



ITUC Policy Brief

Organising and Collective Bargaining in Non-Standard Forms of Work



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International Trade Union Confederation

Foreword from Sharan Burrow

The worldwide surge of ‘non-standard’ or precarious forms of work is pushing millions of people to the margins of economic security or beyond. The ITUC Global Poll shows that nearly two-thirds of people are struggling economically or are just getting by, and the erosion of the employment relationship is at the heart of the problem. Beyond the huge pressures on household incomes, this trend is a major drag on the global economy as the wages share declines.

More and more workers across the world are finding themselves in precarious arrangements, with little certainty over their job security, their salaries or even their working time. The breakdown in direct, regular employment has converged with a rise in informality, with over 60% of the world’s workers now working in informal work, including new platform businesses, with no rights, no minimum wages, no social protection, and in too many cases no access to the rule of law. Growing insecurity at work is fueling poverty and inequality, along with a lack of trust in our public institutions, which have failed in their responsibility to protect their people.

The surge in precarious work is not a natural phenomenon. These jobs have proliferated in the midst of regulatory loopholes and destructive deregulation. Too often, employers are able to benefit from regulatory arbitrage at the expense of their workers. The growth of global supply chains has also played an important role, leading to a fragmentation and breakdown of employer responsibility across

borders, with low-paid, insecure and often informal work arrangements constituting the bottom of the production chain.

Governments must take action, and some are. The California legislature, with its Bill AB5, aims to put an end to platform businesses like Uber and Lyft escaping their responsibilities as employers by falsely classifying their drivers as having no employment relationship with the company. As the home of the platform business model, California has more experience than anywhere else on how these businesses avoid their obligations, and politicians, courts and regulators in other jurisdictions need to take a leaf out of California’s book. This brief outlines the numerous measures that governments should be taking, but they will need to start by putting in place mandatory due diligence requirements for multinationals and essential safeguards for workers. A labour protection floor, in line with the recently adopted ILO Centenary Declaration on the Future of Work, must be urgently implemented in order to provide such a safeguard. This floor would ensure fundamental rights, including freedom of association and collective bargaining, occupational safety and health, an adequate minimum wage and the maximum hours of work. Together with an adequate social protection floor, it can provide the foundation for a new social contract.

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Introduction

Non-standard forms of work have been on the rise in recent years, with serious consequences on workers' rights, security and livelihoods. Such new work forms have increased in prevalence in the midst of technological change, globalisation, regulatory loopholes, and in some cases, reforms to reduce workers' protections. In many countries, employers face few restrictions to make use of precarious work arrangements, and sometimes even profit from fiscal incentives available to them to expand the share of non-standard workers. Non-standard workers generally tend to encounter lower pay and job security, reduced access to social protection and lower benefits, and overall lower quality of life.

This brief compiles information on the incidence of non-standard forms of work, including temporary work, involuntary part-time work and zero-hour contracts, on-call work, casual work, agency work, digital platform work and disguised/dependent self-employment. It looks at the challenges that such forms of work are posing in terms of workers organising and collective bargaining, and the responses that unions are taking. The brief, moreover, highlights examples of what some governments are doing to combat precarious work and offers recommendations for further action. Unions set out a number of demands for what is needed to reduce precarious work. Overall, unions insist that a new social contract is needed, which would ensure an essential floor of labour rights and protections as well as a social protection floor for all workers.

The rise of non-standard forms of work

Non-standard forms of work have been on the rise in recent years, with serious consequences on workers' rights, security and livelihoods. While there is no universal definition of 'non-standard' employment, such a label typically refers to all arrangements that deviate from standard full-time, permanent employment, where a bilateral working relationship exists between an employer and a worker. Non-standard forms of work may, for instance, comprise temporary work, part-time work (especially part-time work performed on an involuntary basis), on-call work and contracts with zero- or variable working hours, casual work, agency work, digital platform work and disguised/dependent self-employment¹. In many cases, often including in platform businesses or casual arrangements, such work is undeclared and constitutes part of the informal economy.

Non-standard forms of work are rapidly increasing in prevalence in many places across the world. In many countries they represent a minority of overall jobs; within the OECD, the majority of employment is in a full-time, open-ended contract.² Nevertheless, the incidence of these non-standard forms of work has become significant and, in some countries, they may even gradually become the new normal. Within the European Union, around one quarter of all employment contracts are for non-standard forms of employment, and over the last decade over half of all new jobs created have been 'non-standard'³. The growth of non-standard forms of work has, moreover, converged with high incidences of informality.

Globally, over 60% of the workforce works in the informal economy⁴. While not all non-standard forms of work are informal, the rise of certain types of work forms, including platform work and casual work that are often undeclared, risks undermining efforts towards formalisation.

A number of different types of non-standard forms of work have risen in recent years. For instance, the share of people in temporary jobs has risen above 25% in countries such as Chile⁵, Mongolia, Peru and Spain⁶. Within global supply chains, temporary workers have been estimated to represent 20% of the workforce among suppliers⁷. In a number of countries, the incidence of part-time work is very prominent. In the Netherlands, for instance, part-time employees amount to around half of the workforce⁸, while in Chile it increased from 5% and 17% between 2000 and 2015. Involuntary part-time work, most worryingly, has increased in many countries and represents a major factor for underemployment and in-work poverty.⁹ In several countries (e.g., UK, Netherlands and France), the share of dependent and 'bogus' self-employment has been increasing in the last decades. Within the European Union, an estimated 18% of all self-employed workers can be considered to be dependent¹⁰. Recent estimates suggest that a 10% of the US workforce has irregular or on-call working schedules¹¹. Agency work covers around one third of the workforce in the Indian manufacturing industry. One quarter of all employment is casual in Australia, while this is true for two thirds of the wage earners

1 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

2 OECD (2019) Employment Outlook: The Future of Work.

3 European Commission (2017) Proposal for a Directive on transparent and predictable working conditions in the European Union.

