



Anna Ginès i Fabrellas
ESADE Ramon Llull University
<https://orcid.org/0000-0001-6313-8355>

Atypical work as flexible work: The rise of labour instability in the Spanish labour market

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Summary

The aim of the article is to analyze the Spanish labour law reforms adopted in a period of ten years and their impact in terms of increasing or decreasing employment precariousness; particularly, in terms of increasing or decreasing labour instability through the promotion of atypical forms of work. The paper concludes that the legislative efforts aimed at promoting permanent employment mainly through reductions on Social Security contributions on behalf of the employer have been offset with other reforms that promote and favour atypical forms of work, such as fixed-term, training, internship, part-time contracts, and self-employment. As a result, atypical forms of work have significantly increased and become flexible forms of work, thus, increasing labour instability.

Keywords: labour law reform, precarious work, atypical work, indefinite contract, labour instability

I. Introduction

The standard employment relationship, characterized by a high degree of regularity and durability of the labour contract and the protection of employees from socially unacceptable practices and working conditions, has been progressively overlapped by forms of atypical or non-standard work like temporary, causal, part-time and informal work, homeworking, moonlighting, self-employment and, more recently, digital work.¹

¹ G. RODGERS: "Precarious work in Western Europe: The state of the debate", in *Precarious Jobs in labor market regulation: The growth of atypical employment in Western Europe*.

In addition, the standard labour relationship has also suffered significant changes in terms of quality of employment. In recent years there have been important regulatory reforms increasing the flexibilization of labour relations and reducing employment protection, benefits and rights.² Essentially, professional careers are less stable with several transitions regarding labour market attachment and some social groups, such as young workers, mature workers, and long-term unemployed, are more vulnerable to exclusion and precarious labour market trajectories.

Vives et al.³ have expressed that precarious employment has expanded as a result of the adoption in developed countries of law reforms that have led to more flexible labour arrangements and the erosion of the “standard” employment relationship; that is, permanent full-time jobs with social benefits. Similarly, Vives et al.,⁴ Holman et al.,⁵ and Julià⁶ have all concluded that precarious employment has significantly increased over the past decades, even among workers with permanent contracts due to employment flexibility. Furthermore, even though the decline of the “standard” employment relationship has affected the entire workforce, women, young, mature, low-qualified and immigrant workers, and long-term unemployed are more affected by precarious work.⁷

Eds. G. RODGER, J. RODGERS. Geneva 1989, pp. 1–16 and *Non-standard employment around the world: understanding challenges, shaping prospects*. Geneva 2016.

² S.M. RUESGA BENITO: “Crisis económica y reformas laborales”, in *Reformas Laborales en la Gran Recesión*. Coord. J.I. PÉREZ INFANTE, S.M. RUESGA BENITO. Valencia 2016, pp. 21–57.

³ A. VIVES, M. AMABLE, M. FERRER, S. MONCADA, C. LLORENS, C. MUNTANER, F.G. BENAVIDES, J. BENACH: “Employment Precariousness and Poor Mental Health: Evidence from Spain on a New Social Determinant of Health.” *Journal of Environmental and Public Health*, 2013, pp. 1–10 (digital version).

⁴ A. VIVES, M. AMABLE, M. FERRER et al.: “The Employment Precariousness Scale (EPRES): psychometric properties of a new tool for epidemiological studies among waged and salaried workers.” *Occupational and Environmental Medicine*, vol. 67, no. 8, 2010, pp. 548–555.

⁵ D. HOLMAN, U.O. MANCHESTER, U. HOLTGREWE, U., F.U.B. ARBEITSWELT, U. VIENNA, A. RAFFERTY, S. VANDEKERCKHOVE: *Convergence and divergence of job quality in Europe 1995–2010*. Luxembourg 2015.

⁶ M. JULIÀ PÉREZ: *Precarització de les condicions d’ocupació a la Unió Europea: precarietat, informalitat, i associació amb la salut* [Dissertation]. Universitat Pompeu Fabra, Barcelona, Spain 2016.

⁷ L.F. VOSKO: “Precarious employment: towards an improved understanding of labour market insecurity”, in *Precarious Employment: Understanding Labour Market Insecu-*

A similar conclusion was reached by Puig-Barrachina et al.⁸ who analyzed a subsample of the EU-27 Fourth European Working Condition Survey of 2005; and, more recently, in the Sixth European Working Conditions Survey of 2015.⁹

The global financial and economic crisis has had a strong impact on the Spanish labour market and, especially, on job destruction and unemployment.¹⁰ In this sense, between 2008 and 2015 the average unemployment rate in the European Union has evolved from 7.0% to 9.4%, reaching the maximum of 10.9% in 2013.¹¹ The Spanish labour market has been greatly affected by the financial and economic crisis, leading to an unemployment rate of 26.94% and more than 6,278,200 people unemployed, according to the Labour Force Survey.¹² Since this historical maximum, the unemployment rate in the Spanish labour market has decreased reaching 18.91%.¹³ However, other indicators do not point to a prospective social and labour recovery in Spain.

