STANDARD WORK: AN ANACHRONISM?
STANDARD WORK: AN ANACHRONISM?

Editors
Jan BUELENS
John PEARSON

Authors
Jan BUELENS
Ferran CAMAS RODA
Raluca DIMITRIU
Kim HAKVOORT
Jari HELLSTEN
Wolfhard KOTHE
Barbara KRESAL
John PEARSON
Ceciel RAYER
Kelly REYNIERS
Cathleen ROSENDAHL

intersentia
Antwerp – Cambridge
Publications on Labour Law

Standard work: an anachronism?
J. Buelens and J. Pearson (eds.)

© 2013 Intersentia
Cambridge – Antwerp – Portland
www.intersentia.be | www.intersentia.co.uk

translation and revision: Sofie Moentjens
lay-out: Els Peeters

ISBN 978-1-78068-132-0
D/2012/7849/170
NUR 825


No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.
FOREWORD

The standardized employment contract: foundation of decent work

During the development of quite some national systems of labour law, the regulator used the open-ended employment contract for a full-time position as reference. This contract offers employees the best possible protection, the best guarantee for job and socio-economic security and an almost automatic affiliation to social security and collective consultation schemes. The open-ended employment contract creates a situation in which employees have a steady job and income. It thus makes a fundamental contribution to the consolidation of the social fabric. Often, stable labour relations are also the foundation of stable and high-quality social relations. Thereby, the open-ended employment contract became the mainstay of respect for human dignity at work and elsewhere. The dominance of the free market economy and the corresponding ideology has long been endorsed by the liberalization of the labour market, which is closely related to its internationalization as well. Because pressure on the nationally developed social correction mechanisms is increased, labour relations are becoming increasingly flexible. As a direct consequence, standardized pay and working conditions are eroded. Precarious employment contracts and precarious types of work are thriving. The reference function of the open-ended employment contract seems to be at risk. The dignity of men at work is jeopardized.

With this “European observatory on standard work”, which was motivated by the concern for a high-quality work environment and society, the Research Unit Social Competition and Law has created an instrument to monitor the situation regarding open-ended employment contracts in various EU countries more closely and to understand the underlying processes more thoroughly.

Marc Rigaux
Research Unit Social Competition and Law
University of Antwerp
INTRODUCTION

1. Is standard work disappearing? ................................................................. 3
2. Standard, non-standard and precarious work ........................................ 6
3. Economics and standard work ................................................................. 9
4. Normative debates about standard work ............................................... 12
5. Methodology ............................................................................................. 15

STANDARD AND NON-STANDARD WORK IN BELGIUM

JAN BUELENS ............................................................................................. 17

1. The concept of standard work ................................................................. 17
   1.1. General impression ........................................................................... 17
      1.1.1. Standard work according to Belgian Law .................................. 17
      1.1.2. Situation in historical perspective .............................................. 19
      1.1.3. Conclusion ................................................................................ 25
   1.2. Criteria for standard work ................................................................. 25
      1.2.1. Full-time .................................................................................... 25
      1.2.2. Working for someone else ........................................................ 27
      1.2.3. Permanent duration .................................................................. 29
      1.2.4. Access to a decent wage ............................................................. 33
      1.2.5. Access to social dialogue ............................................................ 35
      1.2.6. Access to social protection ......................................................... 37
      1.2.7. Access to employment protection ............................................. 38
      1.2.8. Protection of contractual status ................................................. 38
   2. The contrast between standard and non-standard work .................. 39
      2.1. Which of the norms covering standard workers do not apply to non-standard workers? ................................................................. 39
      2.2. Efforts to ensure that workers in the non-standard category are treated in a similar way to standard workers ........................................ 40

STANDARD AND NON-STANDARD WORK IN FINLAND

JARI HELSTEN ............................................................................................. 41

1. A general overview of standard work in Finland ......................... 41
2. Criteria for standard work ........................................ 43
  2.1. Full-time .................................................. 43
  2.2. Working for someone else ................................ 45
  2.3. Permanent duration ........................................ 47
  2.4. Triangular employment relationships – temporary agency work ... 50
  2.5. Access to social protection ................................ 53
  2.6. Access to a decent wage .................................... 56
  2.7. Access to social dialogue ................................... 57
  2.8. Protection of contractual status ............................. 60
3. The contrast between standard and non-standard work .............. 62

Standard and non-standard work in Germany
WOLFHARD KOTHE and CATHLEEN ROSENSDAHL ................. 65

1. Introduction .................................................................. 65
2. The standard work relationship .................................... 66
  2.1. The definition of an employee .................................. 66
  2.2. The labour contract ............................................. 67
  2.3. Working time ................................................... 68
  2.4. Full-time/part-time work ....................................... 70
  2.5. Employment protection ......................................... 72
    2.5.1. Termination of the labour contract ..................... 72
    2.5.2. Recent reforms in dismissal protection law ........ 73
  2.6. Social protection ................................................ 74
    2.6.1. Unemployment insurance ................................. 75
    2.6.2. Statutory pension insurance .............................. 75
    2.6.3. Work accident insurance ................................. 76
    2.6.4. Health insurance and nursing care insurance ....... 76
  2.7. Working for a decent wage ...................................... 77
  2.8. Health and Safety .............................................. 79
  2.9. Further employment conditions ............................... 80
  2.10. Social dialogue ................................................. 81
3. The contrast between standard and non-standard work ............ 83
  3.1. Fixed-term work ............................................... 84
  3.2. Temporary agency work ....................................... 86
  3.3. The contract of work (“Werkvertrag”) ....................... 89
  3.4. Self-employment comparable to an employment relationship (“employee-like person”) .................. 89
  3.5. Part-time work with an average remuneration of less than € 400 per month ........................................... 90
4. Conclusions