4 ILO World Employment and Social Outlook 2019.

5 Eurofound and ILO (2019) Working conditions in a global perspective.

6 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

7 ILO (2017) INWORK Issue Brief No.10 on Purchasing practices and working conditions in global supply chains: Global Survey results.

8 ILO (2015) Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment.

9 ILO (2018) Working time and the future of work.

10 Eurofound (2017) Aspects of non-standard employment in Europe.

11 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

in Bangladesh and India¹². Moreover, 'new' forms of work in the digital economy – including platform or crowd work – have spread quickly in the last decade. Recent research estimates that the online labour market grew by approximately 25% between 2016 and 2017¹³. In the United Kingdom alone, around 1.1 million people are estimated to be employed – partially or fully – in platform businesses¹⁴. Others, however, point out that work in platform businesses is a phenomenon that is limited to 0.5% or 1% of total employment and that there are signs that its growth is already slowing down¹⁵.

The reasons for growth in non-standard forms of work are multifaceted and vary greatly across countries. Technological change and the emergence of platform businesses, along with the transformation of industries, have played significant roles, combined with labour regulations that have not always adapted to these changes¹⁶. The proliferation of global supply chains as a dominant mode of production has also played a role. A lack of due-diligence from multinationals, along with buyers' purchasing practices, can often lead suppliers to make use of non-standard, precarious work and casual work arrangements in order to meet buyers' demands. Insufficient lead times, inaccurate specifications, and prices set below the cost of production can sometimes force buyers to recur to low-paid and insecure jobs, overtime and highly variable working hours and the outsourcing of the production to sub-contractors¹⁷.

Non-standard forms of work are generally characterised by low pay, lower job security, reduced access to social protection and lower benefits, and a lower quality of life overall¹⁸. In some countries, workers in certain types of non-standard forms of work are excluded from labour law altogether with serious implications not only for working conditions,

but also occupational health and safety, leading to higher risk of occupational injury¹⁹. In most cases, non-standard workers tend to receive lower wages than workers on standard contracts. Within developing countries, non-standard workers tend to earn between 30 and 60% less than regular workers, and within high-income countries, wage penalties for non-standard workers can be as high as 34%²⁰. For instance, platform workers in the United States can be paid as low as 2-3 dollars per hour compared to 7.25 dollars an hour²¹. Furthermore, the precarious nature of non-standard forms of work makes workers in such jobs at greater risk of becoming unemployed or inactive²². **For many non-standard workers, social protection entitlements are often scarce or inexistent.** In Ukraine, for instance, the majority of online workers do not contribute to social security nor do their employers.²³ As non-standard workers tend to experience higher turnover, combined with the fact that their employers often pay lower or no social security contributions, it is often more difficult for such workers to accumulate sufficient social security contributions and/or to transfer entitlements accrued between changing jobs²⁴. Even in relatively better social protection systems, including Denmark and Germany, temporary workers are substantially less likely to access unemployment benefits than permanent workers²⁵. Moreover, **non-standard workers tend to enjoy a lower quality of life.** A number of surveys highlight that non-standard employees experience significantly higher levels of stress, often due to unsustainable working schedules, and a worse work-life balance²⁶. A study on job satisfaction of Korean workers shows, for instance, that the average level of job satisfaction of non-standard workers is lower than that of standard workers and the change in employment type from standard to non-standard leads to a decrease in job satisfaction²⁷.

12 Ibid.

13 ILO (2017) Digital labour platforms and the future of work.

14 UK Research and Action Centre (2017) Good gigs: A fairer future for the UK's gig economy.

15 OECD (2019) Employment Outlook: The Future of Work.

16 ILO (2015) Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment.

17 ILO (2017) INWORK Issue Brief No.10 on Purchasing practices and working conditions in global supply chains: Global Survey results.

18 See for instance European Commission (2018) Employment and social developments in Europe.

19 Ibid.

20 ILO (2015) Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment.

21 Fulton (2018) Trade unions protecting self-employed workers. ETUC.

22 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

23 ILO (2018) Work on Digital Labour Platforms in Ukraine: Issues and Policy Perspectives.

24 ILO Committee of Experts (2019) Report on the General Survey on Recommendation 202 on Social Protection Floors.

25 Ibid.

26 Ibid.

27 Park and Kang (2017) Job satisfaction of non-standard workers in Korea: focusing on non-standard workers' internal and external heterogeneity.

Compared to the average worker, women are greatly overrepresented in non-standard employment.

At the global level, women represent 57% of the part-time workers, despite being only 40% of the total workforce²⁸. While part-time work is often a choice to reconcile work and family life, women are also disproportionately represented in involuntary part-time work across the OECD, often leading to underemployment and in-work poverty²⁹. Women are also often overrepresented in temporary jobs with low job security. In the Republic of Korea, for instance, women are more likely to have fixed-term contracts than men³⁰. **Likewise, young people tend to be overrepresented in non-standard forms of work.** In the EU, half of the young people had part-time or temporary jobs in 2014³¹, while in New Zealand workers under the age of 24 are twice as likely to be employed in casual work than older workers. Lastly, a divide exists across skills, as the low-skilled tend to be overrepresented in precarious jobs³².

