



# **Living on the Edge:**

## **The rise of job insecurity in modern Britain**

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Section one

# Introduction and summary

Ten years ago the TUC established a Commission on Vulnerable Employment (CoVE),<sup>1</sup> to examine the increase in the proportion of workers at risk of poverty and injustice due to an imbalance of power in the employer-worker relationship.

It is now nearly a decade since CoVE reported. In that time we have seen a significant increase in the number of people in work, with 2.6 million more people now in the labour market. But while this increase in employment is welcome, it has been accompanied by two major changes in the experience of work:

- Working people have seen a significant downgrade in their pay.
  - Pay is still around £20 a week below its pre-crisis levels, and not set to return to those levels until 2021.
  - British workers have experienced the longest decline in real wages since 1864, and have seen the largest decline in real wages after the financial crisis of any developed economy except Greece.<sup>2</sup>
- A growing number of people face insecurity at work.

This report focuses on the second of these two trends, mapping the insecure workforce and the issues they face. It is the first report of a new series of TUC work focusing on insecure employment.

## Defining insecurity

There is an increasing and welcome focus on the changing world of work and in particular how the nature of work is evolving due to the introduction of new technology.

This report concentrates on changes in the relationship between employers and working people. It sets out to show how key risks associated with work have been increasingly transferred to working people, while any financial rewards from flexibility have accrued to employers.

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 because these contracts often come with lower pay and fewer

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<sup>1</sup> <http://www.vulnerableworkers.org.uk/>

<sup>2</sup> TUC Analysis of OECD figures, see <http://touchstoneblog.org.uk/2016/07/uk-real-wages-decline-10-severe-oecd-equal-greece/> for details.

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 shifts, with online platforms offering a way for employers to break up work into smaller tasks, and contract workers on a piece work basis. (We think that the impact of technology on the employment *relationship*, our focus here, should be looked at separately from its impact on the employment *experience* – in the form of surveillance or monitoring, or on the *supply* of work, and whether robots will replace humans altogether in the labour market).

But the change in the balance of risks between workers and employers cannot be simply attributed to new technology. Unions have long been concerned about the nature of the relationship between those requiring and those supplying employment, from the days of piece work, through labour exchanges, the increase in temporary work in the 1990s, to today's zero-hour contracts, agency workers and growing army of self-employed.

And while some of today's insecure workers may work for 'platform' companies like Uber or Deliveroo, many of them work in areas using 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. These insecure workers are the focus of our report.

### **Measuring the extent of the insecure workforce**

Section two of this report sets out how this insecurity – where working people experience fewer rights and protections at work – takes three main forms:

- Low paid self-employment, where workers miss out on employment rights and income related protections (such as sick pay and maternity pay), but cannot afford a safety net for those periods when they cannot work.
- Forms of temporary work, including agency work, casual and seasonal work, where workers often miss out on key employment rights and protections, including family friendly rights, redundancy pay and sick pay.<sup>3</sup>
- Zero-hours contracts, where workers face insecurity about their income and hours of work, and often miss out on key employment rights.

The table below sets out the size of each of these categories: the next section goes into more detail about the problems these workers face. In summary, we estimate that there are now 3.2 million workers, one in ten of those working today, who face significant insecurity at work. A fuller description of each of these categories is in Chapter 2.

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<sup>3</sup> Our definition of insecure temporary work excludes those on fixed term contracts, who are normally entitled to the same rights as employees.

## Introduction and summary

<b>Type of insecure worker</b>	<b>Why is it a problem?</b>	<b>How many of them are there?</b>
Low paid self-employment	They miss out on key rights and protections that come with being an employee, and often cannot afford to protect themselves against the increased level of risk this creates.	1.7 million
Insecure temporary work (agency, casual, seasonal other)	They risk missing out on key workplace rights and protections, and face lower rates of pay.	730,000
Zero-hours contract workers	They risk missing out on key workplace rights and protections, lack income security and face lower rates of pay	810,000
<b>TUC estimate of insecure work</b>	<b>These workers lack access to key rights and protections at work, and cannot afford to protect themselves against the increased level of risk this creates.</b>	<b>3.2 million</b>

### The problems of insecurity

Chapter three of the report sets out how insecure workers lack access to key rights and protections at work.

Quantifying the number of those missing out on key employment rights is complex, due to the nature of employment law in the UK. For example:

- The rights which individuals are entitled to will depend on whether they are classified as an ‘employee’, a ‘worker’ or as ‘self-employed’, with the courts applying different common law tests for each category.
- When applying the tests the courts will also consider a mixture of ‘law’ (common law tests) and ‘fact’ (what actually happens in the relevant workplace). This means that the status tests can lead to different outcomes from one workplace to another.
- To make things more complicated, different pieces of employment rights legislation use slightly different statutory definitions for ‘workers’ and ‘employees’.

There are currently more than 12 tests of employment status within the law, including some which include or exclude agency workers from the scope of rights.

However, our estimates (set out in full later in the report) based on labour market data suggest that:

- 1.5 million people are now at risk of missing out on family-friendly rights including rights to maternity, paternity, adoption and shared parental leave (including the right return to their job after the time off) and the right to request to work flexibly, an increase of 700,000 compared to a decade ago. In addition, there are 1.7 million self-employed people who lack access to these rights, and whose low pay means they cannot afford to protect themselves against the risk this creates.
- 1.5 million may have no right to an itemised pay slip, making it more difficult to receive the correct pay, an increase of 700,000 compared to a decade ago.
- These 1.5 million may also be missing out on protection from unfair dismissal.

Section four looks at whether these workers are experiencing other benefits that compensate for the lack of rights and protection at work, in the form of either additional pay or flexibility. However, the evidence suggests that insecure workers in fact face lower rates of pay (see section four for further details):

- Self-employed people now earn an average of 60 per cent of the median annual rate of an employee per year, down from around 70 per cent a decade ago.
- Median hourly pay for those on a zero-hours contract in 2016 was worth just 66 per cent of the median for all employees.
- Median hourly pay for those working for an employment agency was worth just 80 per cent that of the average employee; for those in casual or seasonal work, pay was worth just 60 per cent of the employee average.

Several key forms of employment protection, part of the social security system, are dependent on earnings. The lower levels of pay experienced by many of the insecure workforce means that many are also unable to access these rights:

- Nearly 500,000 people on a zero-hours contract or in insecure temporary work do not qualify for Statutory Sick Pay because they earn less than £112 a week, nearly a third of all those in this category.
- 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 enabling them to take time off.
- There is also no right for these workers to be automatically enrolled into a workplace pension.

### **Is this all just a matter of choice?**

It has been argued that the lack of these rights and protections are the price that working people pay for the greater flexibility that these new forms of work can offer. But there is significant evidence that flexibility is in fact constrained for the new insecure workforce:

- Those working on a zero-hours contract, or in agency, casual and seasonal work lack access to family-friendly rights that would enable them to fit their employment more easily around caring responsibilities.
- While some people use a zero-hours contract 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).
- An increasing proportion of those working on temporary contracts are doing so on an involuntary basis: 30 per cent of all of those working in temporary work are doing so because they cannot find a permanent job, up from 25 per cent a decade ago.

There is also concern that a small proportion of the self-employed are classed as such in order to facilitate lowering costs for their employers, rather than because they genuinely experience the benefits of self-employment, and as such are in 'bogus' self-employment, lacking the protections associated with employment, while experiencing none of the benefits of managing their own work.

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.<sup>4</sup>

An alternative estimate comes from data from the Department of Business Energy and Industrial Strategy (then BIS) which suggests that there are at least 100,000 people who were encouraged into self-employment by their previous employer, and now work principally for them. We think that this is a minimum level for the number of people who are falsely self-employed.<sup>5</sup>

### **Who are the new insecure workforce?**

Section five of the report looks at the industries in which insecure work is concentrated, and the characteristics of people in terms of their age and gender who are undertaking this work. Future work will look in more detail at the experiences of Black and Minority Ethnic (BAME) workers – previous TUC work has found that

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<sup>4</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government/>

<sup>5</sup> <https://www.gov.uk/government/publications/understanding-self-employment>

BAME workers have been disproportionately affected by the growth in insecure work.<sup>6</sup>

- Low paid self-employment is concentrated in construction, administrative and support activities, transport and storage, professional scientific and technical, and the wholesale and retail trade.
- Those on a zero hours contract are most likely to be working in accommodation and food, health and social work and ‘transport, arts and other services’.
- Those working on a temporary basis are most likely to be working in education, health and social work, accommodation and food, wholesale, retail and repair, and manufacturing.
- The majority (55 per cent) of those working on a zero-hours contract are female, while the majority of those in self-employment (67 per cent) are male.
- The largest group of workers on a zero-hours contract (36 per cent) are aged 16–24, whereas the largest group of the self-employed (36 per cent) are aged 35–49.

