



THE GIG IS UP

TRADE UNIONS TACKLING
INSECURE WORK



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WHAT IS THIS REPORT ABOUT?

Over three million people – one in ten of the UK workforce – now face insecurity at work. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, or the right to sick pay when they cannot work.

This report shows the impact of insecurity at work on workers themselves, and on the UK's economy and public finances. And it reports back from a TUC survey of people in insecure jobs, enabling them to tell us about their experience of work in their own words.

Most importantly, the report sets out what policy-makers could do to ensure that the modern world of work is one in which everyone can have a decent job – not one of ever-increasing insecurity. We want policy-makers to:

- help more workers to have voice at work
- upgrade our framework of employment rights to make it fit for the twenty-first century
- make sure those rights are properly enforced
- ensure that the tax, social security and pensions systems all encourage employers to offer decent jobs, and guarantees that everyone has a decent standard of living when they're not at work.

INTRODUCTION

Over three million people - one in ten of the UK workforce - now face insecurity at work. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, or the right to sick pay when they cannot work. This insecurity is sometimes described as an inevitable feature of a modern economy, fuelled by new technology and a desire for more flexible ways of working. But the so-called 'flexibility' we outline in this report has been one-way.

Employers have sought to manage the financial risk that comes from the inability to guarantee a constant demand for a product or service by employing workers on contracts that offer flexibility for the employer, at the expense of pay and certainty for the employee. And (as we set out in Section 1), because these contracts often come with lower pay and fewer rights and protections, the risk of being unable to work due to sickness or caring responsibilities is also transferred to working people.

Technology has played a role in these developments, with online platforms offering a way for employers to break up work into smaller tasks and contract out work on a piece-rate basis. But the change in the balance of risks between workers and employers cannot simply be attributed to new technology. The jobs in which insecurity has grown most swiftly are those that have been around for centuries, such as teaching, caring or providing hospitality.

And while some of today's insecure workers may work for 'platform' companies like Uber or Deliveroo, many of them work in areas that use little technology. What unites the agency worker at ASOS, the care worker missing out on the minimum wage and the lecturer employed on a zero-hours contract is not an app, but the lack of rights, protection and power they experience at work.

This report summarises the evidence on the extent and impact of insecurity at work today and sets out the policy changes that the TUC believes could help ensure that everyone gets the chance of a decent job. Throughout the report, we quote workers who responded to an online survey carried out by the TUC in February 2016, enabling these workers to talk about the impact of insecurity in their own words.

Each section finishes with a set of recommendations and these are also summarised at the end of this report.

There should be nothing inevitable about insecure work, and other countries have shown that a downgrade in rights and protections is not an inevitable flipside of healthy employment growth. But policy-makers need to act to ensure that insecure work becomes a thing of the past – rather than a permanent feature of the modern labour market.

Section 1 sets out the evidence on **the extent and impact of insecure work** in the UK. It shows that:

- There are 3.2 million people experiencing insecurity at work, and this number has risen sharply (by 27 per cent) in the last five years. This includes those on zero-hours contracts, in agency and other insecure temporary work, and in low-paid self-employment.
- Insecurity is concentrated among those groups that already face labour market disadvantage: women, black and minority ethnic workers and those in poorer regions of the UK are all more likely to face insecurity at work.
- Insecurity at work often means insecurity about working hours, short-notice cancellation of shifts and worries about pay. But it also comes with a significant loss of rights; we estimate that 1.5 million workers are employed, but risk missing out on key rights including maternity, the right to return to paid work after maternity leave, and rights to union representation in the workplace.
- The lower pay experienced by those in insecure work not only affects their living standards but also has a significant impact on public finances. Research for the TUC estimates that the rise in insecure work in the last decade has led to a net loss of revenue of over £5bn a year.

Moreover, research suggests a correlation between insecure work and productivity, which means that the rise in insecurity could help to explain why the British economy is consistently failing to deliver higher wages and more sustainable growth.

In **Section 2** we turn to the measures that are needed to address the growth of insecurity, focusing on the **importance of voice at work**. A key feature of the rise of insecurity at work has been the shift in risk from employers to workers. Collective voice and power in the workplace is the most effective way for working people to ensure that, rather than this one-way shift, the burden of managing risks at work is fairly shared between employers and employees. Trade unions have been at the forefront of tackling insecurity at work – whether challenging Uber in the courts, or winning new rights and pay for workers at Sports Direct. But a new framework of legal rights is needed to ensure that everyone can have their voice heard at work on the issues that matter to them most. This should include measures to give unions the right to access workplaces to tell individuals about the benefits of joining a union, new rules to strengthen collective and independent consultation rights, a requirement to have workers represented on company boards, and new sectoral arrangements to bring together unions and business to negotiate on pay, progression, training and conditions.

Section 3 sets out how the current framework of rights fails to guarantee decent work for too many people, and how **changes in the world of work have left our current framework of rights looking significantly out of date**. It shows how current definitions of employment status, which determine the rights to which individuals are entitled, too often act as a hurdle rather than a gateway to establishing rights, and have failed to keep up with changes in the nature of work.

Employment law should be strengthened in three areas. First, ensuring that all working people benefit from the same floor of decent employment rights and employers cannot contract out of their employment responsibilities or misclassify staff as self-employed. Second, adding to the existing framework of rights to ensure that flexibility in the workplace cuts both ways. Third, policy should aim to end to the pay penalty experienced by those in insecure work. Individuals who are expected to work variable hours should be financially rewarded for the flexibility they provide to employers, and the loopholes that allow agency workers to be paid less than regular employees should be closed.

Rights are worthwhile only if they can be effectively enforced. **Section 4** focuses on the difficulties people in insecure employment face when trying to **enforce employment rights**. Since the introduction of employment tribunal fees many workers cannot afford to go to an employment tribunal to enforce their rights. And too many workers are intimidated by their employers and afraid that they will lose their jobs if they try to ensure that their rights are respected.

The first step to ensuring that rights are a reality is abolishing employment tribunal fees. But we think that more innovative forms of enforcement could also help tackle insecurity. Making companies responsible for abuses of rights along their supply chains could change the incentives to employ people on insecure contracts. And an extension of licensing, where employers must meet a set of standards before operating within a sector, could help tackle some of the worst abuses of labour market rights.

Section 5 looks at the changes needed to **tax, social security and pensions policy** in order to ensure that employers do not experience a financial incentive to employ people on insecure contracts; that workers, whatever their employment status or earnings, are protected when they need to take time off work due to sickness or during periods of parental leave, and that everyone has the chance of a decent retirement.

Due to the myriad of ways in which the current tax system incentivises insecure employment, we recommend a comprehensive review of how the tax system could support the creation of more secure jobs. Meanwhile, changes should be made to the social security system to provide more people with access to sick pay, to stop universal credit cuts that will particularly disadvantage those in insecure jobs, and to give self-employed fathers and adoptive parents access to financial support. Finally, the system of auto-enrolment into pensions needs further reform to enable more low-paid people to save, and to encourage the self-employed into the system.

There should be nothing inevitable about insecurity at work in the twenty-first century but we need to act now to ensure that everyone has a decent job.



Photo: Shutterstock - Dmitry Kalinovsky

1: THE EXTENT AND IMPACT OF INSECURITY AT WORK

Over three million people - one in ten of the UK workforce - now face insecurity at work. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, or the right to sick pay when you cannot work.

In this section we summarise recent TUC findings on the extent of insecurity at work and why it matters, both for the individuals affected and for the wider health of the economy and public finances. It sets out:

- the extent of insecurity at work
- details of who is most likely to experience this insecurity
- the sectors in which insecurity is growing fastest
- the UK's experience in international context
- the impact of this insecurity at individual and national level.

THE EXTENT OF INSECURITY AT WORK

There are 3.2 million people who face insecurity in work in the UK, either because they are working on a contract that does not guarantee regular hours at work or a regular income (including zero-hours contracts, agency work and casual work) or because they are in low-paid self-employment (earning less than the government's National Living Wage). In total, this is one in ten in of those in work.

HOW THE TUC ESTIMATES THE NUMBERS OF PEOPLE IN INSECURE WORK¹

Zero-hours contracts workers (excluding the self-employed and those falling in categories below)

810,000

Other insecure temporary work including agency, casual, seasonal and other workers, but not those on fixed-term contracts²

730,000

Low paid self-employment³ (using the Social Market Foundation estimate of low-paid self-employed workers)

1.7 million

TUC estimate of insecure work

3.2 million

Official statistics suggest that since 2011 levels of insecure work have risen by more than 660,000 (27 per cent).

The fastest growth in insecure work has been in the number of people on zero-hours contracts (ZHCs), and those who are self-employed.

- The number of those on ZHCs has increased from 70,000 in 2006 to 810,000 in 2016. Some of this increase is due to increased awareness of this form of insecure contract. But if this was the only cause of the increase, we would have seen a corresponding fall in other forms of insecure work.
- The numbers working on agency, casual or seasonal contracts has fallen very slightly over the last decade from 770,000 to 730,000 in 2016. This limited fall, however, has been more than offset by the increase in ZHCs.
- The number of people in self-employment has risen sharply since the financial crisis. In 2016, nearly 4.8 million people were self-employed, up from 3.8 million in 2006. According to the Social Market Foundation,⁴ 1.7 million self-employed people earn below the level of the government's national living wage.

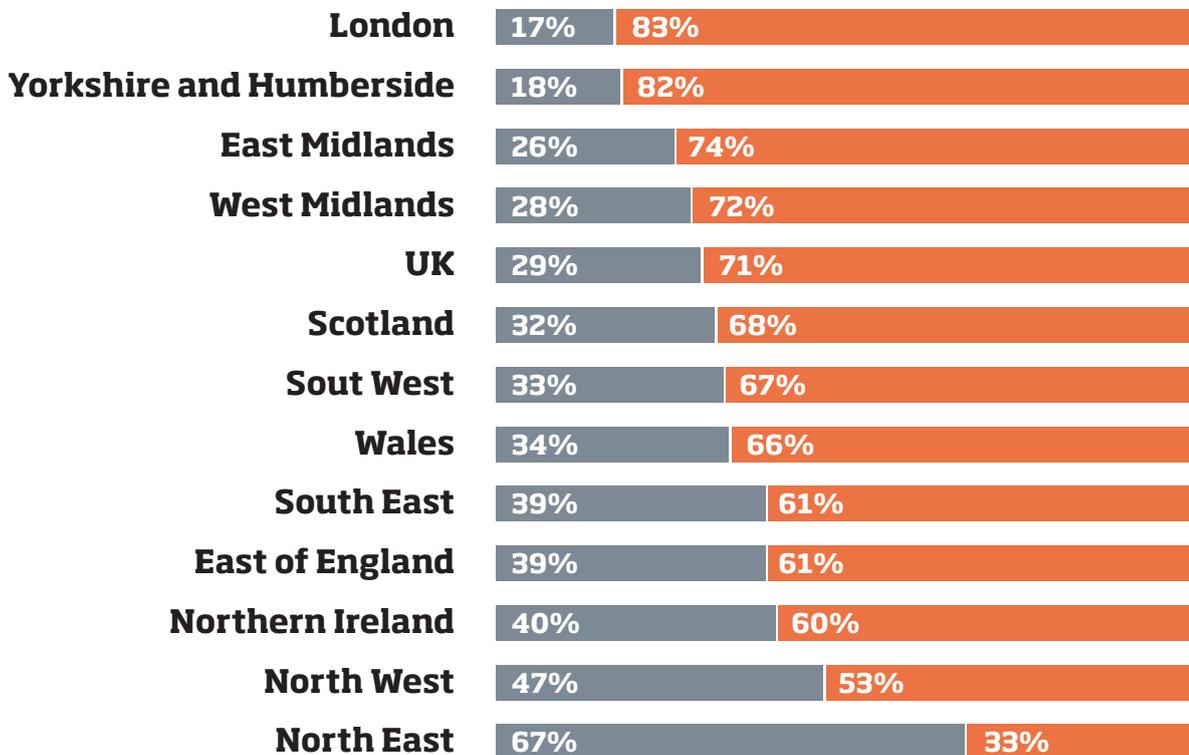
WHO IS EXPERIENCING INSECURITY?

There is evidence that the increase in insecure work is compounding existing labour market disadvantage, with women, minority ethnic groups and those in poorer regions of the UK more likely to be working this way.

- Around the same number of men and women (1.6m) are in insecure jobs. However, because there are more men than women in the labour market, women are more likely to be in insecure work, with almost 11 per cent of women in insecure employment compared to just over 9 per cent of men. The majority of the increase in insecure work since 2011 has come from women, who account for 58 per cent of the increase in insecure jobs.⁵
- Black, Asian and minority ethnic workers are over a third more likely than white workers to be in temporary or zero-hours work. One in 13 BAME employees is in an insecure job, compared to one in 20 white employees. Black workers in particular face insecurity at work, and are more than twice as likely as white workers to be in temporary and zero-hours work. One in eight black workers is in these forms of work, compared to one in 20 white workers.⁶
- Workers in the North-East, the region with the lowest GVA per head in 2015, are most likely to have seen employment in their area dominated by insecure work. Since 2011, two out of three jobs created in the North-East have been in insecure forms of work.

Figure 1: Jobs growth since 2011 by region and whether job was secure or insecure

■ Proportion of job growth since 2011 that was insecure
 ■ Proportion of job growth since 2011 that was secure



Source: ONS (2011 Q4-2016 Q4)

Responses to the TUC survey confirm that young and older workers alike suffer from growing insecurity:

“I get called into work last minute and can go one week with 40+ hours and the next three weeks with 8/9 hours per week. It isn’t steady and I hardly get work but always have to be available to work just in case they phone. When they do phone I have to drop everything and say yes otherwise I can’t pay bills.”

Female aged 16-19 working as a lifeguard

“Shifts cancelled last minute. Total insecurity not knowing how many if any shifts in any one week, with that not knowing if I will earn any money or the amount of money I might earn in any week. Difficulty in planning your life around the shifts, day shift, weekends never knowing what shift you will be given.”

Male factory production worker aged over 65

WHICH INDUSTRIES ARE DRIVING THE RISE IN INSECURE WORK?