Overall, the incidence of non-standard employment seems to be associated with higher levels of job insecurity. The higher the number of temporary contracts, the lower their likelihood for workers to escape unemployment or under-employment, and the lower the chances to reach better jobs³³. However, **the incidence of non-standard work and the degree of socio-economic security enjoyed by non-standard workers depends to a great extent on the regulatory context.** A study of labour market deregulation in 19 European Union countries between 1992 and 2012 showed that government deregulation of the use of temporary contracts increased temporary employment risks for youths and did not reduce unemployment risks³⁴. Moreover, OECD research shows that in some countries **large discrepancies in terms of tax and social security contributions exist between different forms of employment**, which can in turn create arbitrage opportunities for employers and encourage the proliferation of non-standard and precarious forms of employment³⁵.

28 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

29 For more statistics on women and men's participation in voluntary and involuntary part-time work, consult OECD Stat 2019.

30 Eurofound and ILO (2019) Working conditions in a global perspective.

31 European Parliament (2016) Precarious employment in Europe: Patterns, trends and policy strategies.

32 Keune (2015) Trade unions, precarious work and dualisation in Europe.

33 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

34 Gebel and Giesecke (2017) Does deregulation help? The impact of employment protection reforms on youths' unemployment and temporary employment risks in Europe.

35 OECD (2019) Policy responses to new forms of work.

Challenges related to trade union organisation and bargaining

Trade unions often face major challenges to organising non-standard workers and collectively negotiating improvements to their conditions.

Workers in non-standard forms of work are far less likely to be organised. On average across the OECD, non-standard workers have a 50% lower probability to be unionised than standard workers, though significant variation exists between countries³⁶. In the UK, for instance, 28% of the permanent workers are members of a union, while only 10% of temporary workers are unionised³⁷. These gaps seem to increase even further in Continental and Southern Europe³⁸ but are much less pronounced in Nordic countries and Belgium, which have in place a 'Ghent unemployment benefit' system³⁹ whereby unions have responsibility for administering unemployment benefits, which in turn promotes higher union coverage. Gaps in unionisation can also be very acute in low and middle-income countries. In India, for example, 63.9 per cent of workers with long-term contracts are unionised, compared to only 13.5% of workers with short-term contracts⁴⁰. In Cameroon, 52.8% of workers with permanent contracts are unionised compared to 24.5 per cent of workers with fixed-term contracts⁴¹. In Cambodia, trade union membership for workers in part-time contracts is 15 times lower than that of workers on full-time contracts⁴².

There are various reasons for why workers in non-standard forms of work often encounter significant barriers to organising. At the individual level, **non-standard workers find themselves in a substantially more insecure position vis-à-vis their employer compared to traditional employees.** Temporary and agency workers often suffer the threat of being dismissed, or their contract not being renewed. Compared to permanent and full-time jobs, atypical workers tend, hence, to be vulnerable to managerial retaliation. In some cases, employers might even hire atypical workers with the purpose of affecting workers' bargaining power, as well as to undermine their organisational capacity⁴³. In short, **the precarious situation of non-standard workers creates significant barriers to workers' organising, which in turns further reinforces their precarious situation.** Another major issue relates to **workers' physical isolation from other workers.** Traditional settings entailed workers' concentration into one physical space (e.g., the factory), making it easier for them to organise and coordinate their claims. However, some non-standard workers, such as platform workers, are spread across a multitude of workplaces. In some cases, they can be completely isolated from each other (e.g., the self-employed and platform workers). In Ukraine, for instance, 63% of platform workers surveyed stated

36 OECD (2019) Employment Outlook: The Future of Work.

37 Gumbrell-McCormick (2011) European trade unions and 'atypical' workers. *Industrial Relations Journal*, 42(3), pp.293-310.

38 Ermenegger, Hausermann, Palier and Seeleib-Kaiser (2012) The age of dualization: the changing face of inequality in deindustrializing Societies.

39 For more information see Rie, Marx and Horemans (2011) Ghent revisited: Unemployment insurance and union membership in Belgium and the Nordic countries.

40 ILO (2016) Non-standard forms of employment around the world.

41 Ibid.

42 Ibid.

43 Industriall (2014) Negotiating security: Trade union bargaining strategies against precarious work.

that they were not aware of the existence of any union, cooperative or forum through which they could make a complaint about their working conditions or demand support⁴⁴. Evidence from factory visits following a survey on global supply chains showed a low level of awareness on the existence of workers' organisations among the workforce in countries such as China, India and Turkey⁴⁵. In a number of countries, atypical workers tend to experience **high turnover from one job to another, and from a sector to another**. This creates further difficulties in forming unions, especially in collective bargaining systems where unionisation is closely linked to the individual enterprise. It also makes it more difficult to monitor rights violations. Many non-standard workers also tend to have different contractual statuses, despite often performing similar or identical tasks. The same workplace can be shared among different 'types' of employees, ranging from independent contractors and freelancers to part-timers and agency workers. In most cases, the set of rights and entitlements enjoyed by workers is unequal. As a result, atypical workers often have different needs and priorities, making it more difficult to unify all their interests into one coordinated 'voice'.

Loopholes in regulatory frameworks, ambiguous employment relationships, and uncertain contractual status all severely undermine workers' ability to organise and bargain collectively.