### **How should insecurity at work be addressed?**

The past decade has seen some improvements to the rights and protections for those in insecure forms of work.

- The pay and work rights helpline, now run by ACAS, was set up to handle calls about breaches of basic workplace rights, such as the national minimum wage, basic agency worker rights and working time standards.
- Thanks to unions campaigning across the EU, agency workers won equal treatment rights. As a result, many agency workers in the UK are entitled to equal treatment on pay, hours and holidays after working for 12 weeks for the same employer in the same job.<sup>7</sup>
- The government has introduced a ban on exclusivity clauses within zero-hours contracts, meaning that employers cannot prevent workers on a zero-hours contract from taking up other work.
- The government is set to appoint a new Director of Labour Market Enforcement, and some additional resources have been invested in enforcing the national minimum wage.

But change has not all been in the right direction. The government has also weakened key employment rights including by introducing employment tribunal fees which have priced many working people, in particular the low paid, out of justice. Other changes which have downgraded working people’s rights include doubling the

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<sup>6</sup> TUC (2016) *Living on the Margins: black workers and casualisation*  
<https://www.tuc.org.uk/equality-issues/black-workers/black-workers-conference/living-margins-black-workers-and>

<sup>7</sup> Agency workers employed on permanent pay between assignment contracts lose out on equal pay. The TUC continues to campaign for this loophole to be closed.



## Introduction and summary

qualifying period for unfair dismissal rights, making it harder for those in transient employment to benefit from protection, and excluding fixed-term employees, who have reached the end of their contracts, from the right to be represented in consultations on collective redundancies.

This is the first in a series of TUC reports looking at the new insecure workforce. This report concentrates on describing the new insecurity; future reports will set out in more detail how these issues should be addressed.

However, the TUC believes that there are five areas where government should act to ensure that everyone has decent rights and protection at work:

### **1. Make sure that everyone can access decent rights at work**

Government's first responsibility should be to ensure that everyone is protected by basic employment rights at work.

The TUC believes that government should lift the level of the employment rights 'floor', extending existing rights to all those in work, not only those who qualify for 'employee' status. This includes family-friendly rights, protection from unfair dismissal and the right to redundancy pay. Future TUC work will set out how these reforms could work in greater detail.

As an immediate first step, government should create a legal presumption that everyone qualifies for the full set of employee rights, placing the onus on the employer to prove that this is not the case.

### **2. Guarantee that self-employment is a choice made by the worker, not the employer**

Self-employment is a positive choice for many who take it up, with the self-employed often experiencing higher levels of job satisfaction. But self-employment should be a choice made by the individual based on what's best for them, not by the employer based on what minimises their costs.

Again, we intend to set out how reforms in this area could work in more detail in future. But measures to tackle bogus self-employment will need to include a review of the tax incentives for employers to offer work to self-employed contractors rather than employees, as well as enforcement against employers who try to use bogus forms of self-employment to avoid paying the national minimum wage.

### **3. Ensure that everyone is protected when they cannot work**

Our system of national insurance, developed in the Beveridge era to protect against interruptions to earning power, and designed for a world of stable, and mainly male, employment has failed to keep pace with changes in the world of work.

The increase in insecurity, including the increasing number of people unable to access sick pay or paternity protection due to low earnings, means that the system needs re-examining.

Two areas in particular need action. First, the TUC believes that no-one should miss out on sick pay because they are low paid. Second, perhaps the most anachronistic part of the system is the lack of any form of support for fathers with non-standard work patterns – an area where the TUC has long argued for change.<sup>8</sup>

#### **4. Make sure existing rights can be realised**

Existing rights need enforcement to ensure that working people are protected from employers seeking to undercut their rights.<sup>9</sup>

Recent experience of government action has been one step forwards, a giant leap back; welcome additional resources for national minimum wage enforcement, but the imposition of employment tribunal fees of up to £1,200 a case, which make it harder for workers to access justice. Abolishing these fees is an essential first step for any policy maker looking to make progress in tackling workplace insecurity.

#### **5. Strengthen workers' ability to organise for better conditions at work**

The increase in insecurity at work has seen risks shifted onto working people, while rewards accrue to the employer. Fundamentally, these changes are about an imbalance of power, and addressing them means ensuring that those affected by insecurity have the ability to organise for better pay, conditions, and rights.

Trade Unions were formed as a response to the challenges of insecurity at work, and the prominence of the issue now owes much to their current organising efforts; today's totemic examples of insecurity, Sports Direct, Uber, or ASOS are all those where unions have been organising for better terms and conditions. Unions are also innovating to reach more workers in insecure conditions, and to build on the long experience of organising self-employed people in the entertainment sector and beyond.

Unions will continue working to protect more working people from insecurity. But there is more we could do with a better framework of trade union rights, enabling far wider coverage of the collective bargaining that is the best protection against insecurity at work. Enabling better access to workplaces for trade unions would be a first step to enable us to build on these gains faster, stamping out employment practices that have no place in modern Britain and securing better pay and conditions for everyone.

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<sup>8</sup> <https://www.tuc.org.uk/workplace-issues/work-life-balance/employment-rights/two-five-new-fathers-won%E2%80%99t-qualify-shared>

<sup>9</sup> For example, workers at Deliveroo were asked to sign contracts stating that they would not use employment tribunals – a requirement with no basis in law  
<https://www.theguardian.com/law/2016/jul/25/deliveroo-workers-contracts-ban-access-to-employment-tribunals>

Section two

# The changing world of work

The last 10 years have seen a significant increase in the number of people working in insecure work.

This increase has taken three main forms:

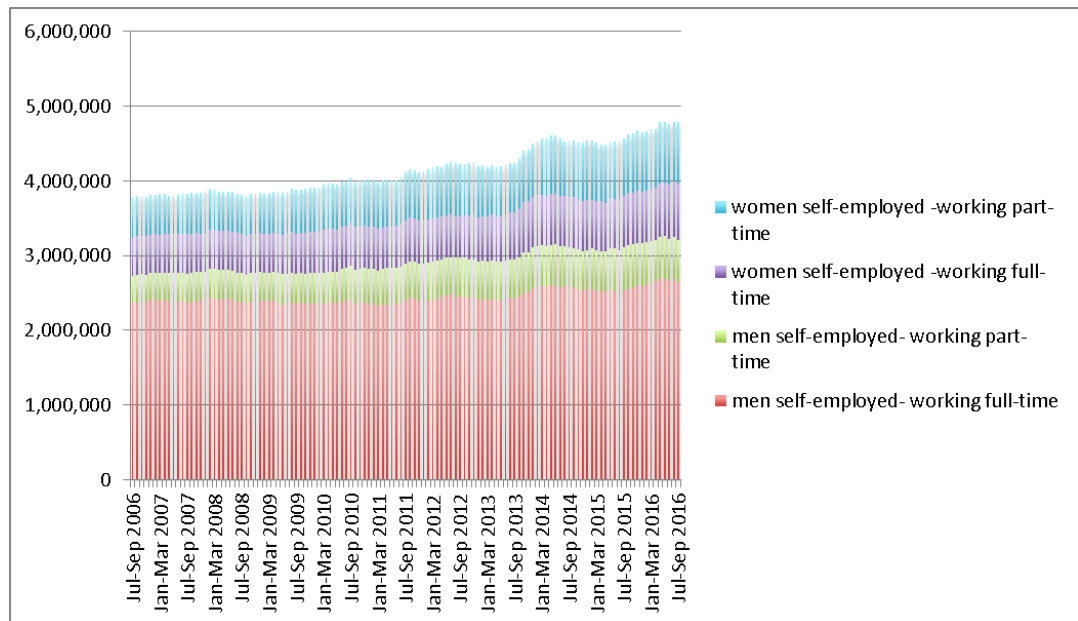
- A rise in self-employment, with an increasing number of self-employed people facing low earnings.
- An increase in the number of people working on a zero-hours contract.
- No corresponding decline in the number of people working in non-standard forms of temporary work.

