agreements reached by the National Labour Council also apply to agency workers (Eurofound, 2009). In 2008, Union Network International (UNI) and ISS, one of the world's leading companies providing cleaning services, renewed their 2003 global agreement and added a clause that enables ISS workers and workers providing services to ISS facilities to exercise rights to

union membership and collective bargaining (ISS-UNI Global Agreement, 2008).

A third factor is the shoring up of inclusive collective bargaining through policy-based extension in countries where these practices exist. For example, in South Africa, the Labour Relations Act was amended in 2014 to enable the Minister to take account of the composition of the workforce in the sector – specifically the proportion of workers in non-standard employment – when establishing whether the social partners have reached the threshold required for the extension of a collective agreement^{viii}.

Conclusion

This issue brief has provided many examples of the ways collective bargaining can reduce the vulnerability of workers in non-standard forms of employment and help ensure that work is decent. This is only possible where the right of these workers to freedom of association and

collective bargaining is recognized and protected. The efforts of the social partners are important in providing a framework that can foster these innovative practices, as are the efforts of government to support collective bargaining.

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^{viii} Labour Relations Act No. 66 of 1995, as amended by Amendment Act No. 6 of 2014, Section 32(5A).

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