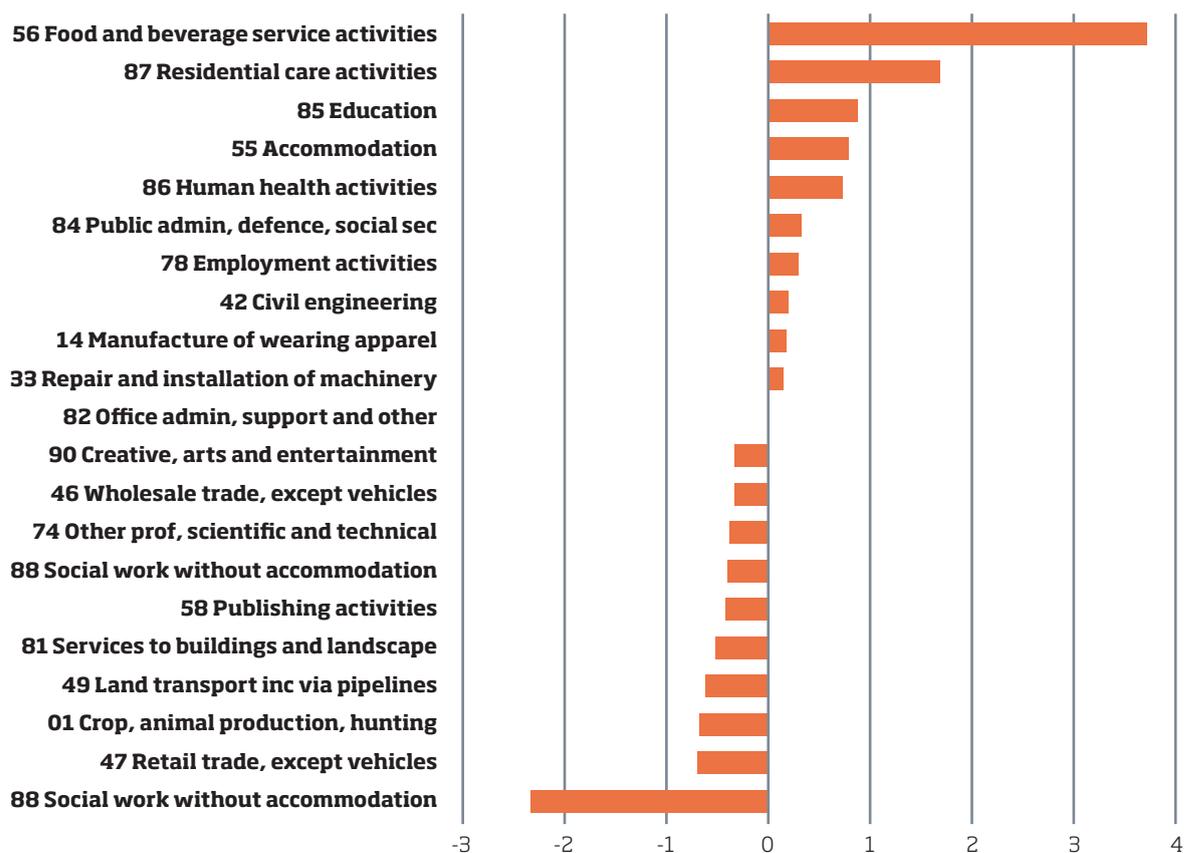
Discussion of the modern world of work often focuses on the role of technology and the ‘gig economy’ in driving down employment rights and standards. App-enabled employment may require new forms of policy response – although as we set out further in section 3 many employment platforms are simply replicating the traditional employment relationship or are operating on the same basis as the traditional employment agency.

But analysis of the industrial sectors in which insecure work is growing the fastest shows that it is in traditional professions – often those in which cost pressures are intense – that the rise of insecure jobs has been concentrated.

The chart below shows the top ten and bottom ten sectors for the change in their proportion of insecure workers. For example:

- Those working in hospitality (such as waiters in restaurants and pubs) make up one-fifth of the increase: the number in insecure work more than doubled, rising by 146,000 (+128 per cent) since 2011.
- Residential care accounts for one-tenth of the increase in precarious working: the number of care home workers facing insecurity has risen by 133 per cent since 2011.
- Education workers account for over one-tenth of the increase: the number in insecure work has risen by 82,000 since 2011 (+42 per cent).

Figure 2: Change in the proportion of insecure workers, 2011-16



Source: analysis of the Labour Force Survey 2016 in Learning and Work Institute (2017, forthcoming)
What is Driving Insecure Work? A sector perspective: Report to the TUC

INSECURE WORK IN THE PUBLIC SECTOR

One striking development of recent years has been the rapid expansion of zero-hours contracts and agency working⁷ in the public sector and outsourced public services,⁸ with cuts to public spending and changes in commissioning systems and the shift away from block purchasing identified as the main drivers for the increase in insecure contracts.

Zero-hours contracts are particularly concentrated in the social care sector. Skills for Care⁹ has estimated that 315,000 adult social care workers in England were employed on ZHCs in September 2016, representing nearly a quarter (24 per cent) of all workers in the sector. ZHCs are particularly prevalent among domiciliary care services, with 58 per cent of domiciliary care workers in England employed on ZHCs.¹⁰

The use of such contracts creates insecurity, making staff more vulnerable to mistreatment at work. There is substantial evidence of non-adherence to national minimum wage legislation among care workers.¹¹ It has also been accompanied by high staff turnover,¹² which in turn has an impact on the quality and consistency of care provided to elderly and disabled people.

Care workers responding to a recent TUC survey reported:

“Feeling pressured to take on extra shifts at very short notice (less than an hour sometimes), worried that if I don’t take them I won’t get offered extra work in future, which would mean not getting enough work to pay bills.”

Female community care assistant aged 20–25 working on a zero-hours contract

But the growth in insecurity has not been limited to social care. One in 10 of those working in education now face significant insecurity, with the increased use of supply teachers to cover staff shortages seen as a primary cause. In 2015–16 over £750m was spent on supply cover in local authority schools alone, of which over £500m was accounted for by supply agencies,¹³ while spending on supply agencies by academies and free schools amounted to £440m in 2014–15.¹⁴

Supply teachers responding to a recent TUC survey reported:

“I can’t get a mortgage as a supply teacher. I have no job security. I don’t get holiday pay or sick pay. I’ve missed appointments for my own children as I don’t feel able to ask to have a day off as I have no contract.”

Female teacher aged 30–49

“I have often been cancelled at last minute for work. I have even not been told I was cancelled until I turned up to work, which makes making ends meet and saving up very difficult as I don’t know how much wage I have at the end of each week. I am not entitled to any sick pay so if I’m off I don’t get paid.”

Female teacher aged 26–30 working on a zero-hours contract

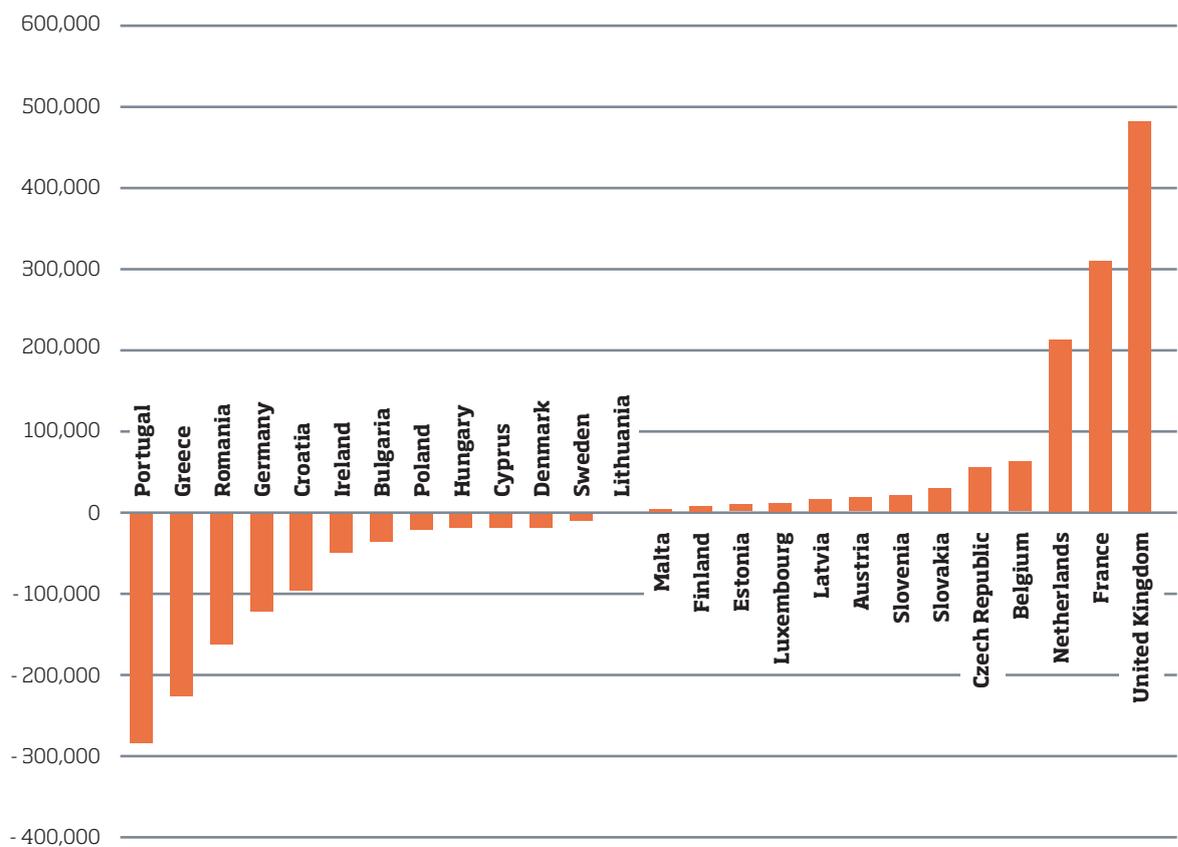
INSECURE WORK IN THE UK IN CONTEXT

The TUC commissioned the National Institute for Economic and Social Research (NIESR) to carry out comparative research to see how the UK's experience compares with other European economies.

The research showed that, in contrast to claims that new forms of work are an inevitable part of modern ways of working, the UK experience since the financial crisis has been exceptional:

- The UK had the third-largest increase in the number of temporary workers for EU countries from 2008 to 2015 (albeit from a lower base of temporary work).
- As the graph below shows, the UK had the largest increase in the number of self-employed workers for EU countries from 2008 to 2015.¹⁵

Figure 3: Growth in self-employment between 2008 and 2015 (EU28)



Source: European Labour Force Survey (2008 and 2015) <http://ec.europa.eu/eurostat/web/lfs/data/database>. (Age Class: From 20-64 years)

The growth in these categories of work in the UK cannot be explained simply by strong employment growth. Germany had the fastest overall employment growth of any EU country during the period, but its number (and proportion) of temporary and self-employed workers has fallen.

The research also found that the absence of effective legislation in the UK to regulate insecure work has allowed the growth of atypical employment, like zero-hours contracts. But even where workers in other European countries do experience more insecure forms of work, their levels of employment protection are greater. For example:

- In France, workers can be on a fixed-term contract for 18 months only, and Germany has introduced a maximum hiring period of 18 months for temporary agency workers.
- Zero-hours contracts do not exist in many EU countries, and are strongly regulated in others (e.g. The Netherlands, Italy and Germany), in contrast to the UK's low levels of regulation. In The Netherlands, for example, employers are required to pay for at least three hours per shift, and to provide regular hours when the worker reaches a certain number of weekly hours over a given period.¹⁶

HOW DOES INSECURE WORK AFFECT INDIVIDUALS?

In the following Sections, we set out in more detail how working in insecure jobs can mean that people miss out on the chance to have their voice heard at work, key employment rights and protection from the social security and pensions systems. Here we briefly summarise the main issues faced by those in insecure jobs.

Missing out on rights at work

The complex rules around employment status that govern access to employment rights mean that many of those in insecure work risk missing out on basic rights and entitlements. Annex 1 at the end of this report sets out key workplace rights, who is entitled to them and our estimate of the number of people missing out.

We estimate that 1.5 million working people, including those employed on zero-hours contracts, agency workers and those in casual work risk, are missing out on key rights including:

- the right to a written statement of pay, hours and other working conditions, and the right to an itemised payslip
- the right to return to the same job after maternity, adoption, paternity or shared parental leave
- the right to request flexible working
- the right to protection from unfair dismissal or statutory redundancy pay.

Missing out on pay

The increase in insecure work has not only led to a loss of rights but is also accompanied by a significant pay penalty.

Just looking at headline rates of pay, compared to the pay of an average employee:

- workers on a zero-hours contract experienced a 34 per cent hourly pay penalty
- workers in agency work had a 20 per cent hourly pay penalty
- those in casual work had a 39 per cent hourly pay penalty, and those in seasonal work a 37 per cent lower hourly rate.

Research by Howard Reed¹⁷ for the TUC looked at the earnings of the self-employed and those on a zero-hours contract, controlling for a range of factors including age, gender, qualifications, occupation and industry. This research focused on weekly earnings where the pay penalties are larger:

- The average weekly pay penalty for working on a ZHC was 37 per cent.
- The average weekly pay penalty for self-employment was 44 per cent.

Missing out on key social security protections

Those in insecure work are also more likely to miss out on key social security protections when they are unable to work.

Nearly 500,000 people on a zero-hours contract or in insecure temporary work do not qualify for statutory sick pay because they do not meet the income tests to qualify for these benefits. In addition:

- These workers are also excluded from full maternity pay and have no right to paternity pay. While new mothers can claim the Maternity Allowance benefit as an alternative, new fathers in the insecure workforce have no right to financial support that enables them to take time off.
- There is also no right for these workers to be automatically enrolled into a workplace pension.

Recent media reports have also highlighted how some self-employed people not only lose out on a day's wage but also face financial penalties when they are unable to work through sickness.¹⁸

A self-employed courier recently reported to the TUC:

"I have phoned in sick and am threatened with a penalty of £50 from the contractor I work for under a self-employment if I didn't come in and to bring a carrier bag or bucket to deal with bad guts I was suffering with. While not earning a wage for that day, I was also charged £50.

I recently had some family emergencies where I am the only person who can take care of others."

HOW DOES INSECURE WORK AFFECT THE ECONOMY AND PUBLIC FINANCES?

The impact of the rise of insecurity at work on individuals should be enough reason to persuade policy-makers of the need for change. But the rise in insecure work has also raised concerns for those worried about the public finances and the broader health of the economy.