This section looks at the scale of these changes over the last decade.

## The increase in self-employment

As has been well documented, the number of people in self-employment has risen sharply following the 2008/09 financial crisis to form what now looks like an established feature of the labour market. There are now a million more self-employed people in work compared to 2006, and self-employed people now make up 15 per cent of the workforce, up from 13 per cent a decade ago.

Chart 1: Increase in self-employment over the decade

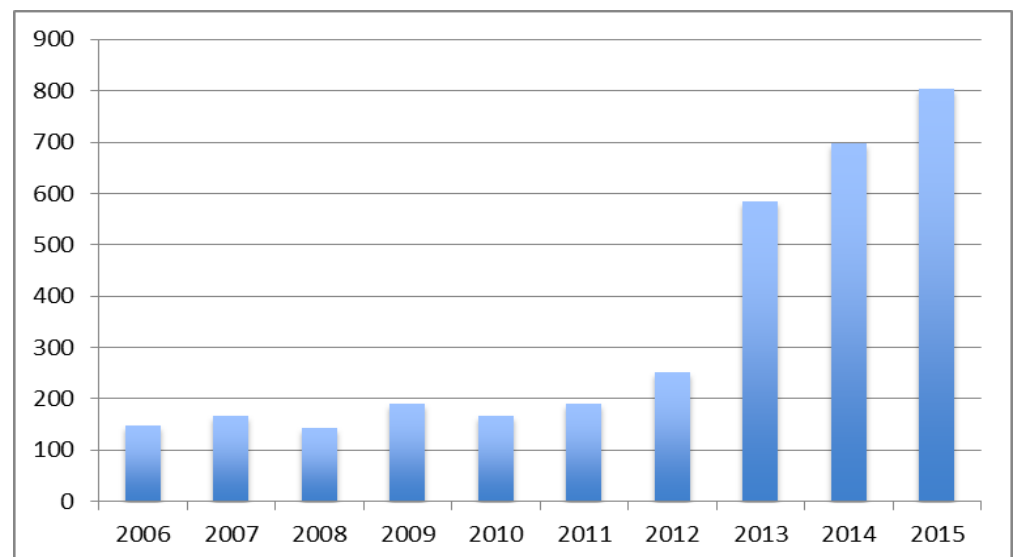


**Research by the Social Market Foundation has shown that 1.7 million self-employed people are now facing pay below the level of the government’s National Living Wage.<sup>10</sup> The TUC believes that these people face insecurity, as they are not compensated financially for the lack of key rights and protections at work.** As section four sets out, there is evidence that self-employment is increasingly associated with lower earnings, with the gap between the earnings of the self-employed and those working for an employer widening over the last decade.

### **Zero-hours contracts**

Zero-hours contracts (ZHCs) have been perhaps the most noted form of the rise in insecurity. The number of people working on a zero-hours contract, offering them no guaranteed hours has been spectacular, with over 900,000 people working on a zero-hours contract in 2016, up from around 100,000 in 2006.<sup>11</sup>

**Chart 2: Number of people on a zero-hours contract over the decade**



While some of this is likely to be due to an increase in awareness of zero-hours contracts, it seems unlikely that this is the whole explanation.

Those who are working on a zero-hours contract may be employed, or classify themselves as self-employed. For the purposes of estimating the total number of

<sup>10</sup> Nida Broughton and Ben Richards (2016) *Tough Gig: low paid self-employment in the UK and London*, Social Market Foundation <http://www.smf.co.uk/wp-content/uploads/2016/03/Social-Market-Foundation-Tough-Gig-Low-paid-self-employment-in-London-and-the-UK-FINAL-Embargoed-0001-210316.pdf>

<sup>11</sup> LFS spring 2006 and 2016. Note that the LFS survey was taken in March-May 2006 and April-June 2016.” – for a clearer explanation – <http://www.hse.gov.uk/statistics/lfs/about.htm>

## Missing out on rights and protections

people facing insecurity at work, we have excluded those who say they are self-employed while on a zero-hours contract from our total number.

**This gives us a total number of 810,000 people facing insecurity because they are on a zero-hours contract in 2016, up from 70,000 in 2006.**

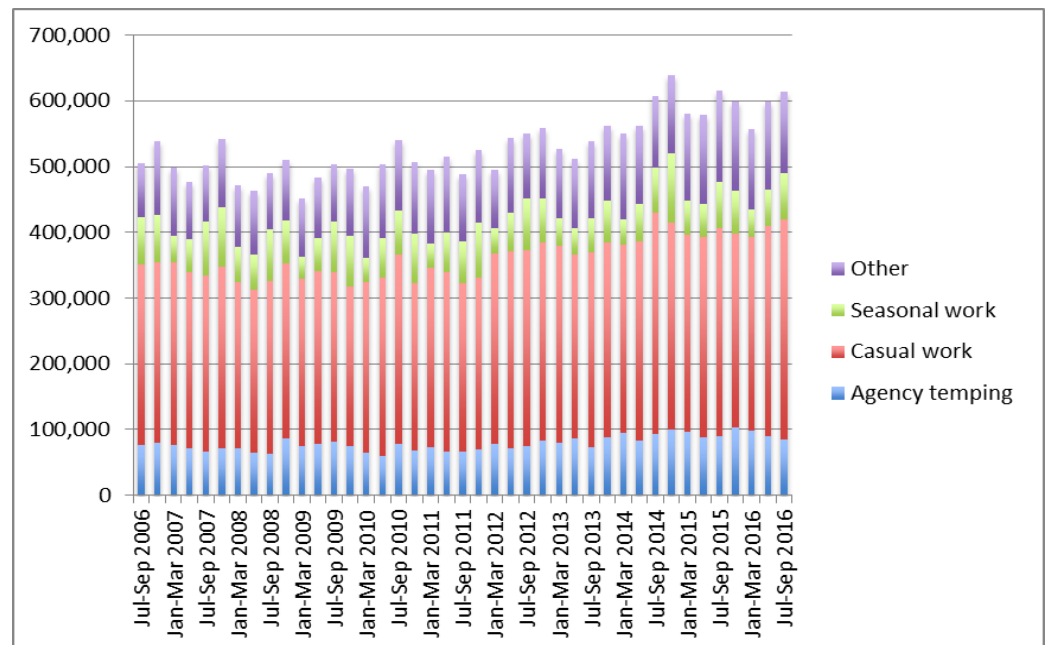
### Other forms of non-standard work

Many people undertake a period of temporary work, to fit in between other jobs, to try out a new area of employment, or sometimes because this is the only work available. The proportion of those taking temporary work on an involuntary basis has grown in the last decade, with 485,000 people, or 30 per cent of the temporary workforce now working on a temporary basis because they cannot find a permanent job, up from 370,000 or 25 per cent of the temporary workforce a decade ago.<sup>12</sup>

Those on a fixed term contract, are entitled to equal treatment on pay, conditions and rights as permanent employees. But those undertaking agency, casual, seasonal or other forms of temporary work, are at risk of missing out on key workplace rights and protections (outlined in the next sections). These 'non-standard' forms of temporary contract are therefore our focus when assessing the growth of insecure work.

These non-standard forms of temporary work have been broadly stable over the last decade. This suggests that the rise in zero-hours contracts has added to, rather than replaced, this type of insecurity at work.