Standard and non-standard work in Romania
RALUCA DIMITRIU

1. Concept and evolution
2. Criteria for standard work
   2.1. Full-time
       2.1.1. The comparable employee
       2.1.2. Switching from a full-time job to a part-time job
       2.1.3. The minimum duration
       2.1.4. Extra hours
   2.2. Indefinite duration
2.3. Working for someone else
2.4. Working at the employer’s workplace
2.5. Working for a decent wage
2.6. Access to social dialogue
2.7. The absence of financial risk
2.8. Employment protection
2.9. Protection of contractual status
3. The contrast between standard and non-standard work
4. The increase of precarious work and the corresponding protection deficit implied
5. The standard employment contract as a formal contract
6. False labelling of employment contracts

Standard and non-standard work in Slovenia
BARBARA KRESAL

1. The concept of standard work
   1.1. Historical background and recent trends
   1.2. Criteria for standard work
       1.2.1. Permanent/unlimited duration (open-ended contracts of employment and protection against dismissals)
       1.2.2. Full-time (regulation of working time)
       1.2.3. Working for someone else
       1.2.4. Decent wage
       1.2.5. Social protection
       1.2.6. Social dialogue
       1.2.7. Protection of contractual status
2. Non-standard work ................................................................. 133
   2.1. Fixed-term contract of employment ...................................... 134
   2.2. Part-time work .................................................................. 137
   2.3. Temporary agency workers ................................................ 138
   2.4. Home- and telework .......................................................... 139
   2.5. Other forms of non-standard work within the framework of the employment relationship .............................................. 139
   2.6. Forms of non-standard work outside the framework of the employment contract ...................................................... 140
       2.6.1. Temporary and occasional work of students .................... 141
       2.6.2. Exceptions to illegal work ............................................. 141
       2.6.3. Self-employed .............................................................. 143
       2.6.4. Economically dependent workers ................................ 144
3. Conclusion ............................................................................. 145

Standard and non-standard work in Spain
FERRAN CAMAS RODA ................................................................ 149

1. The effect of the economic crisis on the Spanish labour market .......... 149
2. Criteria applied in the labour market in order to define standard work .................................................................................. 155
   2.1. The use in Spain of employment contracts of limited and indefinite duration ................................................................. 155
   2.2. The need for higher levels of employment-related qualifications and training in Spain .................................................. 160
   2.3. The situation with regard to full-time and part-time employment contracts ................................................................. 162
   2.4. Procedures for subcontracting employment. Three-sided employment arrangements ................................................. 165
   2.5. Social dialogue as key to the provision of regular employment .... 168
3. Conclusions ............................................................................. 170

Standard and non-standard work in the Netherlands
CECIEL RAYER and KIM HAKVOORT ......................................... 173

1. The concept of standard work .................................................. 173
   1.1. Historical development of the concept of standard work ........ 173
   1.2. Criteria for standard work .................................................. 176
       1.2.1. Working time .............................................................. 177
       1.2.2. Dismissal protection .................................................... 179
1.2.3. Working for someone else ........................................ 180
1.2.4. Decent wage .................................................................. 181
1.2.5. Access to other employment protection ...................... 184
1.2.6. Access to social dialogue ............................................ 184
1.2.7. Access to social protection ......................................... 185

2. The contrast between standard and non-standard work: type of protection and category of non-standard work ........................................ 186
2.1. Dismissal protection ...................................................... 186
2.1.1. On call contracts ....................................................... 187
2.1.2. Temporary contracts ............................................... 188
2.1.3. Temporary agency work .................................... 189
2.2. Working time, health and safety and minimum wage protection ........................................................................ 190
2.2.1. Temporary workers and temporary agency workers .... 190
2.2.2. Self-employed .......................................................... 191

3. Conclusion ........................................................................ 192

Standard and non-standard work in the United Kingdom
JOHN PEARSON .................................................................. 193

1. Criteria for standard work .............................................. 196
1.1. Full-time ......................................................................... 196
1.2. Indefinite duration ....................................................... 198
1.3. Working for someone else ....................................... 201
1.4. Working for a decent wage .................................. 206
1.5. Trade union rights ......................................................... 209
1.5.1. Individual rights for unionists (and against unions) .... 209
1.5.2. Rights to establish collective representation .......... 213
1.5.3. Scope and subject matter of bargaining ............... 217
1.6. Possible future developments .................................... 219

2. Conclusion ........................................................................ 220

Conclusions of the observatory
JAN BUELENS .................................................................. 225