The economic crisis and the registered unemployment rate have led to fundamental changes in the Spanish regulatory framework and in the situation of its labour market. In the wake of the economic crisis and, especially, since 2012, the Spanish Government and Parliament adopted a surprisingly large number of labour law reforms.¹⁴ Accord-

city in Canada. Ed. L.F. Vosko. McGill-Queen's University Press, Quebec (Canada), 2006, pp. 3–39 and A. VIVES, C. VANROELEN, M. AMABLE, M. FERRER, S. MONCADA, C. LLORENS, C. MUNTANER, F.G. BENAVIDES, J. BENACH: "Employment precariousness in Spain: prevalence, social distribution, and population-attributable risk percent of poor mental health." *International journal of Health Services*, vol. 41, no. 4, 2011, pp. 625–646.

⁸ V. PUIG-BARRACHINA, C. VANROELEN, A. VIVES, J.M. MARTÍNEZ, C. MUNTANER, K. LEVECQUE, J. BENACH, F. LOUCKX: "Measuring employment precariousness in the European Working Conditions Survey: The social distribution in Europe." *Work*, no. 49, 2014, pp. 143–161.

⁹ A. PARENT-THIRION, I. BILETTA, J. CABRITA, O. VARGAS, G. VERMEYLEN, A. WILCZYNSKA, M. WILKENS: *Sixth European Working Conditions Survey – Overview report*. Luxembourg 2016.

¹⁰ S.M. RUESGA BENITO: "Crisis económica y reformas laborales"..., pp. 21–57.

¹¹ Labour Force Survey, Eurostat (available at: <http://ec.europa.eu/eurostat/web/lfs/data/main-tables>).

¹² Labour Force Survey, National Statistics Institute, first trimester of 2013, (available at: http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176918&menu=ultiDatos&idp=1254735976595, access date: 5.03.2020).

¹³ Labour Force Survey, National Statistics Institute, third trimester of 2016.

¹⁴ J. GARCÍA VIÑA: "La evolución de las relaciones laborales en los 25 años de vigencia del Estatuto de los Trabajadores (1995–2015)." *Estudios Financieros. Revista de Tra-*

ing to the legislator, these reforms were aimed at eliminating unnecessary rigidities of the Spanish labour regulation and, thus, promoting job creation. In this sense, the objective of the 2012 labour law reform, identified by the Spanish doctrine as one of the most important and substantial reform of the Spanish labour market,¹⁵ was to “create the necessary conditions for the Spanish economy to foster employment once again and generate the necessary security for workers and entrepreneurs, markets and investors” (preamble of the Royal Decree-Law 3/2012 [hereinafter: RDL 3/2012]).¹⁶

However, despite aiming at fostering job creation, they reduced employment protection and social standards. Independently on the reference to “flexicurity” and the need to “ensure both employers flexibility in managing the company’s human resources and the workers’ safety in employment and adequate levels of social protection” (reference included in the preambles of both the RDL 3/2012 and the subsequently ratified Law 3/2016¹⁷), the argument of this article is that these reforms led to a significant increase in employment precariousness. In this sense, Beltran¹⁸ (2014) concludes that the 2012 Spanish labour reform only reduced labour standards, as there is no evidence of increase of workers’ social protection rights.

Despite the two decisions of the Spanish Constitutional Court declaring its constitutionality,¹⁹ an important sector of the Spanish literature identified this labour reform as a disruption with the constitu-

bajo y Seguridad Social, no. 396, 2016, pp. 131–174 and F. VALDÉS DAL-RÉ: “La reforma laboral de 2012–2014: reflexiones críticas sobre la fuente prioritaria de regulación y las materias reguladas”, in *Reformas Laborales en la Gran Recesión*. Coord. J.I. PÉREZ INFANTE, S.M. RUESGA BENITO. Valencia 2016, pp. 59–81.

¹⁵ M.E. CASAS BAAMONDE, M. RODRÍGUEZ-PIÑERO Y BRAVO-FERRER, F. VALDÉS DAL-RÉ: “Las reformas de la reforma laboral de 2012 (La Ley 3/2012 y el RDL 20/2012).” *Relaciones Laborales* no. 15–18, 2012, pp. 1–65.

¹⁶ *Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral* (available at: <https://www.boe.es/boe/dias/2012/02/11/pdfs/BOE-A-2012-2076.pdf>).

¹⁷ *Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral* (available at: <https://www.boe.es/boe/dias/2012/07/07/pdfs/BOE-A-2012-9110.pdf>).

¹⁸ I. BELTRAN DE HEREDIA RUIZ: “Reformas laborales y ‘asiatización’ de las condiciones de trabajo: el tránsito (inacabado) hacia el nuevo paradigma de las relaciones laborales.” *IUSLabor*, no. 3, 2014, pp. 1–6.

¹⁹ See decisions of the Spanish Constitutional Court number 119/2014, July 16, 2014 and number 8/2015, January 22, 2015.

tional model of labour relations.²⁰ Similarly, Sala Franco²¹ argued that the 2012 Spanish labour law reform led to a labour relations model based on business productivity and competitiveness in detriment of labour standards. Beltran concluded that the Spanish labour regulation had never reached such high degree of liberalization as after the 2012 Spanish labour law reform.