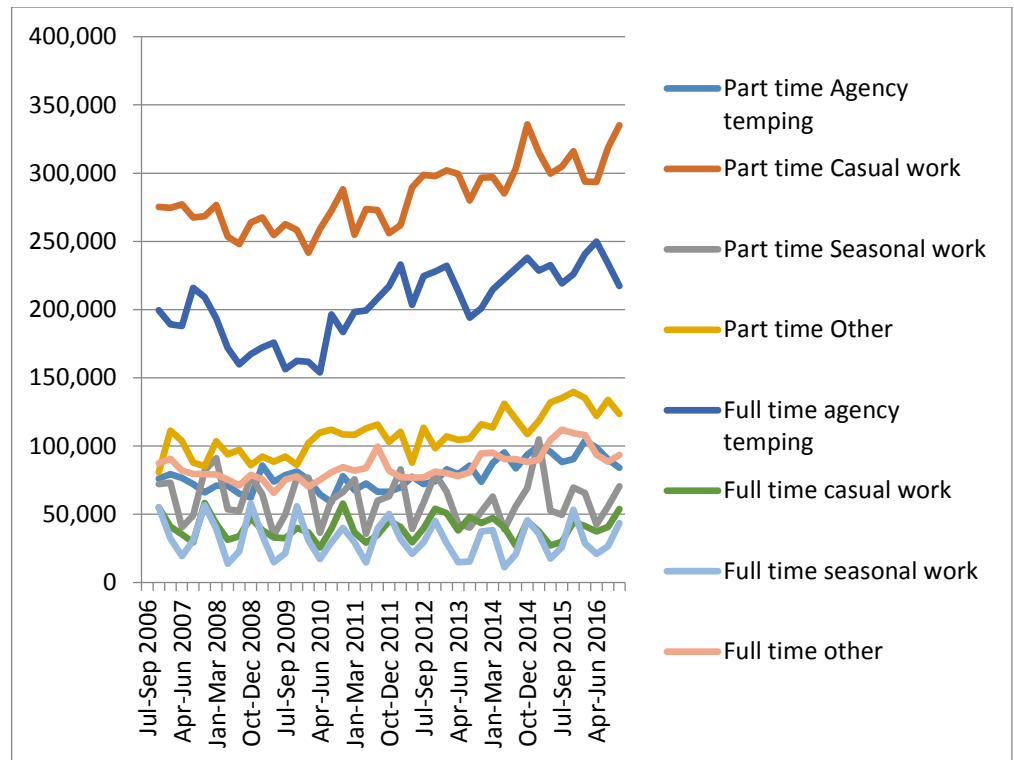
**Chart 3: Non-standard forms of temporary work, 2006–16**



<sup>12</sup> Labour Force Survey data, July September 2006 and 2016.

Including a part time/full time breakdown shows that the most significant forms of non-standard temporary work, and those where the largest increases have taken place, are full time agency working, and part time casual work.

**Chart 4: Increase in full and part time non-standard temporary work, 2006–16**



Some of those reporting that they are engaged in agency and casual work may also report that they are engaged on a zero-hours contract. We have therefore looked at the number of those on a non-standard contract, removing anyone who reports they are on a zero-hours contract (and again restricting this to employees).

**This gives us a total of 730,000 people facing insecurity because they are on a non-standard temporary contract, a slight decline from 2006, when 770,000 were in this situation.** This is likely to be because a larger number of people are now reporting that they are on a zero-hours contract.

### The extent of insecurity

We estimate that one in ten workers, or 3.2 million people, now face insecurity at work, either because they are on a zero-hours contract, or a temporary contract that offers them little protection at work, or because they are engaged in low paid self-employment.

## Missing out on rights and protections

<b>Type of insecure worker</b>	<b>Why is it a problem?</b>	<b>How many of them are there?</b>	<b>What proportion of the workforce are they?</b>
Low paid self-employment	They miss out on key rights and protections that come with being an employee, and cannot afford to provide a safety net when they are unable to work.	1.7 million	5 per cent of everyone in work  (45 per cent of all self-employed)
Non-standard temporary worker (agency, casual seasonal other)	They risk missing out on key workplace rights and protections, and face lower rates of pay.	730,000	2 per cent of everyone in work  (3 per cent of those who work for an employer)
Zero hour contract workers	They risk missing out on key workplace rights and protections, lack income security and face lower rates of pay	810,000	3 per cent of everyone in work  (3 per cent of those who work for an employer)
<b>TUC estimate of insecure work</b>	<b>These workers risk missing out on access to key rights and protections at work, and cannot afford to protect themselves against the increased level of risk this creates.</b>	<b>3.2 million</b>	<b>10 per cent of everyone in work</b>
People facing insecurity while employed (those in non-standard temporary work and on a zero-hours contract).	These workers risk missing out on key rights and protections at work, without any of the benefits of self-employment	1.5 million	6 per cent of those who work for an employer).

The number of people facing insecurity even while employed is now 1.5 million, an increase of 700,000 people since 2006.

## Section three

# Missing out on rights and protections

The increase in forms of insecure work means that more people miss out on key rights and protections at work.

This section sets out how rights and protections are related to different forms of employment contract, and provides estimates for the number of those who may now be missing out.

It is important to emphasise at the outset that these are estimates only. Due to the complexity of UK employment law, it is not possible to simply map access to rights onto a description of types of employment contract.

The evidence is clear, however, that a greater number of people are now employed in a form of work that offers them fewer rights and protections. The figures below give some indication of the size of this change.

### **Who gets which rights?**

The statutory rights and protections that an individual is entitled to at work depend on their employment status. There are three types of employment status in the UK:

- Employee
- Worker
- Self-employed.

Employees are covered by the full range of statutory rights and protections, workers have access to a more limited range, and self-employed people are protected only by rules on anti-discrimination and health and safety in some cases.

The distinctions between each type of employment status are not clear cut, but rely on a number of tests, determined in the courts. The main factors used to decide employment status are summarised below. If the *majority* of relevant factors apply to an individual then they are likely to be classified as an 'employee', a 'worker' or as 'self-employed'.



## Missing out on rights and protections

Employee	Worker	Self-employed
<ul style="list-style-type: none"> <li>• They are expected to attend work on a regular basis unless they are on annual leave, sick leave or on family related leave (e.g. maternity leave) which has been agreed with their employer</li> <li>• They are required to work a minimum number of hours, whether fixed or variable, and you expect to be paid for the hours that you work</li> <li>• A manager or supervisor is responsible for telling them what work they should do, and when and how to do their work. Some employees may be able to organise how they use their own working time and set some of their own objectives.</li> <li>• The organisation deducts tax and national insurance from their wages</li> <li>• They cannot send a substitute to do your work</li> <li>• The organisation provides them with the equipment and tools they need to do their job</li> <li>• They can use their employer's grievance procedure</li> <li>• They are covered by their employer's disciplinary and redundancy procedures</li> <li>• They have a written contract with the organisation which refers to them as an employee or states that it is a contract of employment</li> </ul>	<ul style="list-style-type: none"> <li>• Their employer has no obligation to offer work and they are not required to accept work if it is offered to them.</li> <li>• Any written contract they have with the organisation describes their working relationship as 'casual', 'freelance', 'zero-hours' or 'as required'</li> <li>• They are expected to do the work themselves, without providing a substitute</li> <li>• The organisation deducts tax and national insurance from their wages</li> <li>• The organisation provides them with the equipment and tools they need to do their job</li> </ul>	<ul style="list-style-type: none"> <li>• They are responsible for paying their own tax and national insurance</li> <li>• They bid or provide quotes to secure work and then submit invoices to receive payment</li> <li>• They have specific jobs or targets to complete, although they decide when and how to do the work</li> <li>• They do not have to carry out the work personally – they can hire another person to do the work or hire other helpers at your own expense</li> <li>• They are not under direct supervision when they are working</li> <li>• They are responsible for meeting any losses, as well as taking profits from their own work</li> <li>• They do not receive any holiday pay or sick pay from the organisation when they are unavailable for work</li> <li>• They provide major items of equipment or materials that are a fundamental requirement to complete a job</li> <li>• They have to correct unsatisfactory work in their own time and at their own expense</li> <li>• They might provide their services to a number of different clients</li> </ul>

Because of the complexity of the law, it is not always easy to establish whether a particular worker, or even a particular contract type, falls within a certain status, and is therefore protected by the associated rights. For example:

- Some zero-hours contract workers may qualify as employees, depending on their working pattern. However, they are still likely to lose out on some key rights such as protection from unfair dismissal or maternity leave because they do not work continuously but have gaps in employment.
- Some agency workers will be treated as self-employed or may find it difficult to establish who is their employer and therefore responsible for their rights.
- Many fixed term workers are likely to be employees, despite the temporary nature of their contract. As such, they will qualify for equal treatment with permanent employment. We have excluded them from our analysis of insecure work throughout this report.

In part because of this complexity, too few people will be aware of the rights they are entitled to. Unscrupulous employers may also take advantage of individuals' uncertain employment status to evade employment rights. It is not uncommon for employers to label people as 'self-employed' or to tell them that because they are on a zero-hours contract, they do not have any rights – even though this will rarely be the case in law.