In a number of cases, firms recur to 'triangular' arrangements, in which a firm or agency mediates the employment relation between the main firm and the worker⁴⁶. In these situations, unions face the problem of tackling the 'lead' firm for bargaining, i.e., the one responsible for subcontracting. This mechanism is evident in the case of agency work, whereby the main firm outsources some tasks to external agencies. Analogous situations have been reported in the digital economy. Uber Eats, for instance, employs its workers through an umbrella company⁴⁷. Such 'proxy employers' tend to increase legal uncertainty and jeopardise corporate accountability.

In the case of some non-standard work arrangements, the employment relation is unclear or informal. Such is often the case for dependent or 'bogus' self-employed workers who are formally considered to be self-employed but in practice are economically dependent on a single employer for their income (or a large part of it) and have little to no capacity to set their own price for their work. Despite the existence of **ILO Recommendation 198 on the Employment Relationship**, which sets out guidance on effectively establishing the existence of an employment relationship and distinguishing between employees and self-employed workers, such ambiguities in the employment relationship persist in practice across many countries. The multinational food delivery service Foodora has, for instance, claimed that riders were not proper employees, rather enjoying 'an opportunity to cycle around whilst gaining a small salary'⁴⁸. **Such ambiguities in employment relations have in some cases created legal barriers to workers organising and collective bargaining.** In the United States, the US Chamber of Commerce has argued that based on anti-trust legislation, Uber riders should not be able to unionise, as anti-trust laws do not permit independent business operators to fix prices⁴⁹.

Moreover, as a result of legal and regulatory barriers/obstacles, non-standard workers may fail to enjoy a number of collective and workplace rights.

In Vietnam, for instance, workers whose contracts are shorter than six months cannot join unions⁵⁰. In 2017, in a Nissan plant in Mississippi, workers voted against unionisation during a union election from which, nonetheless, a considerable amount of contract workers earning lower wages than their 'standard' colleagues were excluded.⁵¹ This, along with intense anti-union pressure from the company and local politicians, had a serious impact on the result of the vote. On the contrary, In Germany, in 2016 a legislation on temporary agency work was amended and established that temporary workers must be granted the same rights to elect workers' representatives as the other employees at the user firm.⁵² In Poland, starting from January 2019, all workers, including

44 ILO (2018) Work on Digital Labour Platforms in Ukraine: Issues and Policy Perspectives.

45 ILO (2017) INWORK Issue Brief No.10 on Purchasing practices and working conditions in global supply chains: Global Survey results.

46 Ebisui (2012) Non-standard workers: Good practices of collective bargaining and social dialogue.

47 Soderqvist and Bernhardt (2019) Labor Platforms with Unions Discussing the Law and Economics of a Swedish collective bargaining framework used to regulate gig work. Swedish Entrepreneurship Forum.

48 Tassinari and Maccarrone (2017) The mobilisation of gig economy couriers in Italy. Transfer: European Review of Labour and Research, 23(3), pp.353-357.

49 Summary of *Chamber of Commerce v. City of Seattle* on the US Chamber Litigation Centre website (accessed May 2019).

50 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

51 <https://www.nytimes.com/2017/08/05/business/nissan-united-auto-workers-union.html>.

52 Vogel, S. and Kraemer, B. (Eurofound 2016) Germany: Compromise struck on the new temporary agency work legislation.

<https://www.eurofound.europa.eu/publications/article/2016/germany-compromise-struck-on-new-temporary-agency-work-legislation>.

those self-employed, are allowed to collectively bargain⁵³, while in South Africa, the Labour Relations Amendment Act of 2014 established that trade unions have the right to represent temporary agency workers at the workplace both at the agency and at the user firm⁵⁴.

Together with these problems, organising workers in platform businesses entails additional obstacles. **Algorithmic management further reduces corporate accountability, and rating mechanisms tend to increase competition among workers⁵⁵**. Platform workers can also be subject to privacy invasion and monitoring practices. In some cases, platforms have been reported to capture screenshots from employees' devices, tracking their behaviour and attitudes. Finally, the digital economy poses new problems for organising; representation mechanisms are often missing, and workers may lack the sufficient time and resources to exert their collective rights⁵⁶.

Finally, it is important to take into account that **the degree of centralisation and coordination of collective bargaining can dramatically affect the coverage of collective agreements, including for workers in non-standard forms of work**. Coverage rates for collective bargaining tend to be highest in countries where bargaining happens across multiple employers, for instance at the sectoral or national level. Conversely, countries where agreements are negotiated at enterprise level typically display lower coverage rates⁵⁷. Government extensions of collective agreements to non-unionised workers can also greatly improve the coverage of collective agreements for workers across different firms and different contract types; in France and Italy, for instance, workers in firms that are not covered by collective agreements can benefit from such extensions⁵⁸. That being said, in recent decades many countries have **undertaken reforms to decentralise collective bargaining, shifting it from national/sectoral level to the level of the enterprise, which has in turn led to a lower level of coverage⁵⁹**. Some governments have also rolled back extension mechanisms of collective agreements, allowed agreements to expire without renewal, as well as allowed companies to deviate from agreements, further reducing coverage and associated rights and protections from collective bargaining⁶⁰.

53 OECD (2019) New Forms of Work and the Future of Work.

54 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

55 Fulton (2018) Trade unions protecting self-employed workers. ETUC.

56 Johnston and Land-Kazlauskas (2018) Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy. International Labour Office.