Research conducted for the TUC by Landman Economics found that the rise in self-employment and zero-hours contracts over the last decade sets out the scale of the loss to the exchequer through the rise in insecure work. The research found that:

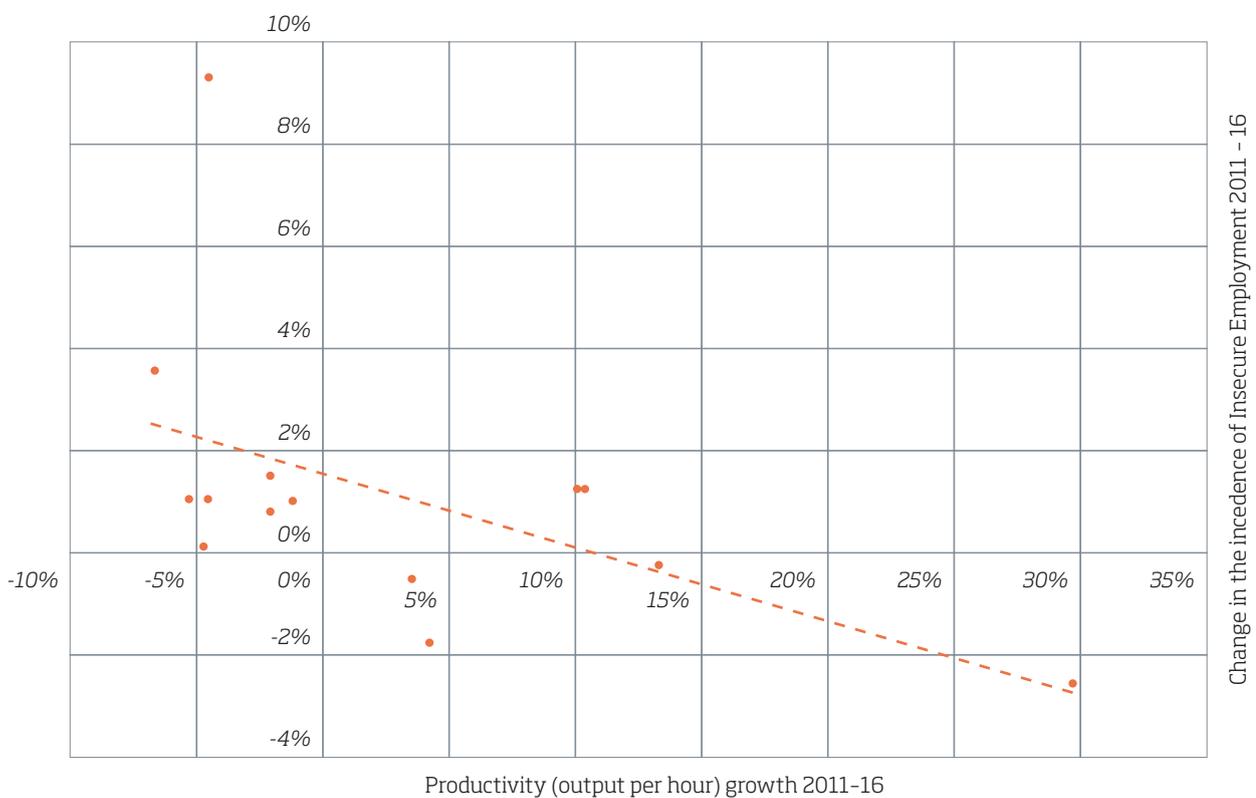
- The overall impact of additional insecure working over the last decade on the public finances is estimated to be a net loss of revenue of between £5.3bn (assuming that all the additional self-employed people in the UK workforce are sole traders), and £5.9bn (assuming that all the additional self-employed people are owner-directors).

- In tax terms, this is roughly equivalent to the revenue yield from raising the basic and higher rate of income tax by 1p. In public expenditure terms, it is equivalent to just over a third of the social care budget for England.
- Around £3.4bn of this impact comes from the effect of increased self-employment and £1.9bn from the effect of increased zero-hours contracts.

Further research, by the Learning and Work Institute, suggests that the rise in insecure work may also be affecting productivity. Its research looked at the relationship between productivity growth and the change in insecure employment between 2011 and 2016, by industry (see footnote for further details).¹⁹ They found that sectors which saw higher increases in productivity tended to experience falls, or smaller increases, in insecure employment compared with other sectors. As the Learning and Work Institute states:

*"... correlation does not necessarily imply causation. The result, however, is interesting suggesting that there could be some negative causal relationship between increasing insecure employment and declining productivity but establishing such a relationship exists would require further research."*²⁰

Figure 4: Productivity Growth and Change in the Incidence of Insecure Employment 2011-16



It seems highly plausible to the TUC that workers who are paid less, given fewer rights and often face uncertainty about when they will be working would be likely to be less productive in their role, potentially creating a vicious circle in which lower productivity in turn causes employers to seek cost savings by downgrading terms and conditions.

CONCLUSION

Insecure work has grown in the UK, further exacerbating poor pay and a lack of rights for those who already face labour market disadvantage. The sectors in which insecure work has grown fastest are those where people do traditional jobs such as waiting, caring and teaching.

International evidence suggests that there is nothing inevitable about insecurity in the modern world of work. The next Sections of this report set out how we can tackle insecurity by:

- increasing workers' ability to negotiate better terms and conditions in their workplace
- updating the framework of employment rights to protect everyone
- improving the enforcement of those rights
- ensuring that our tax and social security systems both incentivise secure jobs and protect those currently facing insecurity.



Photo: Shutterstock - Dmitry Kalinovsky

UCU'S WORK TO TACKLE INSECURITY IN HIGHER EDUCATION

UCU's campaign Stamp Out Casual Contracts aims to ensure that that wherever people are working on precarious contracts in post-secondary education, UCU is fighting to represent them.

Insecure work is a significant issue in further and higher education, with more than a third of FE teachers and more than 50 per cent of higher education academic staff on some form of insecure contract. With the lack of any progress in national-level negotiations, UCU has switched to a campaign that targets employers' reputations nationally while building local campaigning and organising pressure in support of workplace bargaining.

This strategy is beginning to produce results. The Universities of Sussex and Glasgow have agreed to abandon using zero-hours contracts in favour of more secure part-time contracts, while at the University of Bournemouth UCU has negotiated an agreement that should see 100 precariously employed hourly paid lecturers transfer to fractional part-time contracts. More than 40 UCU higher-education branches and a growing number of FE college branches are now pressing local claims around insecure contracts with their employers.

Universities and colleges are making increasing use of subsidiary companies and partnerships with private companies to employ teaching and support staff. These companies enable employers to outsource their teaching, employ people on insecure contracts (often as 'workers') and take staff out of occupational pension schemes. UCU has been targeting these too. At the University of Coventry, UCU fought for and won recognition for a group of English teaching staff, employed through one of these subsidiaries, the majority of whom are on highly precarious short-term contracts. When the company responded by dismissing the staff and engaging them as agency workers through another subsidiary, UCU's response was to launch a national campaign, which resulted in the staff being offered their old contracts back again. UCU has also won recognition for teachers at the University of Sunderland's London campus and at Sheffield International College, part of the growing private HE sector using large numbers of precariously employed staff.

2: A VOICE AT WORK

In recent years, unions have played a vital role in placing a spotlight on exploitative working practices in companies such as Sports Direct, Amazon, Uber and Hermes²¹ - working practices that would be better suited to the Victorian era than twenty-first century Britain.

As employers have sought to transfer the risk of managing variable demands for goods and services onto workers, unions have shown that collective voice and organisation are critical to ensuring that risk and reward are fairly shared.

This Section sets out why ensuring that working people have a voice at work is a critical tool in tackling insecurity, before turning to the legal changes needed to strengthen workers' ability to make their voice heard.

WHY CHANGE IS NEEDED: TACKLING THE IMBALANCE OF POWER IN THE WORKPLACE

The costs associated with the growth in zero- and short-hours contracts, agency working and false self-employment arise from the inherent imbalance of power that exists in such employment relationships.

Unions know all too well that the most effective way of redressing this imbalance is by ensuring that working people have access to effective representation at work, can enforce their hard-won employment rights and have the ability to organise collectively and to negotiate improvements in their pay and working conditions.

By sitting around the bargaining table, employers and unions can find sensible solutions that meet the needs of businesses to respond to changing market conditions at the same time as respecting the rights of working people and improving the quality of work.

In many workplaces across the UK, unions are demonstrating that they make a real difference to working people.

Unions have supported strategic cases in employment tribunals, securing basic rights for working people. For example:

- The GMB supported the recent Uber case securing rights to the national minimum wage, holiday pay and daily breaks for drivers in London and across England and Wales. The union found that a member working exclusively for Uber received just £5.03 per hour in August after costs and fees were taken into account, significantly below the national minimum wage of £7.20.
- UNISON is supporting social care workers to secure the national minimum wage, in one of the largest legal cases in the sector. The union found that home care staff working in London were paid as little as £3.27 an hour, less than half the minimum wage at the time.

Union action has acted as a catalyst for change, with companies such as Sports Direct,²² Wetherspoons²³ and MacDonalDs²⁴ all reporting plans to move away from the zero-hours business model.

Unions have also reached agreements with employers, reducing their reliance on insecure work and negotiating improvements in pay and conditions. For example:

- Unite has negotiated with employers on the use of agency workers in Jaguar Land Rover (JLR). As a result of the agreement, agency and fixed-term employees at JLR enjoy the same benefits as full-time employees and are covered by the same area shop stewards. Under the agreement agency employees progress through the appropriate pay increments and in the event of an agency employee reaching 100 per cent rate of pay are, subject to certain conditions, offered a permanent JLR contract.
- Through its Professionally Made, Professionally Paid campaign,²⁵ Equity has been seeking to challenge poor practices and promote union contracts for use on low-budget productions. Since the launch of the campaign, 168 productions have made use of the Equity Fringe Agreement, employing 800 performers and stage managers. Over a hundred production companies have been involved in these shows and in total since the launch of the campaign over £1m in wages has been paid to performers and stage managers who may not have been paid before.
- In 2013, bakers' union BFAWU secured an end to the use of zero-hours contracts and pay parity for agency workers, following a dispute at the Hovis factory in Wigan. Throughout its campaign, the union engaged with the local community, as well as supporting its members.

Other examples of successful union campaigns are dispersed throughout this report.

The benefits of union organisation go beyond their ability to tackle insecure work. Joint working between unions and employers delivers clear benefits for the workforce, businesses and the taxpayer.

- Union workplaces are safer, with union safety reps reducing serious workplace injuries by 50 per cent.²⁶ Union safety reps save taxpayers between £181m and £578m (2004 prices) every year by reducing the time lost due to occupational injuries and work-related illnesses by between 286,000 and 616,000 days.²⁷
- Union workplaces are more likely to offer better flexible working practices, including job shares, term-time working and annualised hours. Fifty-two per cent of unionised workplaces provide enhanced maternity pay compared with 35 per cent of non-unionised workplaces. Seventy-seven per cent of unionised workplaces offered retraining for women returning to work after maternity leave, compared with 58 per cent of non-unionised workplaces.²⁸
- Union workplaces are more likely to provide additional workplace benefits, including sick pay policies that exceed the statutory minimum, employer-provided pensions and enhanced holiday entitlements.²⁹
- Unions negotiate high-quality training and skills, helping the workforce gain transferable skills and employers to meet their future skills needs. Every £1 of government investment into the Union Learning Fund generates a total economic return of £12.30.³⁰

- Unions improve business performance. A report³¹ commissioned in 2007 by the then Department of Business, Enterprise and Regulatory Reform found that the work of union reps resulted in overall productivity gains worth between £4bn to £12bn to the UK economy.
- Union reps also play an important role in improving workforce engagement and morale, by helping to ensure employees' concerns regarding their working conditions are listened to and addressed. This in turn can improve workplace productivity, the quality of services provided, and ultimately the financial performance of organisations.³²

Despite the clear benefits of union participation in workplaces, the UK falls significantly behind our major competitors in the extent to which it involves employees in workplace decision-making.

The European Trade Union Institute compiles a European Participation Index (EPI), which measures three sources of workers' influence on companies: first, board-level employee representation; second, workplace representation; third, collective bargaining strength, as measured through the percentage of the workforce covered by collective bargaining and trade union membership. The most recent version of the EPI puts the UK sixth from bottom of the EU28 Member States in terms of workforce participation; only Cyprus, Lithuania, Latvia, Bulgaria and Spain perform worse.

TACKLING INSECURITY: PROMOTING VOICE AT WORK

A greater role for workers' voice would help tackle insecurity, and bring wider benefits to workers and business.

There is therefore a clear role for government to take active steps to promote and support unions in workplaces and evidence of the benefits of collective bargaining.

Government should take opportunities to enhance workers' voice at every level of the company and within the economy more widely. Below, we set out how policy changes enabling better access to the workplace, greater representation rights, enhanced information and consultation, worker board representation and sectoral approaches could help deliver better jobs for everyone.

Access to the workplace

While unions have succeeded in organising zero-hours contract workers, agency workers and the self-employed and in securing significant improvements in pay and conditions, they still face significant challenges when organising those employed in insecure work. In 2016, 13 per cent of temporary employees were union members compared with 24.2 per cent of permanent employees.³³

Those in insecure jobs often work irregular hours and in dispersed workplaces, meaning it is difficult for unions to engage with them. Some may be reluctant to join a union for fear that they will be victimised or not offered future work. Many will simply not have had the opportunity to meet a union official or to hear about the benefits of union membership, including the right to be accompanied by trained union reps in grievance or disciplinary hearings with employers, expert legal services, advice on pensions and access to wider union services and benefits, including occupational insurance.

Many employers already involve union reps in induction meetings. They want to ensure that their staff hear at an early stage about the benefits of union representation. The TUC believes that such practices should not be limited to reputable businesses but should become the norm.

To this end, trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.

Representation at work

All workers should have a right to be represented by unions in the workplace. This is a basic human right designed to ensure that all individuals are treated fairly and consistently at work.

Currently, workers have the right to be accompanied by a union rep or a colleague.³⁴ But this is limited to formal disciplinary hearings or where an individual has concerns that their employer has failed to meet their contractual or statutory employment rights. The right does not apply to informal disciplinary or investigatory meetings. Workers also do not currently have a right to be represented by a union when they want to ask for a pay rise and better working conditions.

The TUC believes the right to be accompanied should be converted into a right to be represented by a union rep in all meetings affecting the rights and interests of individuals.