The table below sets out the main categories of employment rights and how they vary by employment status. It also gives estimates for the number of people who may potentially be missing out on these rights, and how these have changed since 2006. For the purposes of these estimates, we have:

- Assumed that those on zero-hours contracts are treated as 'workers' rather than 'employees' (due to the difficulty for these workers in accessing their rights);
- Included only temporary agency workers who say that they are employed (rather than self-employed)
- Not attempted to estimate the number of permanent employees who miss out on rights because they have not met a qualifying period
- Indicated where self-employed people may be missing out on rights, without making assumptions about whether these people may be able to qualify for worker status (as in the recent case of Uber drivers).

The table shows that an increasing number of people are at risk of missing out on key workplace rights. In particular:

- 1.5 million people are now at risk of missing out on family-friendly rights including access to the right to request flexible work, the rights to maternity and paternity leave and shared parental leave (including the right to return to their job after the leave), an increase of 700,000 compared to a decade ago. In addition, there are 1.7 million self-employed people who lack access to these rights, and

## Missing out on rights and protections

whose low pay means they cannot afford to protect themselves against the risk this creates.

- 1.5 million may have no right to an itemised pay slip, making it more difficult to receive the correct pay, an increase of 700,000 compared to a decade ago.
- These 1.5 million are also likely to be missing out on the right to protection from unfair dismissal.

Key Workplace Right	Who gets it?	How many are at risk of missing out?	Change over ten years
<i>Pay</i>			
National Minimum Wage	All workers including employees	4.8 million self-employed people	+1 million
Holiday pay	All workers including employees	4.8 million self-employed people	+1 million
<i>Information</i>			
Written statement of pay, hours of work, holidays, sick pay, notice periods and disciplinary and grievance procedures	Employees (and agency workers) <sup>13</sup>	4.8 million self-employed people 1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+1 million +700,000
Itemised pay statement	Employees only	4.8 million self-employed people 1.5 million people on ZHCs or casual workers or temporary agency workers	+1 million +700,000
<i>Family friendly rights</i>			
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	4.8 million self-employed people 1.5 million people on zero-hours contracts or agency workers or	+1 million +700,000

<sup>13</sup> 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.

Right to request flexible working	Employees only after a six month qualifying period	4.8 million self-employed people 1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+1 million  +700,000
Unpaid parental leave	Employees only after a 1-year qualifying period	4.8 million self-employed people 1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+1 million  +700,000
<i>Job security</i>			
Protection against unfair dismissal	Employees only following a two year qualifying period	4.8 million self-employed people 1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+1 million  +700,000
Statutory redundancy pay	Employees only following a two year qualifying period	4.8m self-employed people 1.5 million people on zero-hours contracts casual workers or temporary agency workers	+1 million  +700,000
<i>Rights to representation and consultation (employees and workers only)</i>			
Protection from unlawful dismissal on grounds of trade union membership or activities	Employees only	1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+700,000
Protection from unfair dismissal for participating in lawful industrial action	Employees only	1.5 million people on zero-hours contracts or casual workers or temporary agency workers	+700,000

## Missing out on rights and protections

Rights to paid time off for union duties or training including for Union Learning Reps	Employees only	1.5 million people on Zero-hours contracts or casual workers or temporary agency workers	+700,000
<i>Social security protections</i>			
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	4.8 million self-employed people 486,000 people who are earning less than £112 a week while working for an employer	+1 million
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	4.8 million self-employed people 486,000 people who are earning less than £112 a week while working for an employer	+1 million

## Section four

# Do increased pay and flexibility make up for a lack of rights?

It is sometimes argued that the increased risk that has been transferred from the employer to the worker through the lack of rights and protections, is compensated for by an increase in pay and flexibility.

This section therefore looks at the extent to which people working in these jobs benefit either financially, or in terms of their ability to control their own hours. It shows that far from being compensated for the lack of rights they face, insecure workers also face both pay penalties, and a lack of control over their working lives.

### **Pay**

Those working in insecure work are more likely to be low paid compared with those on standard contracts, and the evidence is that for several forms of insecure work, this pay penalty has increased over the last decade.

#### **Pay for the self-employed**

There is now widespread evidence that the pay of self-employed people is both significantly lower than that of employees, and that self-employment has become less financially rewarding over time.

Research by the Social Market Foundation showed that 45 per cent of the self-employed, or 1.7 million people are low paid, that is paid below the level of the government set National Living Wage.<sup>14</sup>

Analysis of the Family Resources Survey also suggests that the proportion of families with a low income who rely on self-employment has increased over the last decade. It finds that the proportion of families with an income of less than £200 a week has increased by six percentage points for families who have a self-employed income earner compared to one percentage point for families where the main income earner is an employee.

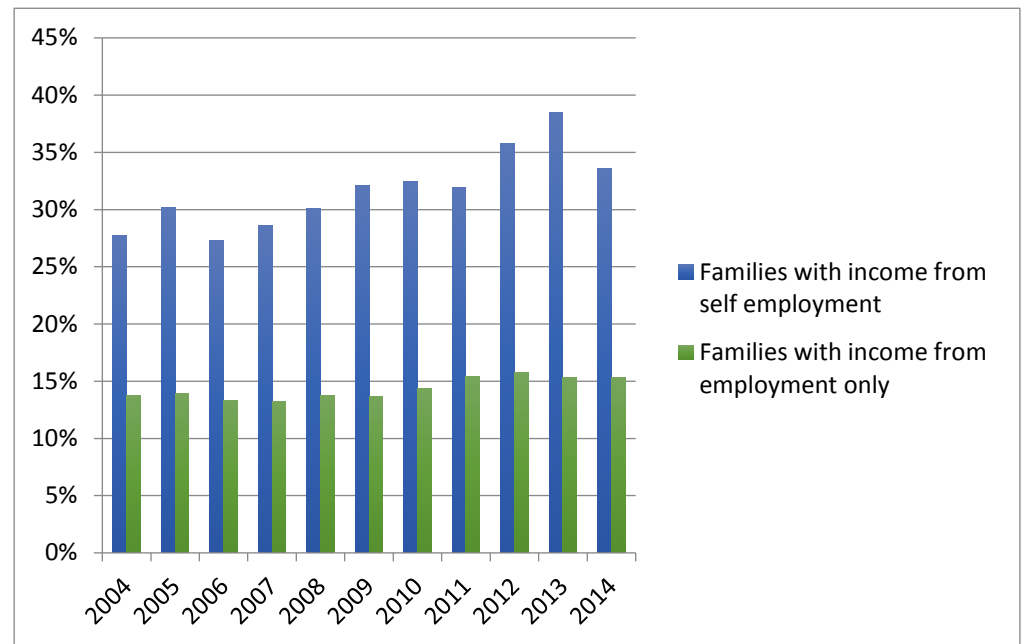
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<sup>14</sup> Nida Broughton and Ben Richards (2016) *Tough Gig: low paid self-employment in the UK and London*, Social Market Foundation <http://www.smf.co.uk/wp-content/uploads/2016/03/Social-Market-Foundation-Tough-Gig-Low-paid-self-employment-in-London-and-the-UK-FINAL-Embargoed-0001-210316.pdf>

## Do increased pay and flexibility make up for a lack of rights?

In 2014/15 (the latest data) 34 per cent of families with some income from self-employment earned less than £200 a week, compared to 15 per cent of families with only employment income.<sup>15</sup>

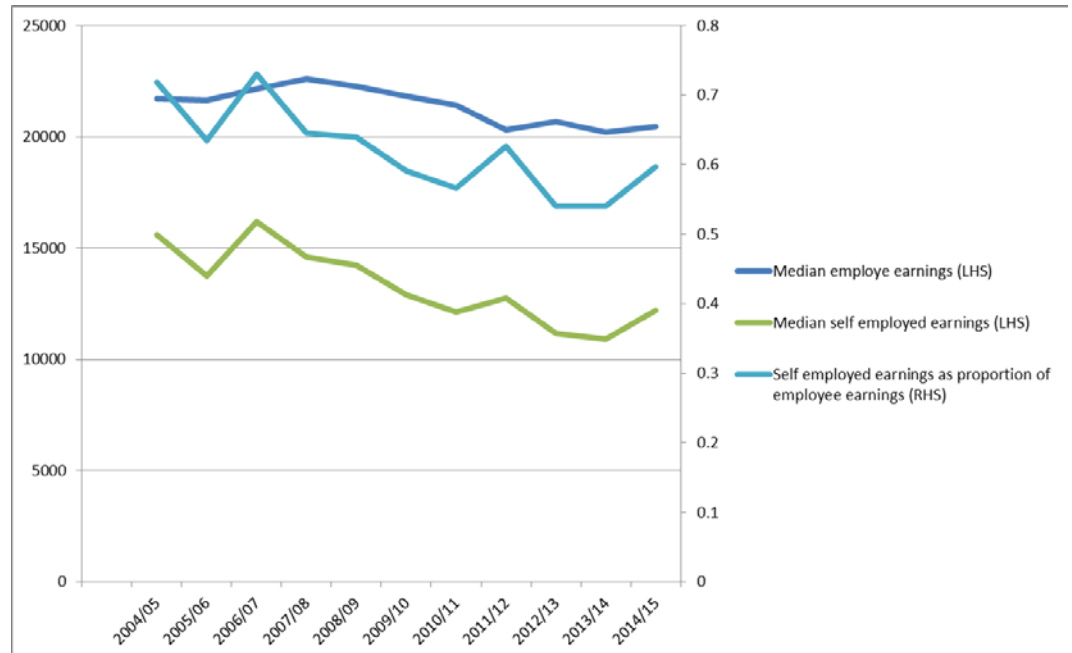
**Chart 5: Proportion of Families earning less than £200 a week**