57 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

58 OECD (2017) Employment outlook: Collective bargaining in a changing world of work.

59 Visser (2016) What happened to collective bargaining during the great recession?

60 ILO (2015) Collective bargaining: Stability, erosion or decline?

Union responses

While workers in non-standard forms of work tend to be significantly less represented by unions, in recent years many unions have sought to **broaden their membership pool to include such workers and adapt their activities in order to provide greater protections for such workers**. The Japanese federation UA Zensen, for instance, has run a campaign to unionise non-standard workers⁶¹. Part-time workers now account for almost a third of their members. Likewise, Dutch trade unions (FNV) have placed great efforts on recruiting from these sectors, including the cleaning, meat processing and taxi sectors⁶². Some German unions have developed a series of projects targeted at precarious workers offering atypical workers practical help and assistance on an individual basis⁶³. Thanks to this innovative approach, in 2012 IG-Metall gained 38,000 new members among temporary agency workers. Similarly, the Swedish TCO provides legal advice and training to freelancers and journalists. In some cases, unions have focused on workers in the informal economy. The Autonomous Workers' Union of the Dominican Republic (CASC) has created an insurance programme (AMUSSOL) in order to support informal workers access social protection, as they are excluded from the public social security scheme, while at the same time supporting them to transition to the formal economy and encouraging them to unionise. The Amussol programme currently supports around 60,000 workers⁶⁴. **Overall, unions' successful organising strategies for non-standard workers are often adaptive to the specific needs and concerns of these workers**. The delivery of services such as insurance, legal assistance and help desks has been shown to have a powerful recruitment effect.

In a number of countries, some national union centres have **created specialist unions or sections for precarious workers**. Soon after the 1997 Italian labour market reform, that promoted flexibility 'at the margin' of the labour market, the major three Italian confederations set up specific organisations to represent workers in non-standard forms of work⁶⁵. These unions have the clear mandate of covering precarious workers across contractual and workplace boundaries. Likewise, Canada has recently seen the creation of the Immigrant Workers' Centre and the Temporary Foreign Workers' Associations⁶⁶. The two organisations promote the interests of immigrant and undocumented workers. In Nigeria, union confederations have created specific branches for contract workers, with a focus on the oil industry⁶⁷. Similar efforts have been done in Korea for workers in the construction industry. In the UK, the Independent Workers Union of Great Britain (IWGB) organises low-wage, immigrant and precarious workers, mostly from 'difficult' sectors including janitorial work and courier services⁶⁸.

In other cases, **obstacles posed by the legal and economic context urged unions to adopt innovative organisational forms**. Unionen Sweden, a pioneer in the field of organising new forms of work, is developing the 'faircrowd.work' project⁶⁹. The initiative aims at creating a platform for crowd and app-based workers, attracting members through services such as insurance. Unionen has recently concluded three collective agreements with platform businesses. In Argentina, the Argentine Street Vendors Union (SIVARA) organises workers in the public and private sector⁷⁰. The network has been pivotal to overcome dispersion across the self-employed. SIVARA has managed to conclude 25 agreements for food street

61 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

62 ILO (2015) Non-standard forms of employment. Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment.

63 Industriall (2014) Negotiating Security Trade union bargaining strategies against precarious work.

64 WSM (2016) Amussol: informal workers have access to social security in the Dominican Republic.

65 Gumbrell-McCormick (2011) European trade unions and 'atypical' workers. *Industrial Relations Journal*, 42(3), pp.293-310.

66 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

67 ILO (2015) Issue Brief no. 3 – Labour relations and collective bargaining.

68 Johnston and Land-Kazlauskas (2018) Organizing on-demand: Representation, voice, and collective bargaining in the gig economy. International Labour Office.

69 Fair Crowd Work (2019) Home [online] Available at: <http://faircrowd.work> [Accessed April 2019].

70 Ebisui (2012) Non-standard workers: Good practices of collective bargaining and social dialogue.

vendors. In Japan, community-based unions have been designed to counter workplace and sectorial fragmentation⁷¹. These unions operate at the regional level, regardless of where and how people are employed. Initiatives involve agency workers, migrants, informal workers and other categories as the independent contractors. In Austria, Foodora delivery workers have joined together to form a works council⁷². The council is co-directed by Vida, a transport and service union affiliated to the international Transportation Federation (ITF).

In a number of cases, **unions have used collective bargaining to promote the 'standardisation' of precarious workers**. In Canada, New Zealand, Philippines and South Africa, unions have managed to negotiate agreements imposing a time limit after which temporary contracts shall become permanent⁷³. In the Netherlands, an agreement for the postal and parcel sector compelled companies to transform 80% of self-employment contracts into standard contracts by 2013⁷⁴. In 2009, German unions DJV and ver.di secured an agreement stating that self-employed journalists must be considered as 'employees' if 50% or more of their income derives from a single employer or client. In some countries, unions have **negotiated reductions in the incidence of non-standard contracts**. In Indonesia, the unions FSPMI and Lomenik have negotiated decreases in the number of temporary agency contracts in the island of Batam, an Export-Processing Zone (EPZ) where the near-totality of the employees (98%) are agency workers⁷⁵. In 2010, IG-Metall and the employers in the steel industry signed an agreement ensuring that temporary agency workers received similar wages as standard workers, and in 2012, a new agreement gave works councils the power to limit the use of agency work⁷⁶.

Unions have managed to successfully negotiate collective agreements to improve non-standard workers' socio-economic security. In New Zealand, Unite has concluded agreements with a number

of fast-food companies, including Burger King, McDonald's and Restaurant Brands to improve the predictability of working hours, and thus pay, for workers on variable-hour contracts⁷⁷. In Denmark, the Union of Commercial and Clerical Workers signed an agreement for the 2014-2017 period increasing access to maternity benefits for agency workers⁷⁸. The Coalition of Immokalee Workers in the United States, representing tomato pickers and other farmworkers across different farms in Florida – many of whom are in casual, seasonal and piece-rate work – has successfully negotiated agreements with major food retail companies and restaurant chains, such as Walmart, Subway and Whole Foods. Within these agreements, the companies agree on purchasing tomatoes at higher prices in exchange for ensuring that tomato farms provide higher wages and increased rights and protections for their workers⁷⁹.