Democracy at work: promoting the role of information and consultation

More could be done to promote the role of information and consultation at work. Successful organisations of all kinds require effective mechanisms for consulting with and engaging their workforce. The case for information and consultation can be made in the name of both economic efficiency and social justice. Information and consultation is one of a range of measures which, taken together, are known as High Performance Work Practices. Evidence shows that such work practices contribute to higher productivity at the company level. However, information and consultation also introduces basic democracy in the workplace. While responsibility for major decisions still rests with management, providing a voice for workers not only improves decision-making but also fosters greater trust between management and employees.

The right of workers to be consulted about changes to their work is recognised in the Information and Consultation of Employees Regulations 2004 (ICE). However, as currently drafted, these regulations have proved ineffective in delivering these rights and have failed to ensure that workers in non-unionised workplaces are consulted properly about developments at work. This is because the consultation rights have to be triggered by a request from 10 per cent of the workforce, which, in an employer of any size that is not unionised, is a very high bar in terms of workforce organisation. In addition, many workers - probably the vast majority - are totally unaware of these rights. Reform of the ICE Regulations is an essential part of delivering minimum standards across the UK in terms of workplace consultation, and would make an important contribution to an effective industrial strategy.

The TUC believes the regulations should be amended to require employers to agree collective and independent consultation arrangements when requested by a recognised union or by five workers in non-union workplaces.

Worker representatives on company boards

The TUC believes that companies should be required to include elected worker representatives on boards.

Workers' interests are affected by the priorities and decisions of boards. As a matter of justice they should be represented in those discussions. But there are also many reasons why worker representatives would enhance the quality of board decision-making:

- Workers have an interest in the long-term success of their company, and their participation would encourage boards to take a long-term approach to decision-making.
- Worker board representation would bring people with a very different range of backgrounds and skills into the boardroom, which would help challenge 'groupthink'.
- Workers would bring the perspective of an ordinary worker to bear on boardroom discussions; evidence from countries with worker board representation shows that this is particularly valued by other board members.
- Workforce relationships are central to company success, and worker board representation would help boards to manage these key stakeholder relationships more effectively.

Promoting standards by sectors

The government should also strengthen economy-wide mechanisms for worker voice. This should include:

- restoring Acas's duty to promote collective bargaining
- introducing new sectoral bodies that bring together unions and business to negotiate pay, progression, training and conditions - these should be piloted in the low-paid sectors where the need to improve conditions is greatest.

Sectoral bodies could play a key role in raising employment standards and in reducing insecurity and inequality.

Recent ILO research shows that in countries where a higher percentage of workers are covered by collective bargaining agreements, relative levels of wage inequality are lower.³⁵

Sectoral bodies can also protect reputable businesses that adopt good employment practices from unfair competition from rogue firms that use insecure work to drive down costs and avoid their employment and tax obligations.

SUMMARY OF RECOMMENDATIONS

- Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.
- All workers should have a right to be represented by unions in the workplace.
- Employers should be required to agree collective and independent consultation arrangements when requested by a recognised union or by five workers in non-union workplaces.
- Companies should be required to include elected worker representatives on boards.
- The government should also strengthen economy-wide mechanisms for worker voice. This should include:
 - restoring Acas' duty to promote collective bargaining
 - introducing new sectoral bodies that bring together unions and business to negotiate pay, progression, training and conditions. These should be piloted in the low-paid sectors where the need to improve conditions is greatest.

UNITE'S CAMPAIGN AT SPORTS DIRECT

Unite has been at the forefront of the campaign highlighting the harsh working conditions experienced by thousands of workers at Sports Direct's Shirebrook warehouse in Derbyshire, including low pay, precarious working arrangements (including a dependence on agency working) and a culture of fear.

The Sports Direct business model means that in reality those who are precariously employed have no access to justice. If they are treated badly they fear raising it in case they lose their employment. They have very little protection, which means there are no consequences for those who commit poor treatment. This inevitably leads to more extreme situations.

Some concerns have been addressed in response to Unite's work, though serious issues remain.

Following the Unite campaign, thousands of workers at Sports Direct's in Shirebrook received back pay totalling an estimated £1 m for non-payment of the minimum wage. This covers workers directly employed by Sports Direct and those employed through employment agency The Best Connection.

This has been followed by a 15p per hour pay rise for all minimum wage workers, the appointment of a full-time nurse and welfare officer, and the removal of the 'six strikes' policy, after which workers could be dismissed. All workers on zero-hours contracts have been offered the option of moving onto fixed hours or minimum-hours contracts. An independent review of working practices and corporate governance is now set to take place, including a review of Sports Direct's model of predominantly using agency workers. Unite has called for the company to waste no further time in now moving agency workers onto permanent contracts.

3: THE GIG ECONOMY AND THE FUTURE OF EMPLOYMENT RIGHTS

The previous section set out how improving workers' ability to have their voice heard is a critical tool in tackling the rise of insecurity at work. But in addition to collective voice, workers need employment rights that keep pace with changes in the twenty-first century labour market.

This section sets out how the current framework of rights fails to guarantee decent work for too many people, and how changes in the world of work have left our current framework of rights looking significantly out of date. It shows how current definitions of employment status, which determine the rights to which individuals are entitled, too often act as a hurdle rather than a gateway to establishing rights, and have failed to keep up with changes in the nature of work.

Changes to employment law should focus on three areas. First, ensuring that all working people benefit from the same floor of decent employment rights and employers cannot contract out of their employment responsibilities or misclassify staff as self-employed. Second, adding to the existing framework of rights to ensure that flexibility in the workplace cuts both ways. Third, policy should aim to end the pay penalty experienced by those in insecure work. Individuals who are expected to work variable hours should be financially rewarded for the flexibility they provide to employers.

The TUC recently ran a survey on insecure work, asking individuals to tell us their stories. The responses we received provide an insight into the day-to-day reality of insecure work

"Irregular shifts mean that some weeks I earn nothing. Because the shifts are so irregular I can't even find another job alongside it because I can be called in last minute. My boss threatened to fire us if we take a second job as we could potentially be unavailable for shifts. I can't make plans for social events as I have been threatened with being fired if I can't show up on short notice. This led me to be increasingly isolated from friends and family and ultimately insecure and depressed without any emotional support or a stable income. ...I was constantly worried about paying rent and bills."

Female, aged 26-30, working in catering on a ZHC

“I’m often not sure when my work will start until 9pm the night before and sometimes work random shifts and hours; this means it’s basically impossible to book something like a haircut in advance because I never know when I will have a day off. I can book off holiday in advance, but it’s a nightmare trying to get things done spontaneously. My boss has never made it clear if I am entitled to sick pay (even when I asked) so I’ve worked through illness before because I was worried that I wouldn’t get paid. My hours are often changed at very short notice, which means my earnings for the week can suddenly be cut in half. This made it practically impossible to find a landlord willing to rent to me - and I am not capable of living at home, due to my second job (which pays peanuts) - and I’m constantly having to ask my parents to help me with bills and rent. I feel terrible about taking money from them but there’s literally no other way for me to keep my flat.”

Female, aged 20-25, working as a nanny and housekeeper on a ZHC

“They don’t care about staff and anyone who complains is ‘replaced’. Shifts get cancelled at the last minute. Blatant favouritism from managers. Managers pick on staff for no clear/obvious reason. Customers can harass staff with no consequences.”

Male, aged 20-25, working on a ZHC in a bar at a football stadium

WHY CHANGE IS NEEDED: A QUESTION OF STATUS

The issue of employment status is vital for working people as it regulates which employment rights individuals benefit from in the workplace. However, there is a growing consensus that employment rules are overly complex, create uncertainty for managers and workers and mean that groups of workers - often those who are most vulnerable - lose out on the rights they need.

The TUC estimates that at least 1.5 million individuals, including agency workers, zero-hours contract workers and casual and seasonal staff, are at risk of losing out on job security rights and family-friendly protections due to their uncertain status and the intermittent nature of their work.³⁶

The three-tier workforce

In the UK, the range of different rights to which individuals are entitled varies substantially depending on whether they qualify as an ‘employee’, a ‘worker’ or as ‘self-employed’.

The self-employed have few rights at work. They have health and safety protections and protection from discrimination in some circumstances but even these limited rights have been eroded. Two years ago, the government introduced new laws that removed millions of self-employed from health and safety protections.³⁷ The courts and tribunals have recently suggested that self-employed workers may no longer fall within the scope of anti-discrimination law.³⁸

Those classified as ‘workers’ fare slightly better with rights, including the right to be paid the national minimum wage, holiday pay, working time protections, protection from discrimination and some union rights.

However, core protections including job security rights, family-friendly rights and protection from arbitrary treatment are reserved for 'employees', who also tend to be entitled to benefits associated with stable employment, such as enhanced sick pay and pensions (a full list of rights and entitlements is at Annex 1). In contrast, individuals engaged in more 'flexible' forms of work bear all the risk. Their employment can be terminated at a moment's notice, they have no guaranteed hours and are not entitled to redundancy pay if work dries up - leaving them with no money for household bills until they find another job.

Gateways to rights - not hurdles

While the rules on employment status were originally designed as the gateways to employment rights, increasingly they have become hurdles that workers must overcome.

In order to qualify for rights, individuals must first establish:

They have the right type of contract with an employer. This involves navigating complex and regularly shifting common law tests, such as control, mutuality of obligation or the requirement to provide work or services personally. Employers are able to deprive individuals of rights by refusing to guarantee any future hours or permitting the individual to provide a substitute if they cannot complete the work.

They have a contract with the right employer. This creates difficulties for those employed through agencies, umbrella companies or a personal service company. The individual is deemed not to have a contract with the end user, even though it is they who benefit from any work performed. They also cannot claim rights against the intermediary who lacks the necessary control over when or how work is performed.³⁹ The intermediary can therefore not be held responsible. As a result, individuals are trapped in a 'Bermuda triangle' in which their rights all but vanish or at least prove unenforceable.

Their contract has to exist for long enough to qualify for rights. This creates difficulties for zero-hours contract workers, agency workers and other casual staff who, due to gaps in employment, fail to meet statutory qualifying periods and therefore miss out on protection from unfair dismissal, statutory redundancy pay and family-friendly rights to request flexible work or to return to work after maternity or paternity leave.

Do new technologies require a new status?

In recent months, there has been growing media and policy focus on whether new technology has affected the employment relationship. Of particular interest has been the emergence of online platforms - often referred to as 'the gig economy'. Online platforms are increasingly used by employers to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job-match services. As such, online platforms are effectively operating as employment businesses and agencies and in the TUC's view should be regulated accordingly.

The growth in platform work has been identified as one driver behind the shift from traditional employment to self-employment - with some commentators claiming that the gig economy is changing the nature of work, creating a new labour market of entrepreneurs where employment law is no longer relevant.

However, as the recent Uber⁴⁰ and CitySprint⁴¹ cases have confirmed, many of the traditional features of the employment remain intact even in the gig economy, with platform companies continuing to determine the substantive terms of the employment relationship. This includes retaining the ability to vet workers, to determine pay rates, to decide when and how work is performed, and even the ability to take disciplinary action. It is therefore unsurprising that employment tribunals decided that an employment relationship existed and that individuals were entitled to rights.

This does not mean that the status of gig economy workers is finally sorted. Platform companies and other employers continue to misclassify workers as self-employed as a means reducing costs and avoiding their tax and employment responsibilities. Estimates of bogus self-employment vary – Citizens Advice, based on survey work, suggest that around 500,000 people could be classified as falsely self-employed.⁴² Individuals are deprived of rights and protections associated with employment, while at the same time missing out on the benefits of self-employment including the ability to control their own work.

Confusion and lack of clarity

Working people are not the only ones affected by the three-tier approach to employment rights and the difficulty of establishing entitlement. The use of multiple employment status tests also generates confusion and uncertainty for line managers, with a CIPD report acknowledging widespread confusion over employment status and who is entitled to what rights.⁴³

The Law Society has commented that *“The very existence of a separate category of ‘worker’ creates uncertainty. As a result many people have no clear idea of their true legal status...”* and expressed concern that *“Currently, the only way to resolve this uncertainty is to take disputes to the employment tribunal”*.⁴⁴

As we set out further in Section 4, without the support of a union, workers simply cannot afford to take a claim to tribunal⁴⁵ or are wary of doing so for fear of future victimisation. The tribunal process is also often protracted: many individuals cannot face the prospect of waiting 6–12 months to discover if they have rights at work.

Avoiding employment rights

Employers can take advantage of the current uncertainty and complexity on status to avoid their employment obligations.

In the Uber case, the employment tribunal criticised the remarkable lengths to which Uber went to seek to avoid employment responsibilities. *“It seems to us that the Respondent’s case and the written terms on which they rely do not correspond with the practical reality. The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common ‘platform’ is to our mind faintly ridiculous.”*⁴⁶

Evidence gathered by the Work and Pensions Committee also reveals that unscrupulous companies use contractual terms to intimidate individuals from enforcing their rights.⁴⁷ It is not uncommon for those on zero-hours or self-employed contracts to be told they have no rights or are barred from going to tribunal to challenge their self-employment status.

TACKLING INSECURITY: BRINGING EMPLOYMENT LAW INTO THE TWENTY-FIRST CENTURY

A framework for reform

The TUC believes that UK employment rights should be reformed to minimise insecurity and ensure that the law keeps pace with changes in the world of work.

Policies should focus on three principal themes, namely the need to:

- modernise rules on employment status and continuity of employment to ensure all working people benefit from the same floor of decent employment rights and employers cannot contract out of their employment responsibilities or misclassify staff as self-employed
- add to the existing framework of rights to ensure that flexibility in the workplace cuts both ways
- put an end to the pay penalty experienced by those in insecure work. Individuals who are expected to work variable hours should be financially rewarded for the flexibility they provide to employers.

Ending the three-tier workforce

The rules on employment status should be modernised to provide employers and working people with increased clarity, to prevent exploitation and to minimise insecurity at work.

The TUC believes all workers should benefit from the same decent floor of rights currently enjoyed by employees. This would mean a wider range of people would benefit from rights, including the right to request flexible working, to return to their job after maternity and paternity leave, to statutory redundancy pay and for union reps to have paid time off for trade union duties.

A new 'worker' definition should be devised that covers all existing employees and workers, including zero-hours contract workers, agency workers and dependent contractors. The definition should extend to individuals who are employed via an agency or a personal service company. Those covered by new 'worker' status should benefit from the full range of statutory rights.