Looking only at median annual pay (again using the Family Resources Survey) shows that the pay gap for self-employed people has been widening, with median earnings for the self-employed now around 60 per cent of that of the employed, down from 70 per cent in 2004/5.

<sup>15</sup> Analysis of the Family Resources Survey, conducted by the Learning and Work Institute on behalf of the TUC.

**Chart 6: Median employee and self-employed earnings, and self-employed earnings as proportion of employee earnings 2004/5 to 2014/15**



For some, income from self-employment may enable insurance against risks that employment normally protects against, such as sick pay or provision for unemployment. But for an increasing proportion of people – and at least 1.7 million self-employed people paid below the level of the government set National Living Wage, this is clearly not the case.

### Pay for those on zero-hours contracts

Those on zero-hours contracts experience a significant pay penalty. Median pay for those on a zero-hours contract in 2016 was worth just 66 per cent of the median for all employees.

This pay penalty has increased significantly in the last decade. In 2006 the median pay for a worker on a zero-hours contract was worth 74 per cent of that of all employees.

	Median hourly pay for ZHC	Median hourly pay for all employees	Pay for ZHC worker as percentage of that for all employees
2006	£6.58	£8.93	74 per cent
2016	£7.25	£11.05	66 per cent
Change	+£0.67	+£2.12	8 percentage points increase in pay penalty for ZHCs



## Do increased pay and flexibility make up for a lack of rights?

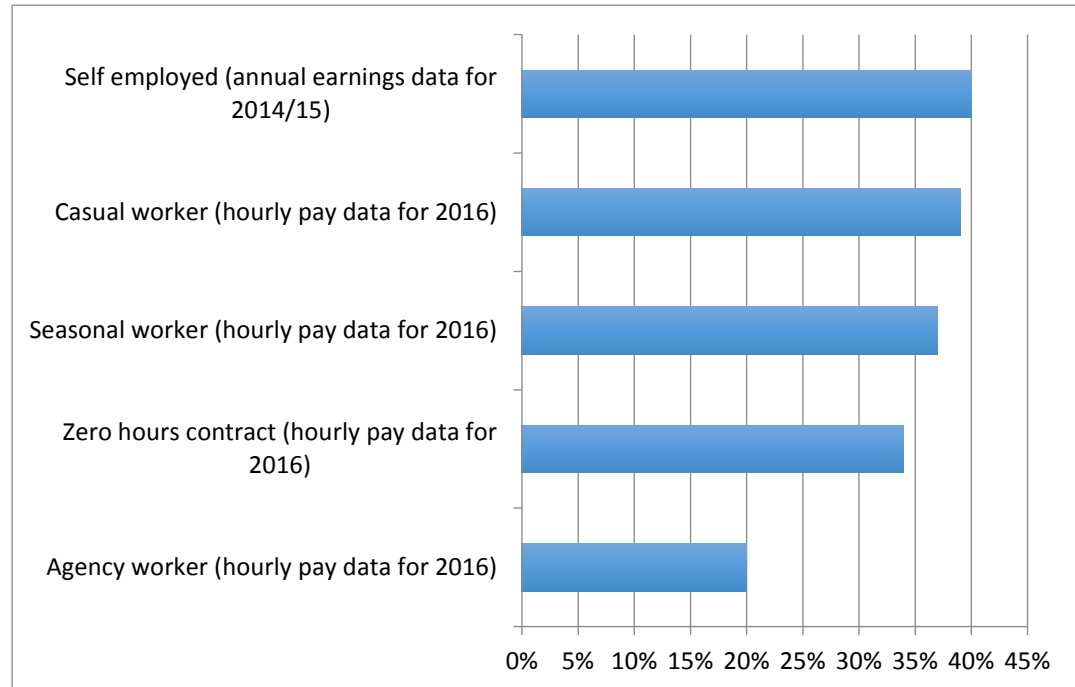
### Pay for those on non-standard contracts

Those on non-standard contracts also face significant pay penalties. Median pay for those working for an agency was worth just 80 per cent that of the average employee; for those in casual or seasonal work, pay was worth just 60 per cent of the employee average.

	<b>All Employee</b>	<b>Zero-hours contract</b>	<b>Working for an employment agency</b>	<b>Casual work</b>	<b>Seasonal work</b>
<i>Median gross hourly pay rate 2006</i>	8.93	6.58	6.35	5.35	5.55
<i>Pay as a percentage of that for all employees</i>	n/a	74%	71%	60%	62%
Median gross hourly pay rate 2016	11.05	7.25	8.80	6.70	7.00
Pay as a percentage of that for all employees	n/a	66%	80%	61%	63%
Change in total pay 2006-2016	2.12	0.67	2.45	1.35	1.45

Overall, it is clear that insecure workers face significant pay penalties, with self-employed people and casual workers experiencing the widest pay gap.

**Chart 7: Size of pay penalty for insecure work**



### **Do insecure workers experience more flexibility at work?**

It is clear that insecure workers enjoy fewer rights at work, and lower pay. Does an increase in flexibility – the ability to control their own hours, provide some compensation for this?

The TUC believes strongly that choice over hours, pay and rights should not be a trade-off. Good employment practices are not only good for those in work, but for business, with evidence showing that more engaged employees are also more productive.<sup>16</sup>

But in the case of insecure workers, it is not clear that people are even enjoying the benefits of greater control over their own working hours. There are also increasing concerns about the use of surveillance at work. Workers at the Amazon warehouse, for example, have their movements and performance monitored by handheld devices, and face disciplinary action if they cannot keep up with set targets.<sup>17</sup> The use of surveillance at work will be the subject of future TUC work within this series, but increasing reports suggest that it is causing high levels of stress and undermining dignity in the workplace.

<sup>16</sup> See, for example, Sissons, K. (2014) *The UK Productivity Puzzle: is employment relations the missing piece?* ACAS. <http://www.acas.org.uk/media/pdf/o/8/The-UK-Productivity-Puzzle-is-employment-relations-the-missing-piece.pdf>

<sup>17</sup> <http://www.dailymail.co.uk/news/article-3997864/Amazombies-Seven-seconds-item-filmed-blistering-12-hours-shifts-timed-toilet-breaks-Christmas-order-does-worker-elves.html>

## Do increased pay and flexibility make up for a lack of rights?

### Self-employment

Self-employment is clearly a positive choice for some individuals, with the self-employed reporting a greater satisfaction with their working life than employees.<sup>18</sup> Nevertheless, recent research has shown that a significant minority of the self-employed, one in five, report little autonomy over their own working hours<sup>19</sup>

There is an increasing concern around false-self-employment, where individuals are labelled by employers as 'self-employed', minimising the costs to the employer in terms of national insurance contributions. These workers lose out on the protections offered by employment, while gaining little of the autonomy offered by working for yourself.

Estimating the scale of this bogus self-employment is clearly difficult. Citizens Advice, based on survey evidence, estimate that there may be up to 460,000 people in this category.<sup>20</sup>

Further evidence comes from a survey undertaken by the Business Energy and Industrial Strategy department (then BIS), which found that at least 100,000 people who were encouraged into self-employment by their previous employer, and now work principally for them. We think that this is a minimum estimate of the number of people who are falsely self-employed<sup>21</sup>

### Zero-hours contracts

Zero-hours contracts may offer limited flexibility to some workers, and one in five of those working on a zero-hours contract are students.