In some countries, workers' organisations have also pursued the **extension of existing collective agreements applying to standard workers to those in non-standard forms of work**. This is the case of Switzerland and the Netherlands, where collective agreements have been extended to sectors such as contract cleaning, waste disposal, security services and personal care⁸⁰. On a similar note, the Swedish TCO has called for the equalisation of the employment rights for platform workers, in line with the Swedish labour market model⁸¹. The Swedish Transport Workers' Union has recently concluded an extension of collective agreements for taxi drivers to new transportation companies such as Bzzt, a green startup managing Podtaxi⁸².

In some cases, unions have also undertaken **industrial action to advance the interests of non-standard workers**. In 2010, contracted-out cleaning workers in the Dutch railways and airport sector participated in the longest strike in the Netherlands in the past 80 years⁸³. In the United States, the Service Employees International Union (SEIU) has promoted the 'justice

71 Keune, M. (2015) Trade unions, precarious work and dualisation in Europe.

72 Johnston and Land-Kazlauskas (2018) Organizing on-demand: Representation, voice, and collective bargaining in the gig Economy. International Labour Office.

73 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

74 Ibid.

75 Keune (2015) Trade unions, precarious work and dualisation in Europe.

76 ILO (2015) Issue Brief no. 3 – Labour relations and collective bargaining.

77 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

78 ILO (2015) Issue Brief no. 3 – Labour relations and collective bargaining.

79 Coalition of Immokalee Workers: About CIW [online] <http://ciw-online.org/about/> [accessed May 2019].

80 ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects.

81 Unionen (2016) The platform economy and the Swedish labour market model.

82 Johnston and Land-Kazlauskas (2018) Organizing on-demand: Representation, voice, and collective bargaining in the gig Economy. International Labour Office.

83 Gumbrell-McCormick (2011) European trade unions and 'atypical' workers. *Industrial Relations Journal*, 42(3), pp.293-310.

for janitors' campaign, aimed at improving working conditions for low-paid precarious workers, mostly Latin-American women⁸⁴. In 2006, janitors at five major cleaning companies participated in a month-long strike. The efforts resulted in a collective agreement with the five firms that raised hourly wage rates by almost 50% and increased employers' contributions for individual and family health insurance. **The digital economy has also in some cases offered a 'breeding ground' for innovative forms of industrial action.** In 2016, Italian Foodora workers launched a proto-strike where riders collectively logged out from the app, thereby affecting the company's delivery capacity⁸⁵. Customers were also invited to boycott the app via the internet. Last year, the New York Taxi Workers Alliance (NYTWA) gathered hundreds of Uber drivers to protest against pay cuts and obtain a minimum wage per ride⁸⁶. These actions have been instrumental in achieving higher wage rates, lower lease rates, and better protection against risks.

In addition to winning greater protections for non-standard workers through collective bargaining, in some countries unions have also been successful in promoting legislative reforms to improve protections for such workers. In Finland, a reform was introduced in 2018 to reduce the incidence of zero-hours contracts as well as limit the unpredictability and volatility of workers' earnings⁸⁷. The law notably stipulates that employers can resort to using such contracts only if they need a variable labour amount, and a justification must be provided in writing^{88,89}. New Zealand introduced legislation requiring employers to provide for an 'availability provision' within variable-hour contracts and guaranteed hours within them, in order to avoid that on-call workers need to be constantly on-call and then not paid for the hours they reserved⁹⁰. In Ireland, zero-hours contracts have been banned with the only exception of the actual need of occasional employment and in order to deal with specific circumstances, such as short-term absences

and emergencies.⁹¹ Germany and Italy have put in place measures to limit the incidence of temporary contracts, putting in place the requirement for firms to specify an objective reason for why such contracts are needed over permanent contracts. In the case of Italy, the maximum overall duration of successive fixed-term contracts has also been shortened. In Portugal, new legislation introduced in 2018 provides stricter regulations with regard to employment conditions with respect to platforms operating in the passenger transport sector and requires that drivers have an employment relationship with the platform. In the Republic of Korea, a recent legislative amendment has strengthened the powers of the Labor Relations Commission in addressing discrimination against non-standard workers⁹². The Canadian Labour Code was updated in 2018 to explicitly prohibit employers from treating employees as if they are self-employed contractors and putting the burden of proof on the employer⁹³. A number of other countries, including Greece, Hungary, Italy and Saudi Arabia also place a presumption of an employment relationship in their laws and have the burden of proof on the employer. To reduce worker misclassification, the Australian government has put in place an 'Employee/contractor decision tool' setting out 16 questions to determine whether a worker falls under the category of an employee or a contractor and clarifying the business's obligations in terms of tax and social security contributions⁹⁴.

In some cases, impressive achievements have been realised by workers themselves through a bottom-up mobilisation process. In Rwanda, moto-taxi drivers created the UNESCOM cooperative, which allowed them to buy their own vehicles, gaining independence from motorcycles' owners, as well as to get access to social security benefits.⁹⁵ Similarly, in Albania, employees of Teleperformance, a telemarketing company, created their own Union, Solidariteti, representing for the first time call centre

84 Ebisui (2012) Non-standard workers: Good practices of collective bargaining and social dialogue.

85 Tassinari and Maccarrone (2017) The mobilisation of gig economy couriers in Italy. Transfer: European Review of Labour and Research, 23(3), pp.353-357.