Care needs to be taken when devising new statutory definitions to ensure that working people are not disadvantaged, that those in need of protection are covered, and that a new test is resilient and will accommodate future developments in the labour market. The government will need to draw on legal expertise and consult extensively with unions and employers when developing a definition.

In the meantime, while work on a new worker definition is carried out, the government should take steps to extend existing 'employee' rights to all 'workers'. This should include rights:

- **to statutory redundancy pay**, which would assist those in insecure work to access training and access the new skills needs to find new employment
- **for working parents to return to their substantive job following maternity, paternity or adoption leave.** This would ensure that women in more insecure work retain access to the labour market and are not forced to accept a pay cut when returning to work after having a baby
- **to paid time off for union reps.** This would ensure that individuals working in high-risk sectors where insecure forms of work are prevalent, such as construction, forestry and agriculture, benefit from union representation and from the expertise of union safety reps. Union learning reps can also assist those in insecure work to access training and learning opportunities.

Avoiding exploitation

Employers should not be able to avoid or contract out of their employment law responsibilities. Self-employment should be a choice for individuals, not something that is imposed.

- There should be a statutory presumption that individuals have 'employee' status unless the employer can demonstrate otherwise. This would go some way to giving working people greater security about their rights.
- Employers who use contract terms designed to prevent or deter individuals from enforcing their rights should be fined.

Minding the gap: rules on continuity of employment

The rules on continuity of employment should be reformed to ensure that those on insecure contracts who work intermittently do not lose out on key employment rights because they lack the necessary continuity of employment.

Zero-hours contract workers, agency workers and other casual staff who do not work in any week can find that their continuity of employment has been broken and they will fail to meet the relevant qualifying period for key rights.⁴⁸

The courts have tried to deal with this problem by finding that an umbrella contract spans any gaps between works. This has assisted zero-hours contract workers who work relatively regularly and have a genuine expectation of future hours.⁴⁹ But those with more varied or random working patterns continue to lose out.

The rules on continuity of employment should reflect the realities of the world of work. One way to achieve this would be to amend the law to state that if an individual does not work during any given week that week should not count towards their length of service. However, continuity of employment would also not be broken. The same rule applies where individuals take strike action. Weeks where an individual is absent from work due to holidays, sickness, family-related leave or a temporary cessation of work would continue to count towards continuity of service.

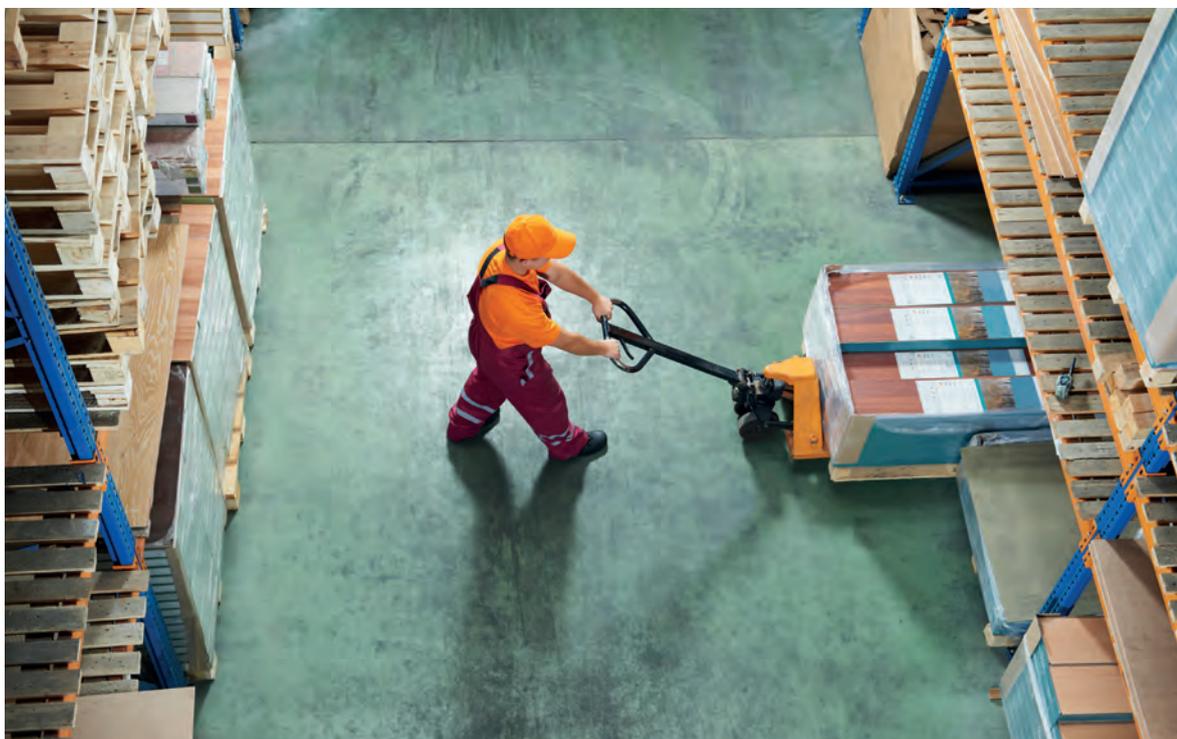


Photo: Shutterstock - Dmitry Kalinovsky

ENSURING THAT FLEXIBILITY CUTS BOTH WAYS

Employers argue that the growth in flexible work benefits both employers and workers.

The advantages for employers in using temporary workers are clear. Employers use casual work practices to maximise the flexibility of their workforce in order to manage peaks and troughs in demand. They can achieve significant cost efficiencies by retaining a pool of flexible workers, who are familiar with their business practices and who can be called on at short notice. The use of contingent workers can be part of a broader strategy to keep wage costs down. Employers also use agencies to 'outsource' any employment law obligations, while others see zero-hours contracts as a means of evading such rights altogether. Employers are therefore able to reduce costs by, for example, laying off staff at short notice while avoiding redundancy payments.

Some workers value the flexibility that comes with variable hours' contracts. However, the issues of flexibility and choice in the workplace primarily tend to cut one way, with individuals bearing the risks of increased flexibility while employers reap the financial benefits.

Far from enjoying increased choice, individuals are often forced into accepting a zero-hours contracts, agency working and even self-employment as being the only form of employment open to them. Fifty-nine per cent of those working as temporary agency workers report they are only doing so because they cannot find a permanent job.⁵⁰

As for increased flexibility, while some people use a ZHC to fit their employment around studying or caring, there is clear evidence that zero-hours contracts do not offer workers either sufficient hours or income security; workers on a zero-hours contract are three times more likely than other workers to say that they would like to work more hours (30 per cent compared to 10 per cent).⁵¹

Those working on zero or variable hours' contracts report often having little no choice or control over when or how often they will be offered work.

In the recent TUC survey, individuals told us about their daily experience of insecure work.

Unpredictable working hours

The most common complaint from individuals responding to the TUC survey was that they never knew when exactly they would be working. Many respondents relayed experiences of being given rotas late, shifts being cancelled on the day, or even being sent home without pay once they had arrived at work:

"My boss frequently leaves filling out the rota until the Sunday evening before the week ahead, giving me no way of planning for the week."

Female, aged 20-25, working as a barista on a ZHC

“I get given shifts last minute and other times turn up only to be told to go home (without pay)”.

“Many occasions, a shift has been cancelled 30 minutes before it was due to start. Also, started a 5-hour shift, sent home 30 minutes or on average 2 hours later.”

Female, aged 20-25, working as a waitress on a ZHC

Fluctuating pay leading to financial difficulties

Not knowing when you're going to work, or how long for, doesn't just affect plans and childcare. It also impacts on financial stability. Unpredictable hours and fluctuations in pay meant some respondents were unable to pay bills or were struggling to get by.

“Changeable income makes paying bills and budgeting hard. Can't afford to take holidays or be off sick as it means a lower wage that month.”

Female, aged 26-30, working in a supermarket on a ZHC

“As a single mum of three I often have sleepless nights worrying when I'll next be working and also how short on money I'll be during the school holidays.”

Female, aged 30-49, working as a teacher on a ZHC

“I have no idea about how much I'll earn from week to week, if I'll be able to make the rent.”

Male, aged 26-30, working as a self-employed journalist

“Hard to get sick pay or take time off for family. Insecurity: some weeks too much work, leading to massive exhaustion, and other weeks not enough work, making it hard to pay for rent.”

Female, aged 20-25, working in a café on a ZHC

In addition to reforming the rules around employment status, UK employment rights should be enhanced to reduce insecurity and ensure that flexibility genuinely cuts both ways in the workplace.

Written statement of terms and conditions

The government should encourage increased transparency in the employment relationship. Many workers do not have a written contract of employment and are not aware of their basic terms and conditions. Agency workers and those working for sub-contractors often do not know who their legal employer is. As a result, they face difficulties enforcing their rights.

Currently, the right to receive a written statement of employment particulars is limited to employees whose contract lasts one month or more. Employers are required to provide the statement within two months of the start of employment.

All workers should have the right to receive a written statement of terms and conditions of employment before their employment starts, or on the first day of work at the latest. The statement should set out individual's expected hours of work. This would encourage employers to map out their workforce needs in advance and to ensure that working hours are allocated fairly.

The government should encourage public bodies and companies to take a more transparent and strategic approach to workplace planning. Companies and public bodies should be required to report on the use of zero-hours contracts, short-hours contracts and agency work, including in their supply chains, in their annual reports, and explain why they are using these types of contract. These reports would help inform consumer choices and shareholders' investment plans.

Ending the use of zero-hours contracts

As the findings from the TUC survey show, a lack of guaranteed and regular working hours is another of the major problems experienced by those on zero-hours and short-hours contracts. The ability of employers to reduce an individual's working hours without any notice or without their agreement creates significant anxiety for workers and makes it difficult to plan financially.

The government should move towards banning the use of zero-hours contracts. Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours. This would ensure that individuals who have worked regularly for an employer over a period of time cannot suddenly find that their hours have been zeroed down and they face financial difficulties.

Incentives should also be created for employers to plan in advance for their workforce needs, rather than expecting employees to remain at their beck and call. Workers employed on zero or short hours should have a right to be paid a premium, in the form of overtime payments, for any non-contractual hours worked. The TUC believes the enhanced hourly pay rate should be linked to the individual's normal pay rather than an enhanced national minimum wage rate. This would ensure individuals are properly remunerated for the flexibility that they provide employers.

Short notice of shifts and cancellations

As responses to the recent TUC survey highlighted, many on zero-hours and short-hours contracts find themselves significantly out of pocket when their shifts are cancelled at short notice or they are sent home early from work without pay.

A CIPD survey from 2013⁵² also confirms that zero-hours workers receive very limited notice. Forty-per cent of zero-hours workers received no notice at all if work is not available or has been cancelled, and six per cent received notice only at the start of a shift (six per cent). The lack of adequate notice places pressure on households, and makes it difficult to plan family and social life.

Workers should have the right to be reimbursed by employers for travel costs where a shift is cancelled at short notice. Employers should also be required to pay the workers for their scheduled shift. These changes would ensure that workers are not left out of pocket. They would also encourage employers to plan their staffing needs well in advance.

Short-hours contracts

The rights set out above should not be limited to those on a zero-hours contract but should extend to the growing numbers of short-hours contract workers in the UK. Employers increasingly use short-hours contracts as a means of avoiding the reputational risks associated with ZHC work, but to reduce costs nevertheless. The limited working hours guaranteed to such workers mean that earnings fall below the thresholds for National Insurance contributions and for income protections such as statutory sick pay and statutory maternity pay. Workers on such contracts benefit little in terms of increased job or income security but are nevertheless expected remain available for work and at the beck and call of their employer.

ENDING THE PAY PENALTY FOR THOSE IN INSECURE WORK

Those working in insecure work are more likely to be low paid compared with those on standard contracts. As we set out in Section 1, both the self-employed and those on zero-hours contracts face significant pay penalties and the evidence is that this pay penalty has increased over the last decade.

The proposals outlined above are designed to encourage employers to move away from insecure work to more stable forms of employment that provide workers with increased financial security. But additional measures should also be adopted to ensure that those in insecure work are paid the going rate for the job.

In particular, the TUC remains concerned that agency workers do not receive equal treatment. One concern is the use of the so-called 'Swedish derogation', or pay between assignments (PBA) contracts. Individuals employed on such contracts are not entitled to equal pay even where they have been on an assignment for more than 12 weeks. Under PBA contracts agency workers should be paid when the agency cannot find them work. However, between assignments workers are guaranteed only half their basic pay for the hours worked on the last job (subject to national minimum wage levels) and to receive payments for up to four weeks.

The TUC discovered that in some workplaces agency workers on PBA were paid up to £135 less a week than permanent staff doing the same job.⁵³

A female supply teacher aged 50–65 from Wales reported:

"I get paid half of what a permanent teacher is paid... I work for an agency. They only pay 1 per cent towards a pension. What is called holiday pay is actually deducting money from the daily rate. No sick pay. I can't get a permanent job as I'm too high up on the salary scale so I DON'T choose to do supply teaching. There is a shortage of supply teachers in South Wales as the pay is sooo low! After 12 weeks teachers are asked to sign a contract - Swedish derogation so that wages are kept low. If you don't sign you will not be kept in the same school... Only teachers who sign a contract saying they renege on AWR, and therefore accept not being on the same rate as permanent colleagues, are employed past 12 weeks, unless the school chooses to go through the local authority."

The government should close loopholes in the Agency Worker Regulations that permit employers to pay agency workers less than the going rate for the job.

SUMMARY OF RECOMMENDATIONS

- All workers, including zero-hours contracts workers, agency workers and those in casual work, should benefit from the same decent floor of rights currently enjoyed by employees.
- Self-employment should be a choice for individuals, not something that is imposed. There should be a presumption that individuals have 'employee' status unless the employer can demonstrate otherwise.

- Online platforms are increasingly used by employers to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job-match services. As such, online platforms are effectively operating as employment businesses and agencies and in the TUC's view should be regulated accordingly.
- All workers should have a day-one right to a written statement on pay and conditions, including expected hours of work.
- Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours.
- Workers employed on zero- or short-hours contracts should have a right to be paid a premium for any non-contractual hours worked and compensation for shifts cancelled at short notice.
- End the Swedish derogation, which allows agency workers to be paid less than regular employees doing the same job.
- Companies and public bodies should be required to report on the use of zero- hours contracts, short-hours contracts and agency work in annual reports, including throughout their supply chains, and explain why they are using these types of contract.