But many workers on zero-hours contracts face uncertainty rather than flexibility. The lack of guaranteed hours means that, under pressure to earn a living, zero-hours contracts workers have to accept shifts when they are offered, with often as little as 24 to 48 hours' notice of when they are required to work.<sup>22</sup>

Workers on zero-hours contracts clearly report a higher lack of satisfaction with their working hours than other workers:

- Three times as many would like to work more hours (31 per cent compared to 10 per cent).

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<sup>18</sup> RSA (2015) *Boosting the living standards of the self-employed*

<https://www.thersa.org/globalassets/pdfs/reports/boosting-the-living-standards-of-the-self-employed-.pdf>

<sup>19</sup> <http://www.smf.co.uk/self-employed-workers-may-getting-worst-worlds/>

<sup>20</sup> <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government/>

<sup>21</sup> <https://www.gov.uk/government/publications/understanding-self-employment>

<sup>22</sup> CIPD (2013) *Zero-Hours Contracts: myth and reality*, [https://www.cipd.co.uk/Images/zero-hours-contracts\\_2013-myth-reality\\_tcm18-10710.pdf](https://www.cipd.co.uk/Images/zero-hours-contracts_2013-myth-reality_tcm18-10710.pdf)

- Although the proportions are small, eight times as many would like to work more hours in a different job (eight per cent compared to one per cent).<sup>23</sup>

This may be related to the fact that zero-hours contract workers are significantly more likely to have been offered no work in the previous week before being surveyed – 15 per cent compared to 9 per cent.

As outlined above, the lack of access to family-friendly rights such as the right to request to work flexibly, that is, to request a working pattern that fits with caring responsibilities, creates problems for workers on zero-hours contracts with family responsibilities. The need to remain available for work at short notice makes it hard for individuals to plan childcare, for example, and what many would like is more certainty in their working hours.

### **Non-standard temporary contracts**

Some forms of temporary work, including fixed term contracts, may offer a good option for those wanting to try out a new area of work, or with a limited period of time they can commit to a job.

As outlined above however, other forms of temporary working, including agency, casual and seasonal work, risk less access to rights at work, alongside a significant pay penalty. Looking across all forms of temporary work, the proportion of those taking temporary work on an involuntary basis (this time including those on fixed term contracts) has grown in the last decade, with 485,000 people, or 30 per cent of the temporary workforce now working on a temporary basis because they cannot find a permanent job, up from 370,000 or 25 per cent of the temporary workforce a decade ago.<sup>24</sup>

Research in 2013 by the University of the West of England looked at the extent to which temporary and permanent employees varied in their level of job satisfaction. They found that the main driver of job satisfaction was security at work – and that the lack of security in temporary, and particularly casual contracts, was driving lower levels of satisfaction.<sup>25</sup>

### **Wider impacts of insecurity**

In addition to lower pay and a lack of control over working life, there is evidence that those in temporary and precarious employment experience negative impacts on their health and well-being.

Analysis of the British Household Panel Survey in the UK has shown that healthy men and women suffer adverse health effects in insecure, low paid work and those facing low earnings and insecurity were two and a half times more likely than those

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<sup>23</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016>

<sup>24</sup> Labour Force Survey data, July September 2006 and 2016.

<sup>25</sup> Chris Dawson and Michael Veliziotis (2013) *Temporary employment, job satisfaction and subjective well-being*, University of the West of England.

## Do increased pay and flexibility make up for a lack of rights?

in better jobs to develop an illness limiting their capacity to work.<sup>26</sup> A report by the World Health Organization also highlighted the negative effects of temporary work on health and well-being. These included higher mortality among temporary workers, and an association between poor mental health and precarious employment.<sup>27</sup>

Research undertaken by Cambridge University shows that a range of flexible employment practices used in supermarkets in the UK and US – including zero-hours contracts – cause widespread anxiety, stress and ‘depressed mental states’ in workers as a result of financial and social uncertainty.<sup>28</sup>

Future TUC work will examine the experiences of insecure workers in greater detail through qualitative research.

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<sup>26</sup> Bartley M, Sacker C and Clarke P (2004) Employment Status, Employment Conditions and Limiting Illness: Prospective Evidence from the British Household Panel Survey 1991-2001, *Journal of Epidemiology and Community Health*, Volume 58, pp501-506 cited in Howard C and Kenway P (2004) *Why Worry Any More About the Low-Paid?* London: New Policy Institute.

<sup>27</sup> World Health Organization Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health (2008); See also Marmot M et al (2010) ‘Fair Society, Healthy Lives: The Marmot Review’, Executive Summary London: The Marmot Review

<sup>28</sup> <http://www.cam.ac.uk/research/news/zero-hours-contracts-are-tip-of-the-iceberg-of-damaging-shift-work-say-researchers#sthash.QzT1sNXe.dpuf>

## Section five

# Who are the new insecure workforce?

This section looks at where insecure workers are most likely to work, and their characteristics in terms of gender and age.

Future TUC work will look in more detail at the sectors in which insecure workers are concentrated, and at the experiences of BAME workers. Previous TUC work has found that BAME workers have been disproportionately affected by the growth in insecure work.<sup>29</sup>

### **Where do insecure workers work?**

Looking at broad categories of self-employment, workers on a zero-hours contract, and those in temporary work (including on fixed term contracts) suggests that potentially insecure workers are spread across a range of industries:

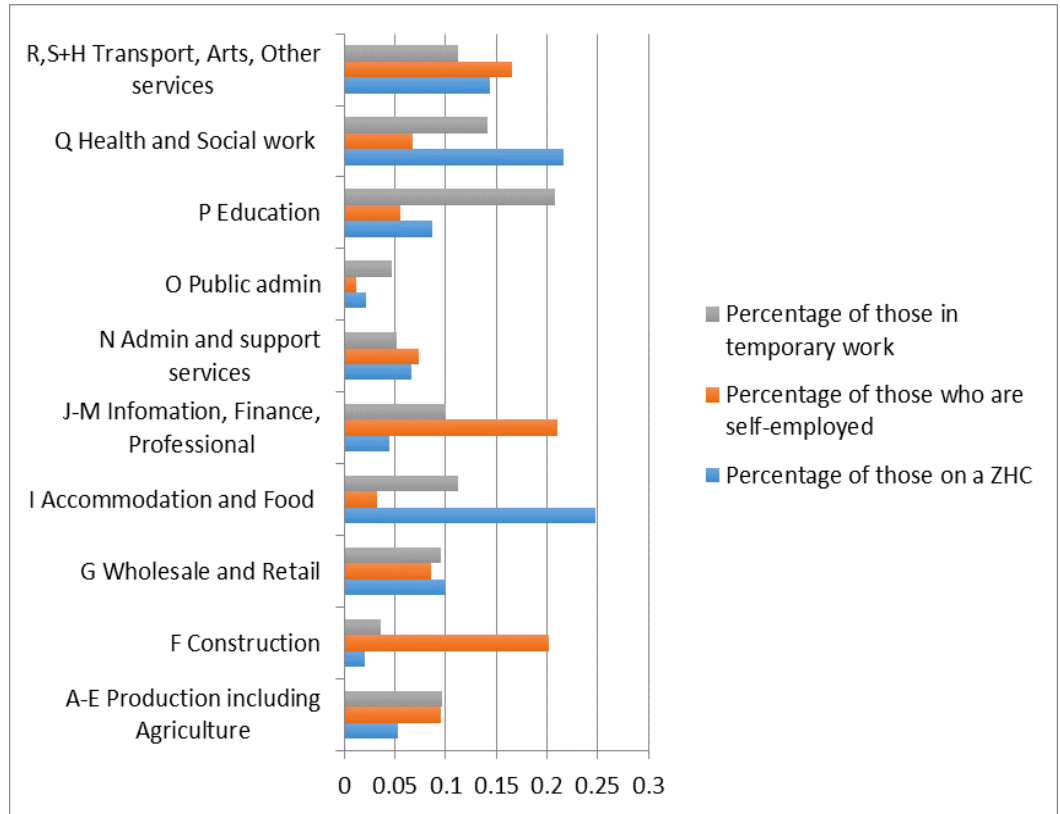
- The self-employed are most likely to be working in information, finance, and professional services (21 per cent) construction (20 per cent), and 'transport, arts and other services' (16 per cent).
- Those on a zero-hours contract are most likely to be working in accommodation and food (25 per cent), health and social work (22 per cent), and 'transport, arts and other services' (14 per cent).
- Those working on a temporary basis are most likely to be working in education (21 per cent), health and social work (14 per cent), and accommodation and food (11 per cent).