86 NYTWA (2018) Statement on Taxi & Limousine Commission Vote on First-Ever Minimum Pay Standard for Uber Drivers. [online] Available at: <http://www.nytw.org/ny-twa-statements/2018/12/4/december-5-2018-nytw-statement-on-taxi-amp-limousine-commission-vote-on-first-ever-minimum-pay-standard-for-uber-drivers>. [Accessed April 2019].

87 OECD (2019) Policy responses to new forms of work.

88 In addition, employers must communicate the shift rosters to the employees at least one week in advance, and if workers become ill on a scheduled working day, they are entitled to pay. In case of termination of the contract, employees working a lower number of hours than before during the notice period are entitled to a compensation.

89 Ibid.

90 Ibid.

91 Ibid.

92 ILO (2016) Non-standard employment around the world. Understanding challenges, shaping prospects.

93 OECD (2019) Policy Responses to New Forms of Work.

94 The decision tool is accessible here: <https://www.ato.gov.au/calculators-and-tools/employee-or-contractor/>.

95 <https://www.equaltimes.org/rwanda-s-moto-taxi-drivers#.XS3Pe3duKAq>.

operators⁹⁶. In India, the Self Employed Women's Association (SEWA) has organised women working in the informal sector who do not have access to social protection by providing to all members services such as insurance, credit and savings and protection schemes, including health care and childcare⁹⁷.

In some countries, improved protections for non-standard workers have been won through the courts, often through legal cases initiated or supported by unions. In 2017, the Independent Workers' Union of Great Britain (IWGB) won a case against Addison Lee, a private hire taxi company, to recognise a driver as an employee rather than an independent contractor. The court ruled that he should be considered an employee and be entitled to standard rights and protections, such as guaranteed minimum wage and paid holidays. The case was further reaffirmed in an appeal.⁹⁸ The General Trade Union (GMB) of Great Britain also supported a group of couriers in taking a legal action against the delivery company Hermes, and an employment tribunal ruled that couriers were effectively dependent workers.⁹⁹ In Spain, Intersindical Valenciana supported the case of a Deliveroo rider in order for him to be recognised as an employee rather than as an independent contractor, getting the first win in Europe for food couriers' rights.¹⁰⁰ In California, a Supreme Court ruling regarding package delivery drivers has imposed restrictions on companies to hire dependent self-employed workers through the establishment of an 'ABC standard', a three-stage screening a firm must pass in order to treat workers as independent contractors.

In some cases, governments have also introduced a 'third category' for worker classification to cover workers in a 'grey zone' between dependent employment and self-employment. In France, for instance, a new law requires that platforms provide accident insurance for their workers. Similar provisions have been introduced in other countries, such as Portugal, Italy and Korea.¹⁰¹ While the establishment of such categories may increase the rights and protections afforded to these workers compared to

those with a 'self-employed status', such categories nevertheless provide fewer protections than those on standard contracts. The OECD has also pointed out a risk of creating two rather than just one grey zone: one between standard 'employees' and workers under the 'third category' as well as one between the 'third category' and the self-employed¹⁰². Such new categories can, moreover, further increase the incentives for employers not to hire standard workers if their obligations for workers under the 'third category' are substantially lower.

With regard to precarious work in supply chains, **global framework agreements (GFAs) have been negotiated between global union federations and multinational enterprises** in order to provide greater security and better working conditions for workers in supply chains. For example, the GFA signed between H&M and IndustriALL Global Union and Industriefacket Metall includes specific provisions on recognised employment, consistent with Convention 122 on Employment Policy and Convention 175 on Part-Time Work. According to the agreement, workers shall be entitled to written contracts and employers shall avoid the use of labour-only contracting or unjustified apprenticeships, in order to guarantee regular employment conditions to all the employees. Moreover, the agreement provides for a limit to the use of fixed-term contracts and for the provision of insurance (medical, retirement, etc.) in those countries lacking comprehensive social security systems¹⁰³. Moreover, the GFA signed by GDF SUEZ and IndustriALL, the Building and Woodworkers International (BWI), and Public Services International (PSI) requires that GDP SUEZ and all sub-contractors ensure that work is performed under the appropriate legal framework and that excessive use of temporary or agency labour is avoided. It also requires all sub-contractors to commit to not making use of bogus self-employment and to guarantee the payment of social security and pension contributions to their workers¹⁰⁴. In addition, international guidance on responsible business conduct exists to ensure safe and secure working conditions within supply chains through

96 <https://www.equalltimes.org/in-albania-call-centre-workers-are#XTA8RHduKAq>.

97 <http://www.sewa.org>.

98 IWGB (2019) Addison Lee refused permission to appeal landmark worker rights case.

99 <https://www.ft.com/content/1b83fefe-786a-11e8-bc55-50daf1b720d>.

100 <https://www.thenational.ae/world/europe/deliveroo-rider-recognised-as-employee-by-spanish-court-1.789583>.

101 OECD (2019) Policy Responses to New Forms of Work.

102 Ibid.

103 For more information, see: http://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/HM/hm_gfa2016_eng.pdf.

104 For more information, see: www.industrialunion.org/sites/default/files/uploads/documents/GFAs/GDF-Suez/gdf-gfa-english.pdf.

the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises.