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CWU CAMPAIGNING TO CONVERT AGENCY STAFF TO DIRECT EMPLOYEES

The CWU has been campaigning since 2006 to secure fair treatment for agency workers and for legal changes to ensure employers cannot use Pay Between Assignment (PBA) contracts to deny agency workers pay parity with their directly employed permanent colleagues in identical roles.

The CWU was concerned about the high number of agency staff being used at BT as well as the level of work off-shore. Around 3,000 agency staff were working in BT call centres in 2014, 90 per cent of whom were employed on PBA contracts. The CWU had evidence that agency workers were paid up to £500 less a month and were not entitled to the same family-friendly working practices and career development opportunities. By 2014, pay differentials were stark, with the hourly agency rate for highly skilled jobs of £7.50 standing at less than half the permanent hourly pay rate of £16.92. For basic skilled jobs, the pay differentials were smaller but still significant, with an agency rate of £6.31 per hour compared to the permanent rate of £10.12 per hour.

The CWU launched a campaign to convert agency staff to BT employees to tackle this pay disparity. In 2014, CWU successfully negotiated a conversion process to move agency staff onto BT contracts and secure permanent jobs. Between October 2014 and the end of 2016, BT offered contracts to around 1,600 existing agency staff in nine separate conversion phases at the contact centres around the UK.

In December 2015, the union also negotiated the Transformation Agreement with BT Consumer, aiming to return work to the UK and reducing the reliance on agency staff. BT agreed levels of 80 per cent of direct labour jobs in sales areas and 90 per cent in service areas and to handle 90 per cent of calls in the UK. BT Consumer is now recruiting for direct labour jobs across the UK. Since October 2014, the company has recruited over 2,500 direct labour jobs (excluding agency conversions) that would previously have been recruited via the agency route or been employed off-shore.

In 2017, while there are significantly fewer agency workers, pay differentials remain. The remaining agency staff in contact centres are still employed for the most part on PBA contracts. The CWU has found that the lowest-paid agency workers can earn as much as £3.26 per hour less than their directly employed counterparts for doing the same work, which equates to £122 less per week and £529 less per month. The CWU campaign for pay parity for agency workers therefore continues.

4: EFFECTIVE AND INNOVATIVE ENFORCEMENT

The previous section set out how we believe the framework of employment rights needs to be updated to adapt to the changing world of work. But rights are only worthwhile if they can be effectively enforced.

This section focuses on the difficulties many people in insecure employment face when trying to enforce their employment rights. Since the introduction of employment tribunal fees many workers cannot afford to go to an employment tribunal to enforce their rights. And too many workers are intimidated by their employers and afraid that they will lose their jobs if they try to ensure that their rights are respected.

The first step to ensuring that rights are a reality is abolishing employment tribunal fees. But we think that more innovative forms of enforcement could also help tackle insecurity. Making companies responsible for abuses of rights along their supply chains could change the incentives to employ people on insecure contracts. And an extension of licensing, where employers must meet a set of standards before operating within a sector, could help tackle some of the worst abuses of labour market rights.

WHY CHANGE IS NEEDED: EMPLOYMENT RIGHTS ARE ONLY WORTHWHILE IF THEY CAN BE ENFORCED BY WORKERS

Providing a range of individual employment rights does not ensure that employers will comply with law, so it is vital that workers can rely on an effective enforcement system to protect their rights. All workers should be able to enforce their employment rights without fearing the consequences of doing so.

At present, there is widespread non-compliance with employment rights in the labour market. The TUC estimates that at least 250,000 are not being paid the national minimum wage. In 2014, we estimated (using ONS data) that 1.6 million employees received less than 5.6 weeks annual leave.

“No sick or holiday pay. No contract. Deductions from wages if a mistake has been made. £5 per error, e.g. a food order missed or mixed up.”

Male, aged 16-19, working in hospitality with no contract

“We routinely worked for longer than was legal for our age and it took several months to get on the payroll, so was paid in cash with no receipt.”

Female, aged 16-19, working in hospitality on a ZHC

A weak, ineffective enforcement system leads to the exploitation of workers. Employers underpaying the national minimum wage rates results in more workers living on poverty wages, earning below legal minimum thresholds. And the introduction of employment tribunal fees in July 2013 means that workers are no longer able to challenge discrimination, harassment or arbitrary dismissals.

“Shifts cancelled last minute and fluctuating shifts during random rota changes make it hard to afford rent. Forced to work at least 45 minutes or more (usually over an hour) for free every day or have our hours reduced. While pregnant, instead of accommodating the pregnancy, they cut my hours from 32 hours to 20 hours in five-hour shifts while still having to work the free hour, bringing me past the legal six hours without a break”

Female aged 20-25, working in retail on a ZHC

“Threatened to be sacked for taking holidays. Getting paid in a little paper envelope and having no idea of your holiday allowance or anything as never seen a contract in your life.”

Female, aged 20-25, working in hospitality on a ZHC

Non-compliance with employment rights has far-reaching consequences. For instance, the endemic rates of non-payment of the national minimum wage in the care sector not only pushes care workers into poverty and contributes to high staff turnover rates (30 per cent in homecare) but also has a detrimental impact on care standards. Not paying for travel time in the homecare sector, even though it is working time, encourages the practice of ‘call clipping’ whereby homecare workers leave their visits early in order to cut down on the amount of time they have to spend working for free. Poorer levels of care in the social care system inevitably lead to more pressure and cost being placed upon the NHS.

An effective enforcement system should not just target violations and exploitation at the fringes of the labour market. In order to effectively tackle exploitation there must be concerted action to prevent and respond to all breaches of employment rights. Allowing ‘low-level’ or ‘accidental’ breaches to routinely happen undermines standards of decent work and encourages an environment in which exploitation can thrive.

TACKLING INSECURITY: MORE EFFECTIVE ENFORCEMENT

The TUC believes that the first step to helping people enforce their rights must be the abolition of employment tribunal fees. But more innovative forms of enforcement, using joint and several liability and licensing, could also make a real difference to employers' incentives to tolerate insecure work. And it's vital that enforcement agencies have the resources they need to make a difference.

Abolishing employment tribunal fees

The introduction of employment tribunal fees has significantly reduced the likelihood of employers facing individual enforcement action. The dramatic 67 per cent fall⁵⁴ in the number of cases going to employment tribunal shows that many workers cannot afford to enforce their employment rights and are effectively being priced out of justice.

Employment tribunal fees particularly disadvantage low-paid workers. This is clearly demonstrated by Ministry of Justice (MoJ) statistics⁵⁵ which show that national minimum wage claims fell by 72 per cent and claims relating to unauthorised deductions from wages fell by 78 per cent.

The TUC is particularly concerned about the disproportionate impact that the introduction of employment tribunal fees has had on people with protected characteristics. Findings from the recent MoJ review of fees clearly show how discrimination claims, across-the-board, have significantly decreased in volume in the years following the introduction of employment fees. Comparing the year to June 2013 to September 2014, all sex discrimination complaints fell by 83 per cent, whereas the fall in all jurisdictional complaints was 68 per cent.

The TUC is calling for employment tribunal fees to be abolished so that all workers can afford to enforce their rights through an employment tribunal.

Adopting a joint and several liability approach to enforcement

In recent years the structure of the UK labour market has become increasingly fragmented, with the emergence of long and complex supply chains for the provisions of labour. These changes are manifested in different ways including:

- **The use of agencies (employment businesses) to supply workers.** Recent research by the Resolution Foundation found that agency worker assignments are increasingly permanent in nature,⁵⁶ leading to a displacement of stable, direct employment.
- **The expanded role of umbrella companies.** While in the past such companies primarily performed payroll functions or business and organisation, they are increasingly performing the role of intermediary employers with particular expertise in reducing tax liabilities.⁵⁷
- **The growing use of personal service companies,** which is spreading beyond high-skill professional workers, such as IT specialists, freelancers and management consultants, to become increasingly prevalent in other sectors, including construction and the public sector.

The TUC is concerned that employers are increasingly using intermediaries in order to benefit from tax advantages and to avoid employment law obligations.

The increased outsourcing of work has significant ramifications for working people. Individuals employed via an agency or umbrella company will often not know who their employer is, while those who sign papers setting up a personal service company will often be aware that they effectively employ themselves. But perhaps the most significant implication for working people is that the organisation that employs them is often no longer responsible for:

- setting the substantive terms on which they are employed: often a company higher up the supply chain will decide the rate for the job and therefore how much workers are paid
- deciding what, when or how work is done: often the end-user will oversee and direct their work
- ensuring that they are treated fairly in the workplace.

As a result, individuals face significant difficulties in accessing and enforcing any workplace rights.

The TUC believes that the law needs to change to ensure that the companies and organisations that are in practice responsible for undercutting employment standards or mistreating individuals are held to account for it. The best way to achieve this is to move towards a system of joint and several liability for employment law standards throughout supply chains.

If the UK were to take this approach, we would not be alone. Helpful precedents can be found in other countries. For example:

- The USA has adopted a 'joint employer' model. Under the Fair Labor Standards Act, which include rights to the minimum wage and overtime pay, and the National Labor Relations Act, which contains trade union and collective bargaining rights, the law states that individuals can be jointly employed by two or more employers where there is evidence the companies are economically dependent and/or both employers are involved in directing or supervise the individual's work.⁵⁸
- Some European countries, such as The Netherlands, have systems that apply joint and several liability for the payment of wages through supply chains.

There are also precedents for a joint and several liability approach in UK employment law:

- Under section 41 of the Equality Act 2010, principal employers are prohibited from discriminating against contract workers who are not in their direct employment.
- The Posted Workers (Enforcement of Employment Rights) Regulations 2016 include a right for a posted worker in the construction sector to bring a claim for non-payment of the national minimum wage against his or her employer's contractor.

Lessons could also be drawn from the approach adopted in the Modern Slavery Act, which seeks to improve transparency throughout supply chains with a view to preventing slavery and the trafficking of workers through supply chains.

The TUC is calling on the government to pilot a joint and several liability approach to enforcement, so that employers are held responsible for compliance throughout their supply chain.

Public sector bodies should lead the way in this respect, ensuring that employers throughout their supply chain are paying the national minimum wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.

Extend the GLAA licensing scheme further across the labour market

The TUC would like to see the licensing model currently used by the Gangmasters Labour Abuse Authority (GLAA), in the shellfish-gathering, agriculture and horticulture sectors, extended further across labour market. We believe this is the most effective system for ensuring organisations comply with core labour standards. Licensing is an effective system for weeding out unscrupulous employers from the labour market. This is because only licensed labour providers can operate in a particular sector. Before they do so they have to prove that they comply with core licensing standards.

We believe there is a strong case for extending the GLAA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme. There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or migrant worker status and there is evidence of exploitative working practices being routinely used. The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence gathering and ensure that criminal prosecutions are targeted at the worst cases.

Licensing has raised labour standards and, where it currently operates, has been instrumental in preventing and uncovering cases of exploitation in the farming and food processing sectors. As well as improving conditions for vulnerable workers and protecting them from abuse, the licensing scheme has helped ensure a level playing field for responsible businesses. It is strongly supported by licence holders⁵⁹ and by retailers and food manufacturers.

In sectors where exploitation is reported, but not yet prevalent, an approach may be to offer employers the chance to work with unions and government to set and monitor compliance with minimum standards. If standards have not improved within, say, a year, the sector should be licensed, with those who wish to operate in this sector required to register with the GLAA, and be subject to regular inspection.

Ensure that statutory enforcement agencies have adequate resources to fulfil their functions

It is important that enforcement agencies have adequate resources to fulfil their statutory obligations. The TUC has concerns that the financial resources and numbers of inspectors at the enforcement agencies are not sufficient to provide an effective enforcement route across the labour market.

The TUC is calling for a review of the resources at the enforcement agencies' disposal and whether these are adequate to fulfil their obligations, particularly in light of the newly expanded remit of the GLAA.

Focus must be on tackling labour exploitation, not immigration

Labour exploitation will not be effectively addressed if it is closely linked to immigration enforcement. Migrant workers are particularly vulnerable to exploitation. Employers can take advantage of migrant workers' limited English, their lack of awareness of employment rights, their immigration status, and the fact that visas and basic requirements like housing are often tied to their employment with them. For undocumented migrant workers, the fear of speaking out is especially acute and this can present significant barriers to enforcement agencies' ability to gather intelligence and uncover exploitation.

Measures should be taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration authorities.

SUMMARY OF RECOMMENDATIONS

- Employment tribunal fees should be abolished so that all workers can afford to enforce their rights.
- The government should move towards a joint and several liability approach to enforcement, so that companies are held responsible for compliance throughout their supply chain. This could be piloted with one area of employment - for example, payment of the minimum wage - before being expanded to a wider scope of employment rights.
- The government should develop a public procurement strategy with public sector bodies ensuring that employers throughout their supply chain are paying the national minimum wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.
- The approach taken by the Gangmasters Labour Abuse Authority (GLAA) to licensing sectors has proved effective and should be extended to types of occupation where exploitation is rife, including construction.
- The resources given to enforcement agencies should be reviewed and measures taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration officers.



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UNISON'S ETHICAL CARE CHARTER

UNISON's Ethical Care Charter has now been adopted by 29 councils in England, Wales and Scotland against a backdrop of savage cuts to social care budgets. It was brought into being because of widespread levels of poor treatment among the half-a-million-strong homecare workforce. UNISON has documented the lack of time homecare workers are given to care for elderly and disabled people, a frightening lack of training for many, widespread non-compliance with the minimum wage and a growing use of zero-hours contracts. All these problems conspire to rob homecare workers and the elderly and disabled people they care for of dignity and they contribute to poor levels of care.

The Charter provides a baseline of minimum standards that all homecare providers must adhere to when a local council commissions its homecare contracts (the sector is overwhelmingly outsourced). These include better levels of training, payment of travel time between visits, guaranteed hours of work and continuity of care. It also ensures that homecare workers are paid at least the Living Wage. This is a series of modest steps that enable homecare workers to provide a better level of care. UNISON's analysis has shown that adoption of the Charter has had a positive impact on recruitment and retention levels in a sector where 900 workers are quitting their jobs every day. It is led to improved levels of satisfaction from people who rely on homecare services. By having a baseline in place it also prevents care providers who value their workforce from being undercut by more unscrupulous employers who are willing to take on a council contract for less by exploiting their workers.

The Charter is an initiative better for care users, care workers and care providers.