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<sup>29</sup> TUC (2016) *Living on the Margins: black workers and casualisation*  
<https://www.tuc.org.uk/equality-issues/black-workers/black-workers-conference/living-margins-black-workers-and>

## Who are the new insecure workforce?

Chart 8: Percentage of potentially insecure workers by industry



More detailed data for those in low paid self-employment (produced by the Social Market Foundation), shows that:

- Five sectors account for 64 per cent of the low-paid self-employed in the UK: construction, administrative and support activities, transport and storage, professional scientific and technical, and the wholesale and retail trade.<sup>30</sup>

### What are the characteristics of the insecure workforce?

Again, the characteristics of those in potentially insecure work differ by the type of work:

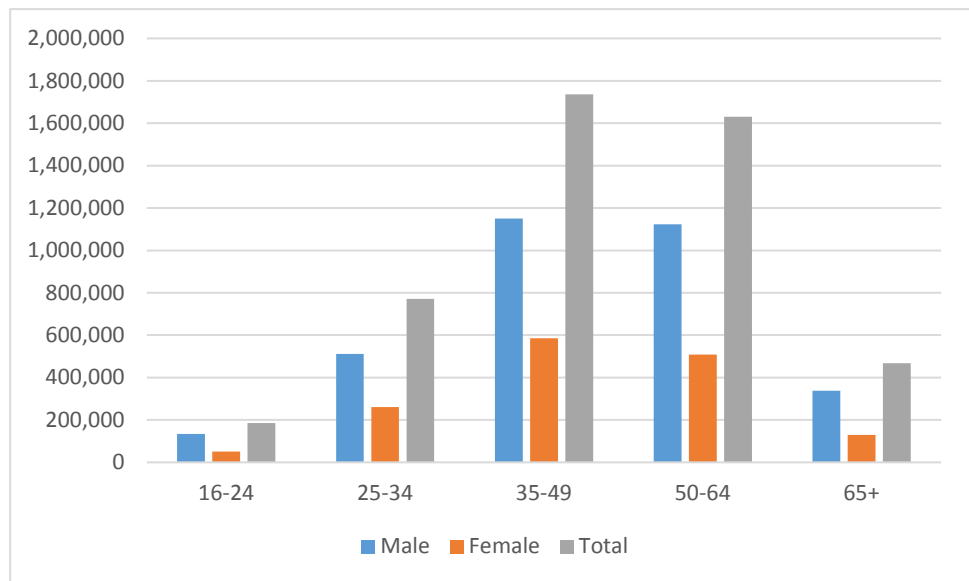
- The majority of those who are self-employed, 67 per cent, are male.
- The majority of those on zero-hours contracts, 55 per cent, are female.
- Men are more likely to be in involuntary temporary work, a third of men compared to around a quarter for women.

Looking at age:

<sup>30</sup> Social Market Foundation (2016) *Tough Gig: low paid self-employment in London and the UK*, <http://www.smf.co.uk/publications/tough-gig-low-paid-self-employment-in-london-and-the-uk/>

- Young workers, those aged 16–24, are most likely to be on a zero-hours contract, but the clear majority of zero-hours contract workers are over the age of 24.
- The same applies for those in agency and casual work, with 40 per cent aged 16-24. Again however, a clear majority cannot be described as young workers.
- The largest group of the self-employed is aged 35–49, although self-employment has been growing fastest amongst those over 50.

**Chart 9: Age of the self-employed – 2016**





Section six

# Addressing the new insecurity

This is the first in a series of TUC reports looking at the new insecure workforce. This report concentrates on describing the new insecurity. Future reports will set out in more detail how these issues should be addressed. However, the TUC believes that there are five areas where the government should act to ensure that everyone has decent rights and protection at work.

## 1. Making sure everyone can access decent rights at work

As set out in this report, access to key workplace rights including protection against unfair dismissal, and family-friendly rights, depend on the 'employment status' of the person at work and whether they meet relevant qualifying periods. This report estimates that in the last decade, the number of people who are entitled to the rights associated with 'worker' status, rather than the full set of rights that comes with being an 'employee', has risen by around 700,000.

The TUC believes that Government should lift the level of the employment rights 'floor', extending existing rights to all those in work, not only those who qualify for 'employee' status. This includes family-friendly rights, protection from unfair dismissal and the right to redundancy pay. Future TUC work will set out how these reforms could work in greater detail.

As an immediate first step, government should create a legal presumption that everyone qualifies for the full set of employee rights, placing the onus on the employer to prove that this is not the case.

## 2. Ensure that self-employment is a choice made by the worker, not the employer

Many people appreciate the flexibility and control over their work that self-employment can offer. But there is increasing evidence of a minority of employers pushing their workforce into self-employment, to avoid meeting their responsibilities to both workers, and to the exchequer.

Employers should not be able to 'opt-out' of their employment and tax responsibilities simply by labelling someone as self-employed. The TUC wants all workers to qualify for all workplace rights unless the employer can demonstrate the individual is genuinely self-employed.

Again, we intend to set out how reforms in this area could work in more detail in future. But measures to tackle bogus self-employment will need to include a review of the tax incentives for employers to offer work to self-employed contractors rather than employees, as enforcement against employers who try to use bogus forms of self-employment to avoid paying the national minimum wage.

### **3. Ensure that everyone is protected when they cannot work**

It is not only rights that are put at risk by the growth of insecure work and self-employment, but also key income protections when people cannot work, whether because they are sick, on maternity or paternity leave, or retire.

As this research sets out the growth in insecure work has been accompanied by a growth in low pay – meaning that too many people miss out on benefits such as sick pay which require them to meet a minimum earnings floor, as well as automatic enrolment into a workplace pension. In particular, the growth in low-paid self-employment means that not only are these workers missing out on key forms of protection offered through the workplace, they increasingly cannot afford to protect themselves through other means.

Two areas in particular need action. First, the TUC believes that no-one should miss out on sick pay because they are low paid. Second, perhaps the most anachronistic part of the system is the lack of any form of support for fathers with non-standard work patterns – an area where the TUC has long argued for change.<sup>31</sup>

### **4. Ensure that existing rights can be realised**

The government's new Director of Labour Market Enforcement – due to be appointed in the New Year – has a key role to play in cracking down on non-compliance with existing rights, including the minimum wage.

The TUC is however concerned that despite welcome new resources for minimum wage enforcement, the enforcement system for breaches of basic workplace rights is substantially under-resourced. In addition, the imposition of fees of up to £1,200 has priced many workers out of justice and created a serious deterrent for individuals to take genuine cases to an employment tribunal. Since their introduction the number employment tribunal cases has fallen by over 9,000 a month.<sup>32</sup> A first step for any government serious about tackling insecurity at work should be to abolish these fees.

### **5. Strengthen worker's ability to organise for better conditions at work**

The issues faced by the new insecure workforce often seem like a ghoulish revival of the problems people first formed trade unions to fight against. No control over working time, low pay, and little access to protection are issues that unions have been forced to tackle throughout the decades – and are still tackling today.

Unions will continue working to protect more working people from insecurity. But there is more we could do with a better framework of trade union rights, enabling far wider coverage of the collective bargaining that is the best protection against insecurity at work. Enabling better access to workplaces for trade unions would be a first step to enable us to build on these gains faster, but there is much more to be

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<sup>31</sup> <https://www.tuc.org.uk/workplace-issues/work-life-balance/employment-rights/two-five-new-fathers-won%E2%80%99t-qualify-shared>

<sup>32</sup> <http://touchstoneblog.org.uk/2016/11/action-tribunal-fees-key-test-theresa-mays-commitment-workers-rights/>

## Addressing the new insecurity

done to strengthen collective bargaining, ensure we can stamp out employment practices that have no place in modern Britain and secure better pay and conditions for everyone. Making the case for how unions can help tackle insecurity at work is a key task for the TUC in the coming months.

The TUC produces regular reports on economic and social issues, providing up to date analysis and commentary on key policy debates.

You can also read TUC policy officers' comments on the issues in the report series and the ongoing economic situation at the TUC public policy blog: **[touchstoneblog.org.uk](http://touchstoneblog.org.uk)**

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