Finally, at international level, over the past decades unions have succeeded in negotiating several key **international labour standards** setting out key rights and protections for workers in non-standard forms of employment. Notably, **ILO Convention 175 on Part-Time Work** sets out several provisions to ensure non-discrimination of part-time workers on the basis of their employment status, as well as ensure occupational health and safety and the right to organise and collectively bargain. **ILO Recommendation 198 on the Employment Relationship** sets out guidance on establishing the existence of an employment relationship and distinguishing between employees and self-employed workers. **Convention 158 concerning the Termination of Employment** aims at protecting agency workers against wrongful termination and at preventing employers from avoiding conformity to this provision by resorting to specific types of contract for their employees. Furthermore, the **ILO Convention 181 on private agency workers** establishes that such workers should be ensured adequate rights and protection, including freedom of association, social security benefits and minimum wages. **ILO Convention 186 on Maritime Labour** has set out key principles to ensure fundamental rights at work for maritime workers operating across international boundaries, along with ensuring portable entitlements to social protection, occupational health and safety, and access to grievance mechanisms. The effectiveness of this Convention in improving protections to workers across borders has been highlighted by the ILO's Global Commission on the Future of Work, which has suggested that it could be used as a model for a new international agreement regulating the behaviour of platform businesses across multiple jurisdictions¹⁰⁵. Moreover, **ILO Recommendation 202 sets out the right to non-contributory social security guarantees**, available to people irrespective of their employment relationship, and complementing **ILO Convention 102 on access to contributory social security**.

Finally, the recently-adopted **ILO Centenary Declaration for the Future of Work**¹⁰⁶ calls for a floor of labour rights and protection for all workers including a floor of protections for all workers that includes respect for fundamental rights, including freedom of association and collective bargaining, health and safety at work, adequate minimum wages, health and safety and limits on working time, among others. Moreover, it reiterates the importance of strengthening social protection to provide universal access.

¹⁰⁵ ILO Global Commission on the Future of Work (2019) Work for a Brighter Future.

¹⁰⁶ Available here: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf.

Union demands

As demonstrated in this brief, the significant use or even abuse of forms of non-standard work, and the increasing levels of insecurity together with the imbalances in bargaining power experienced by atypical workers, are largely driven by legislation and regulatory gaps. Employers often face few restrictions to the use of non-standard workforce, while reaping important cost savings in the form of lower wages and wage costs when resorting to precarious workers, sometimes even profiting from fiscal incentives to expand the share of precarious workers.

While the challenges related to different types of non-standard forms of work vary, and so do the solutions, a number of actions can be taken by governments to reduce the incidence of many of these non-standard forms of work and improve protections for these workers.

Unions stress the need for governments to:

- **Deliver on a new social contract by guaranteeing an adequate floor of labour rights and protection for all workers, irrespective of contract type, in line with the ILO Centenary Declaration for the Future of Work.** This floor must include fundamental rights to freedom of association and collective bargaining, occupational health and safety, an adequate minimum wage based on the cost of living, and control over working time. **Ensuring adequate, universal social protection floors for all workers** is equally necessary in order to deliver on such a contract.
- **Eliminate legal obstacles for non-standard workers to unionise** and collectively negotiate improvements to their working conditions by ensuring self-employed workers who are, in practice, dependent on a single employer or group of employers are not restricted by competition legislation from organising and engaging in collective bargaining.
- **Extend social protection coverage** in line with ILO Convention C102 on Social Security and Recommendation 202 on Social Protection Floors. Require that employers pay comparable social security contributions for their workers and that workers have access to social protection irrespective of their contract type. **Ensure the preservation and portability of security entitlements** in order to facilitate workers transitions between contracts.
- **Provide protections against uncertain working conditions**, for instance by setting clear requirements for fragmented working schedules (e.g., establishing minimum hours for on-call work).
- **Prevent regulatory arbitrage** from encouraging the misclassification of workers and **promote the gradual phase-out of non-standard contracts**, which can be done by, amongst others, fixing caps on the share of atypical workforce or by limiting the use of atypical contracts to well described situations, eliminating financial incentives for firms to make use of precarious work, ensuring strict adherence to the principle of “equal pay for equal work” and enacting legislation to promote the timely transition of atypical workers towards higher levels of contractual security – for instance, by requiring that temporary workers receive permanent contracts after a designated period of time.
- **Step up labour law to put in place regulatory and enforcement measures to ensure the correct classification of workers and tackle bogus self-employment**, in line with ILO Recommendation 198 on Employment Relationship.
- **Promote broad-based collective bargaining** with a view of maximising coverage levels for both standard and non-standard workers, including through encouraging national and/or

sectoral agreements that are legally enforceable. Governments should also consider **extension mechanisms** to extend coverage to those segments of the labour market where it is difficult for unions to organise workers (e.g., the self-employed, workers in small and medium enterprises, agency workers, casual workers, etc.) as well as put an end to exemptions allowing enterprises to opt-out of collective agreements, wherever existing.

- **Set the right example themselves by limiting non-standard forms of work in the public sector, thus preventing sending the wrong signals to the private sector.**
- **Implement the UN Guiding Principles on Business and Human Rights** and enact legislation to ensure responsible business practices across the supply chain and combat precarious work, including through **mandatory due diligence, robust grievance mechanisms and access to remedy.**

Further Reading

ITUC (2017) [Future of Work](#)

ILO (2016) [Non-standard employment around the world: Understanding challenges, shaping prospects](#)

Johnston and Land-Kazlauskas (2018) [Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy](#)

OECD (2017) [Employment Outlook: Collective bargaining in a changing world of work](#)

OECD (2019) [Policy Responses to New Forms of Work](#)

OECD (2019) [Employment Outlook: The Future of Work](#)