In the words of Southwark Council's lead member for adult social care when the Charter was adopted: "I believe that having a better paid, better skilled and well-motivated workforce in our community will help ensure high quality care, reducing unnecessary demand for hospital services."

5: TAX, SOCIAL SECURITY AND PENSIONS

Tax, social security and pensions policy have a critical impact on the choices that both employers and workers make about the type of work that they offer and accept, as well as the experience and rewards they gain from that work.

At present, the tax system risks incentivising employers to offer jobs that reduce working people's security and rights, the social security system leaves too many of those working in non-traditional jobs unprotected when things go wrong, and the pensions system does not yet ensure that all working people have access to a decent retirement.

This Section looks in turn at the tax, social security and pensions systems, why change is needed, and how reform of each could help to tackle insecurity. This includes a fundamental review of how employment and self-employment are taxed, changes to sick pay, parental benefits, and universal credit to better protect the low paid and self-employed, and a concerted effort to ensure that everyone, including those in insecure work, gets access to a decent pension.

WHY CHANGE IS NEEDED: THE CURRENT TAX SYSTEM INCENTIVISES EMPLOYERS TO OFFER INSECURE WORK

The rise in insecure work has consequences for the exchequer as well as for working people. As we set out in Section 1, research conducted for the TUC by Landman Economics found that the rise in self-employment and zero-hours contracts over the last decade had led to a significant loss in revenue to the exchequer, of between £5.3bn and £5.9bn a year.⁶⁰

The fall in tax revenue is in part due to the lower earnings of both the self-employed and those on zero-hours contracts as compared to those in regular employment.

However, as highlighted at the time of the 2017 Budget, self-employment is taxed significantly more lightly than employment:

- Self-employed individuals currently pay a National Insurance rate of 9 per cent, compared to 12 per cent for employees.⁶¹
- The tax liabilities for employers hiring the self-employed is also far lower, with those choosing to take on an employee paying employer National Insurance at 13.8 per cent, while those employing someone as a contractor pay no National Insurance at all.

As the Low Incomes Tax Reform Group has set out, National Insurance is only one of several tax advantages that employers can gain by taking on staff on a self-employed, agency or zero-hours contract basis.

Potential cost advantages for employers of hiring staff on a zero-hours (or short-hours) basis, rather than employing people full time, include:

- The lower earnings limit for the payment of employer National Insurance is £157 a week. If employers employ staff for fewer than 20 hours a week on the National Living Wage they will be exempt from paying this element of taxation.
- As we set out further below, employers who pay staff less than the lower earnings limit (currently £113) can avoid certain social security benefits, including sick pay (which can no longer be reclaimed from the state) and maternity and paternity pay (which can be reclaimed to some extent, though can be very complex to administer).
- Having to pay into a workplace pension scheme (also set out further below).
- Having to register with HMRC or operate a PAYE scheme payroll, if pay for every worker on the payroll is kept below £113 a week - saving a huge amount of time and effort for employers in terms of having to comply with the requirements of HMRC's Real Time Information (RTI) reporting system.

In addition to the National Insurance savings, employers can also achieve significant cost savings by contracting people on a self-employed basis and persuading workers to sign up for flat-rate VAT schemes. Under these schemes, self-employed traders are able to claim back VAT on 'input' costs, regardless of their actual spend. For workers with limited input costs, entering the flat-rate VAT scheme can offer considerable benefits, essentially offering another income stream (from which the employer then takes a 'cut', as their payment for helping with administration, etc). New rules have recently been introduced to clamp down on flat-rate VAT and travel and subsistence issues, but we are yet to see whether these new rules are having the intended impact.

The existence of tax and NI contribution advantages, including travel and subsistence schemes, has also created an incentive for some employers to move away from offering direct employment to staffing up via agencies or so-called umbrella companies in order to reduce labour costs.

TACKLING INSECURITY: HOW COULD THE TAX SYSTEM ENCOURAGE EMPLOYERS TO OFFER MORE SECURE JOBS?

Various proposals have been put forward for reforming the tax system to reduce the incentives for employers to offer work on an insecure basis. These include implementing changes to the IR35 scheme.

The Office for Tax Simplification has recommended that National Insurance should be assessed on an annual basis (rather than the current weekly or monthly system), and on combined earnings for those with multiple jobs, for both employed and self-employed workers.

It has also recommended that National Insurance be levied on an employers' whole payroll, rather than on the earnings of individual employees, reducing the financial incentive to offer work on a short-hours basis.⁶²

The enforcement measures we set out below, including additional enforcement resources for HMRC, could also do more to tackle false self-employment.

However, the TUC is concerned that piecemeal efforts at reform could simply result in employers finding new ways to evade the rules. Instead the government should engage in a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.

WHY CHANGE IS NEEDED: THE SOCIAL SECURITY SYSTEM DOESN'T YET OFFER EVERYONE PROTECTION WHEN THEY CANNOT WORK

The TUC believes that the government's aim should be to minimise insecurity at work, rather than redesign the social security system to accommodate ever-increasing flexibility for employers. However, there are some clear areas where the social security and pensions system has not kept pace with the modern workplace. Below we outline issues with and potential solutions to the current design of sick pay, parental benefits and Universal Credit.

Sick pay

As set out in Section 1, those in insecure work are significantly more likely to face low pay.

This means that these workers are less likely to be paying (or credited into) National Insurance, which only kicks in when workers earn £113 a week or more.⁶³ And, because National Insurance is the gateway to a range of contributory benefits, including statutory sick pay,⁶⁴ many workers miss out on these protections when they cannot work.

The TUC estimates that nearly 500,000 workers on ZHCs or in insecure temporary work miss out on the right to statutory sick pay (SSP) because their pay is too low.

“There is no sick pay and it is hard to claim holiday pay owed apart from once a year. Casual employment works completely in the employer's favour in this case; we are expected to be available when needed and just wait when we are not needed.”

Female, aged 30-49, working in a theatre with no contract

“There is essentially no sick pay (missing a shift gets you squat, and doctor's appointments and recovery times after surgery have been taken using holiday time because of this).”

Female, aged 26-30, working as a waitress on a ZHC

“No sick pay. I've been told several times by doctors to take time off from a back injury done in work and I cannot afford it.”

Female, aged 20-25, working as a pub duty manager on a ZHC

Parental benefits

National Insurance contributions are also necessary to qualify for statutory maternity, adoption and paternity pay (SMP, SAP and SPP), meaning many new parents in insecure work also miss out on decent support when their child is young.

For mothers, the system is slightly improved by the existence of Maternity Allowance, which is available both to those who do not earn enough to qualify for SMP and to the self-employed. Maternity Allowance (MA) is, however, significantly less generous than SMP. Whereas those who qualify for SMP can receive up to 90 per cent of their normal earnings for the first six weeks of maternity leave, those on MA are capped at a maximum of £140.98.

But one particularly anachronistic feature of the current set of social security rights is the lack of any dedicated support for new fathers or adoptive parents who do not qualify for SPP. In 2015 the TUC estimated that over 9,000 agency workers don't qualify for paternity leave or pay and about 93,000 self-employed fathers receive no help to take time off work when they have a baby.

Universal Credit

Those in insecure work are significantly more likely to qualify for in-work benefits due to their low rates of pay. In-work benefits currently take the form of tax credits, but are soon to be replaced by Universal Credit.

Universal Credit will be significantly less generous than tax credits, with cuts to the proposed level of 'work allowances' (the amount that can be earned before benefits start to be tapered away) within Universal Credit set to leave families significantly worse off. The Institute for Fiscal Studies (IFS) estimates that, for example, a working lone parent will be over £2,000 a year worse off in 2020 compared to 2015 because of the impact of tax and benefit reforms, including Universal Credit.⁶⁵

In addition, the six-week waiting period for Universal Credit - in effect a cut in the level of support - will be particularly difficult for those in insecure work and on a low income. It is likely many will have to request advance payments, which are repayable out of benefit subsequently received.

Tax credits require people to work a minimum of 16 hours a week in order to qualify for financial support. But the last government wanted to enable people to work in shorter-hours jobs, so there is no minimum hours' qualification rule for Universal Credit. The government has also sought to encourage people to work more hours, through 'in work conditionality'. This means that if claimants do not earn the equivalent of 35 hours at the minimum wage (with exceptions for those with caring responsibilities or a disability), they will be expected to attend the Jobcentre in order to find ways to increase their hours or hourly pay sufficiently in order to continue receiving Universal Credit, with the risk of facing a financial sanction if they are not seen to be making enough effort to improve their earnings.

Those in insecure work, particularly those on zero-hours or short-hours contracts, often face great fluctuations in their hours, over which they have little control. So they are particularly likely to be affected by in-work conditionality proposals and the requirement to increase their hours. The DWP should publish the results of the pilots it has conducted with a particular focus on the impact on insecure workers. And if it proceeds with in-work conditionality, it should set out proposals that guarantee it will not sanction anyone who has worked short hours because their employer will not offer them additional hours.

Families with a self-employed earner are likely to face reductions cuts in the level of support they receive due to the operation of the 'Minimum Income Floor', which comes into effect after a year. The floor effectively limits the amount of support self-employed claimants receive to the equivalent of what they would receive if earning 35 hours a week at the (age appropriate) national minimum wage.

This measure is expected to lead to a £1.5bn saving for the Exchequer by 2021/22⁶⁶, while the self-employed are set to experience a significant hit to their income. As our affiliated trade unions BECTU and Equity have set out, this could leave many self-employed workers with legitimate businesses facing substantial cuts to their income. Equity gives the example of an actor left almost £500 a month worse off due to the operation of the Minimum Income Floor.

TACKLING INSECURITY: REFORMING SOCIAL SECURITY TO OFFER BETTER PROTECTION

Sick pay

It can't be right that you can be considered too low paid to fall ill. The TUC believes that low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.

Parental benefits

The TUC believes that government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.

Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance for the first six weeks at a rate equivalent to earnings-related Statutory Maternity Pay.

Universal Credit

The government should cancel cuts in the work allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six-week waiting period for payment of benefit.

The Work and Pensions Select Committee has recently recommended that: "The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants." The TUC endorses this recommendation.

WHY CHANGE IS NEEDED: THE PENSIONS SYSTEM ISN'T WORKING FOR INSECURE WORKERS

Those in insecure work also face an insecure retirement, with the pensions system not yet fully fit for purpose for low-paid workers or the self-employed. There is some evidence that employers use these forms of work in order to avoid taking responsibility for their workers' retirement.

The TUC has welcomed the roll out of auto-enrolment, which has brought many people into pensions savings for the first time. However, the 'earnings trigger' for qualification for auto-enrolment, currently £10,000, excludes many low-paid and insecure workers from pensions provision. Over half a million people working on zero-hours contracts or in insecure temporary work have wages below this level.

Those working in multiple jobs also miss out, where each role earns them less than £10,000. We estimate that there are more than 100,000 people working in multiple jobs (70 per cent of them women) who miss out on being automatically enrolled because none of their jobs enables them to meet this qualifying threshold.

Pensions are a key part of the reward for employment, and no one should miss out because they are too low paid. The TUC believes that the government should abolish the earnings trigger for employer contributions. This would give those in low-paid or part-time jobs the same rights to pension payments as colleagues who earn more.

The self-employed are also considerably less likely to be enrolled into a pension than those on regular contracts. With self-employment growing, this risks a growing number of people being forced to rely solely on the state pension, topped up by means-tested benefits, in retirement.

The government should set out steps to address this including:

- Applying the principle of auto-enrolment (that has successfully driven higher pension provision for employees) to the self-employed, by using the tax return to automatically enrol self-employed workers into pension provision, unless they choose to opt out.
- The tax return should also spell out the tax advantages of enrolling in a pension (in terms of pensions tax relief).

SUMMARY OF RECOMMENDATIONS

- The government should carry out a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.
- It's not right that you can be considered too low paid to fall ill. Low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.
- New fathers and adoptive parents in low-paid work or self-employment should be able to take paid time off for a new baby. The government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.
- The government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance at an equivalent rate to earnings-related Statutory Maternity Pay, for the first six weeks.
- Cuts to Universal Credit will have a significant impact on the low paid, particularly those in insecure work. The next government should cancel cuts in the work allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six-week waiting period for payment of benefit.
- Auto-enrolment into a workplace pension has been a success, but has left out too many of those facing low pay and insecurity at work. To address this, the government should
 - abolish the earnings trigger for employer contributions
 - apply the successful principle of auto-enrolment to the self-employed; the tax return should be used to automatically enrol self-employed workers into pension provision, unless they choose to opt out.

SUMMARY OF RECOMMENDATIONS

THE EXTENT AND IMPACT OF INSECURITY AT WORK

Insecure work has grown in the UK, further exacerbating poor pay and a lack of rights for those who already face labour market disadvantage. The sectors in which insecure work has grown fastest are those where people do traditional jobs such as waiting, caring and teaching.

International evidence suggests that there is nothing inevitable about insecurity in the modern world of work. We can tackle insecurity by:

- increasing unions ability to negotiate better terms and conditions in their workplace
- updating the framework of employment rights to protect everyone
- improving the enforcement of those rights
- ensuring that our tax and social security systems both incentivise secure jobs, and protect those currently facing insecurity.

VOICE AT WORK

- Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.
- All workers should a right to be represented by a union in the workplace.
- Employers should be required to agree collective and independent consultation arrangements when requested by a recognised union or by five workers in non-union workplaces.
- Companies should be required to include elected worker representatives on boards.
- The government should also strengthen economy-wide mechanisms for worker voice. This should include:
 - restoring Acas' duty to promote collective bargaining
 - introducing new sectoral bodies that bring together unions and business, to negotiate pay, progression, training and conditions - these should be piloted in the low-paid sectors where the need to improve conditions is greatest.

THE GIG ECONOMY AND THE FUTURE OF EMPLOYMENT RIGHTS

- All workers, including zero-hours contracts workers, agency workers and those in casual work, should benefit from the same decent floor of rights currently enjoyed by employees.
- A new 'worker' definition should be devised that covers all existing employees and workers, including zero-hours contact workers, agency workers and dependent contractors. The definition should extend to individuals who are employed via an agency or a personal service company. The government will need to draw on legal expertise and consult extensively with unions and employers when developing a definition.
- While work on a new 'worker' definition is carried out, the government should extend existing employee' rights to all 'workers'. This should include rights:
 - to statutory redundancy pay
 - for working parents to return to their substantive job following maternity, paternity or adoption leave
 - to paid time off for union reps.
- Employers should not be able to avoid or contract out of their employment law responsibilities. Self-employment should be a choice for individuals, not something that is imposed:
 - There should be a statutory presumption that individuals have 'employee' status unless the employer can demonstrate otherwise. This would go some way to giving working people greater security about their rights.
 - Employers who use contract terms designed to prevent or deter individuals from enforcing their rights should be fined.
- The rules on continuity of employment should be reformed to ensure that those on insecure contracts who work intermittently do not lose out on key employment rights. One way to achieve this would be to amend the law to state that - if an individual does not work during any given week - that week should not count towards their length of service. However, continuity of employment would not be broken.
- Online platforms are increasingly used by employers to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job-match services. As such, online platforms are effectively operating as employment businesses and agencies and in the TUC's view should be regulated accordingly.
- All workers should have a day-one right to a written statement setting out their pay and conditions, including their expected hours of work.
- Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours.
- Workers employed on zero- or short-hours contracts should have a right to be paid a premium for any non-contractual hours worked and compensation for shifts cancelled at short notice.
- End the Swedish derogation, which allows agency workers to be paid less than regular employees doing the same job.
- Companies and public bodies should be required to report on the use of zero-hours contracts, short-hours contracts and agency work in annual reports, including throughout their supply chains, and explain why they are using these types of contract.

EFFECTIVE AND INNOVATIVE ENFORCEMENT

- Employment tribunal fees should be abolished so that all workers can afford to enforce their rights.
- The government should move towards a joint and several liability approach to enforcement, so that companies are held responsible for compliance throughout their supply chain. This could be piloted in one area of employment - for example, payment of the national minimum wage - before being expanded to a wider scope of employment rights.
- The government should develop a public procurement strategy with public sector bodies, ensuring that employers throughout their supply chain are paying the national minimum/living wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.
- The approach taken by the Gangmasters Labour Abuse Authority (GLAA) to licensing sectors has proved effective and should be extended to types of occupation where exploitation is rife, including construction.
- The resources given to enforcement agencies should be reviewed and measures taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration authorities.

TAX, SOCIAL SECURITY AND PENSIONS

- The government should carry out a dedicated review of how employers and contractors are taxed and the impact this has on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.
- It's not right that you can be considered too low paid to fall ill. Low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.
- New fathers and adoptive parents in low-paid work or self-employment should be able to take paid time off for a new baby. The government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents, who opt to take shared parental leave in the first year after birth or adoption.
- Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance for the first six weeks at a rate equivalent to earnings-related Statutory Maternity Pay.
- Cuts to Universal Credit will have a significant impact on the low paid, particularly those in insecure work. The next government should cancel cuts in the work allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six-week waiting period for payment of benefit.
- Auto-enrolment into a workplace pension has been a success, but has left out too many of those facing low pay and insecurity at work. To address this, the government should:
 - abolish the earnings trigger for employer contributions
 - apply the successful principle of auto-enrolment to the self-employed - the tax return should be used to automatically enrol self-employed workers into pension provision, unless they choose to opt out.





ANNEX 1: EMPLOYMENT RIGHTS AND WHO GETS THEM

KEY WORKPLACE RIGHT	WHO GETS IT?	HOW MANY ARE AT RISK OF MISSING OUT?	CHANGE OVER THE LAST DECADE
Pay			
National minimum wage	All workers including employees	4.8m self-employed people	+1m
Holiday pay	All workers including employees	4.8m self-employed people	+1m
Information			
Written statement of pay, hours of work, holidays, sick pay, notice periods and disciplinary and grievance procedures	Employees (and agency workers) ⁶⁷	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Itemised pay statement	Employees only	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Family-friendly rights			
Rights to statutory maternity, adoption, paternity and shared parental leave (including to return to their job)	Employees only with six months' service by the 15th week before the expected week of childbirth or adoption date	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Right to request flexible working	Employees only after a six-month qualifying period	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Unpaid parental leave	Employees only after a one-year qualifying period	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000

KEY WORKPLACE RIGHT	WHO GETS IT?	HOW MANY ARE AT RISK OF MISSING OUT?	CHANGE OVER THE LAST DECADE
Job security			
Protection against unfair dismissal	Employees only following a two-year qualifying period	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Statutory redundancy pay	Employees only following a two-year qualifying period	4.8m self-employed people 1.5m people on ZHCs or casual workers or temporary agency workers	+1m +700,000
Rights to representation and consultation (employees and workers only)			
Protection from unlawful dismissal on grounds of trade union membership or activities	Employees only	1.5m people on ZHCs or casual workers or temporary agency workers	+700,000
Protection from unfair dismissal for participating in lawful industrial action	Employees only	1.5m people on ZHCs or casual workers or temporary agency workers	+700,000
Rights to paid time off for union duties or training including for union learning reps	Employees only	1.5m people on ZHCs or casual workers or temporary agency workers	+700,000
Social security protections			
Right to be automatically enrolled into a pension by your employer if you meet qualifying earnings	Employees and workers who earn over £112 a week	4.8m self-employed people 486,000 people who are earning less than £112 a week while working for an employer	+1m
Statutory maternity pay (those who do not qualify may qualify for Maternity Allowance), statutory adoption pay or statutory paternity pay	Employees and workers who earn £112 or more a week	4.8m self-employed people 486,000 people who are earning less than £112 a week while working for an employer	+1m

NOTES

- 1 Using 2016 Q2 ONS data, unless otherwise stated.
- 2 The total excludes those who are self-employed. We also decided to exclude fixed-term contract workers, who are entitled to the same rights as permanent employees.
- 3 <http://www.smf.co.uk/wp-content/uploads/2016/10/Social-Market-Foundation-SMF-Tough-Gig-Tackling-low-paid-self-employment-in-London-and-the-UK-October-2016.pdf>
- 4 Ibid
- 5 Analysis of the LFS Q4 2011 to Q4 2016 by the Learning and Work institute, commissioned by the TUC.
- 6 Analysis of the LFS 2016, average of four quarters by the TUC.
- 7 Johnny Runge, Nathan Hudson-Sharp and Heather Rolfe (2017). Use of Agency Workers in the Public Sector. NIESR.
- 8 A CIPD survey in 2015 found that public sector and voluntary sector employers were more likely to rely on zero-hours contracts than those in the private sector, with 46 per cent of health and social and 35 per cent of education employers using these working arrangements: CIPD, (2015). Zero-hours and short-hours contracts in the UK: Employer and employee perspectives. Available at: http://www2.cipd.co.uk/binaries/zero-hours-and-short-hours-contracts-in-the-uk_2015-employer-employee-perspectives.pdf
- 9 Skills for Care is the workforce development body for adult social care in England.
- 10 Skills for Care (2016). The State of the Adult Social Care Sector and Workforce in England, 2016.
- 11 See UNISON (2016). Calling Time on Illegal Wages in the Healthcare Sector: a UNISON report on the escalating crisis in our homecare system ; Bessa I, Forde C, Moore S. and Stuart M (2013). "The National Minimum Wage, earnings and hours in the domiciliary care sector". University of Leeds (February 2013) : http://www.lowpay.gov.uk/42249CB5-5776-4301-AE0F-82E8E141496D/FinalDownload/DownloadId-2D769C80D2C61B894049E334F2BD5D04/42249CB5-5776-4301-AE0F-82E8E141496D/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf
- 12 Skills For Care ibid.
- 13 Local authority and school expenditure, 2015-16. Available at www.gov.uk/government/statistics/la-and-school-expenditure-2015-to-2016-financial-year
- 14 Income and expenditure in academies in England, 2014-15. (Most recent available figures). See www.gov.uk/government/uploads/system/uploads/attachment_data/file/541051/SFR27_2016_Main_Text.pdf

- 15 Nathan Hudson-Sharpe and Johnny Runge (2017). *International Trends in Insecure Work: a report for the Trades Union Congress NIESR*.
- 16 *ibid*
- 17 Howard Reed (2017). *The Impact of Increased Self-Employment and Insecure Work on the Public Finances*. TUC.
- 18 www.theguardian.com/business/2017/mar/03/sick-dpd-couriers-face-150-charge-if-unable-to-find-cover
- 19 The full report from the Learning and Work Institute explains: The figure shows the relationship between productivity growth and the change in insecure employment between 2011 and 2016. We were only able to look at this relationship for 14 1-digit SIC 2007 industries, as productivity data was not available for mining and quarrying; electricity, gas, steam and air conditioning; water supply, sewerage and waste management; and data was available only for government services which covers the three 1-digit sectors of: health and social work; education; and public administration and defence, and not these sectors separately.
- 20 Learning and Work Institute (2017, forthcoming). *What is driving insecure work? A sector perspective: Report to the TUC*.
- 21 <http://www.independent.co.uk/news/business/news/sports-directs-dickensian-working-practices-will-spread-exploitation-in-the-uk-unite-says-a7068766.html>; <https://www.theguardian.com/uk-news/2016/oct/20/delivery-giant-hermes-faces-hmrc-inquiry-into-low-pay-allegations>; <https://www.theguardian.com/uk-news/2014/dec/14/why-cant-britain-create-decent-jobs>; <http://www.mirror.co.uk/news/uk-news/argos-homebase-tesco-exploit-workers-3630972>;
- 22 www.ft.com/content/1696540a-7402-11e6-b60a-de4532d5ea35
- 23 www.theguardian.com/uk-news/2016/sep/12/jd-wetherspoon-sports-direct-zero-hours-contracts
- 24 www.bbc.co.uk/news/business-39707429
- 25 www.equity.org.uk/campaigns/professionally-made-professionally-paid/
- 26 www.tuc.org.uk/workplace-issues/health-and-safety/organisation/worker-involvement/union-effect
- 27 *ibid*
- 28 www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf
- 29 Budd J (2004). "Non-Wage Forms Of Compensation". *Journal of Labor Research*, vol 25, pp. 597-622; Budd J and Mumford K (2004). "Trade Unions and Family-Friendly Policies in Britain". *Industrial and Labour Relations Review*, vol 57, pp 204-22.
- 30 www.tuc.org.uk/workplace-issues/health-and-safety/organisation/worker-involvement/union-effect
- 31 www.tuc.org.uk/sites/default/files/tucfiles/thefactsaboutfacilitytime.pdf
- 32 www.acas.org.uk/media/pdf/7/j/icoct03_1.pdf
- 33 BIS (2017). *Trade Union Membership 2016 Statistical Bulletin*, May 2016. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/616424/trade-union-membership-statistical-bulletin-2016.pdf
- 34 Section 10 of the Employment Relations Act 1999.
- 35 ILO (2015). *Labour markets, institutions and inequality: Building just societies in the 21st century*. Available at: http://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/WCMS_351306/lang--en/index.htm
- 36 <https://www.tuc.org.uk/economic-issues/labour-market/living-edge>.

- 37 Deregulation Act 2015: <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>
- 38 *Halawi v WDFG UK* (t/a World Duty Free) [2014] EWCA Civ 1387.
- 39 *James v London Borough of Greenwich* [2008] EWCA Civ 35 CA.
- 40 *Aslam & Ors v Uber & Ors* 2202550/2015 available at: <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>
- 41 *Dewhurst v CitySprint UK Ltd* 2202512/2016
- 42 <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government>
- 43 http://www2.cipd.co.uk/binaries/zero-hours-contracts_2013-myth-reality.pdf
- 44 See the Law society evidence to the BEIS Committee Inquiry on the future of work. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/future-world-of-work/written/44652.html>
- 45 Since the introduction of fees in 2013, the number of claims taken to a tribunal has fallen by 67 per cent.
- 46 www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf paras 87 and 90
- 47 www.independent.co.uk/news/uk/politics/deliveroo-uber-amazon-gig-economy-workers-exploitation-contracts-mps-accuse-exploitative-a7668971.html
- 48 To qualify for unfair dismissal and statutory redundancy pay an individual requires two years' continuous employment; rights to request flexible working and to return to a job after maternity, paternity or adoption leave require 26 weeks of continuous service.
- 49 *Pulse Healthcare Ltd v Carewatch Care Services Ltd & six Others* UKEAT/0123/12/BA.
- 50 <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>
- 51 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302989/flexible-contracts-final.pdf
- 52 CIPD, *ibid*, pp 20-1.
- 53 www.tuc.org.uk/workplace-issues/employment-rights/proposed-changes-law/basic-rights-work/tuc-lodges-complaint
- 54 HoC Library, Briefing Paper No 7081, 15 February 2016, <http://researchbriefings.files.parliament.uk/documents/SN07081/SN07081.pdf>
- 55 www.gov.uk/government/uploads/system/uploads/attachment_data/file/575422/tribunal-grc-main-tables-jul-sept-2016-2017.xlsx, Tab ET.3
- 56 www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf
- 57 <http://touchstoneblog.org.uk/2017/05/tax-system-driving-people-insecure-work-unexpected-ways/>
- 58 David Weil (2014). *The Fissured Workplace: why work became so bad for so many and what can be done to improve it*. Harvard University Press. See also the US Department of Labor fact sheet: www.dol.gov/whd/regs/compliance/whdfs35.htm
- 59 The Association of Labour Providers' Annual Survey 2015 indicates that 93 per cent support licensing.
- 60 The former figure assumes that all the additional self-employed people in the UK workforce are sole traders, while the latter assumes that all the additional self-employed people are owner-directors

- 61 Some self-employed traders may also choose to incorporate their business, and pay themselves in dividends rather than earnings. See Howard Reed (2017), *The Impact of Increased Self-Employment and Insecure Work on The Public Finances*, TUC.
- 62 www.gov.uk/government/uploads/system/uploads/attachment_data/file/567491/OTS_report_web_final.pdf
- 63 This is the 'lower earnings threshold' at which workers are credited into the National Insurance system. Actual contributions are only levied on earnings above £157 a week, the current primary threshold.
- 64 National Insurance contributions are also necessary to claim contributory Jobseekers Allowance, contributory Employment and Support Allowance, and bereavement benefits.
- 65 www.ifs.org.uk/uploads/publications/budgets/as2016/as2016_tw.pdf see slide 7.
- 66 OBR (2017), *Economic and fiscal outlook, March 2017* <http://budgetresponsibility.org.uk/efo/economic-fiscal-outlook-march-2017/>
- 67 Agency workers' right to information about assignments are more limited than those for employees. They have a right to be informed about pay rates and hours of work, but most will not be entitled to information about or to use workplace disciplinary or grievance procedures.



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