Casas Baamonde²² argued that because of the global market and new forms of business organization, Labour Law has lost efficacy and efficiency in protecting workers' rights and compensating the inequalities between workers and employers inherent in the employment relationship. The aim of Labour Law has shifted from worker protection to economic policy that requires the erosion of labour rights and new forms of atypical work to promote employment and job creation.

In this sense, the aim of the article is to analyze the Spanish labour law reforms adopted over the past fifteen years and their impact in terms of increasing or decreasing employment precariousness; specifically, in terms of increasing or decreasing labour instability through the promotion of atypical forms of work. The article's hypothesis is that, especially due to the current economic situation, atypical forms of work have been legally promoted in Spain in the past years.

A review of the literature in the first section of the article will define precarious employment as a combination of multiple factors: instability, insecurity, lack of protection, and social or economic vulnerability. Nevertheless, this article focuses on the factor regarding instability and atypical forms of work as one of the key elements of precarious work. The following section of the article analyzes, from a quantitative and qualitative standpoint, various labour law reforms adopted in Spain and their impact in terms of promoting atypical forms of work. And, finally, the article arrives at the most relevant conclusions.

²⁰ M.E. CASAS BAAMONDE, M. RODRÍGUEZ-PIÑERO Y BRAVO-FERRER, F. VALDÉS DALRÉ: "Las reformas de la reforma laboral de 2012..."

²¹ T. SALA FRANCO: "Puntos críticos para un debate sobre la reforma laboral de 2012." *Relaciones Laborales*, no. 10, 2013, pp. 1–14 (digital version).

²² M.E. CASAS BAAMONDE: "La eficacia y la eficiencia del Derecho del Trabajo: reflexiones sobre un Derecho cuestionado por la economía y el desempleo." *Relaciones Laborales*, no. 10, 2014, pp. 1–30 (digital version).

II. A multidimensional approach to precarious employment

The concept of precarious employment or precarious work cannot only be analyzed from the perspective of temporariness or atypical work, but rather poor quality of employment must be considered a multidimensional configuration of employment precariousness. Even though there is a still existing tendency to consider permanent work as secure, other characteristics of the employment relationship have to be considered in terms the existence of precarious employment.

According to Rodgers,²³ there are four dimensions to precarious employment: instability, insecurity, lack of worker's protection, and social or economic vulnerability. In this sense, he identifies precarious employment as, first, those works with a short time horizon or a high probability of job loss; fixed-term work and irregular forms of work should be included in this dimension of precarious employment "as there is uncertainty as to its continuing availability." Second, precarious employment is identified with worker's insecurity or lack of control over work; less collective or individual control over working conditions results in more insecurity. Third, the lack of protection (through law, collective organization or customary practice) against discrimination, unfair dismissal, or unacceptable working conditions or practices also defines precarious employment. Furthermore, the lack of social protection in terms of access to Social Security benefits in cases of accidents, unemployment, etc. also contributes to the configuration of precarious employment. Finally, precarious employment is constructed with the fourth dimension of social and economic vulnerability; in this sense, low income jobs can be identified as precarious "if they are associated with poverty and insecure social insertion."

Precarious employment arrangements are identified by some combination of these dimensions. Particularly, a fixed-term contract cannot necessarily be classified as precarious if workers have control over their working conditions, protection against unlawful practices, access to social protection and have an adequate income. "It is some combination of these factors which identifies precarious work, and the boundaries around the concept are inevitably to some extent arbitrary."²⁴

²³ G. RODGERS: "Precarious work in Western Europe: The state of the debate" ...

²⁴ Ibidem.

Similarly, Amable et al.²⁵ identify precarious employment with four dimensions: instability, vulnerability, insufficiency or uncertainty of wages, and reduced social benefits. Tompa et al.²⁶ associate precarious employment with instability, lack of protection, insecurity, and social and economic vulnerability. Rather than identifying precarious employment with forms of atypical employment contracts (fixed-term, part-time, casual work, etc.), their research focuses also on labour conditions and labour-market experiences, including those affecting standard work.

Lewchuk et al.²⁷ use the employment strain model and focus on the dimensions of control, effort, and support: (i) control in the sense of certainty or uncertainty over future employment and the terms and conditions of current employment; (ii) effort related with finding and keeping an employment and balancing the demands of multiple employers or work locations; and (iii) assistance regarding the support workers receive at work from unions and co-workers, as well as at home from friends and family.

Instead of precarious employment, Holman²⁸ focuses on the concept of job quality as those “work and employment-related factors that foster beneficial outcomes for the employee, particularly psychological well-being and positive attitudes such as job satisfaction.” These work and employment-related factors include work organization, wages and payment system, security and flexibility, skills and development, and engagement and collective representation. The study, consistent with the previous literature, provides evidence that quality of work is a multidimensional concept, as not all jobs with high pay or high job discretion or cognitively demanding tasks are of high quality.

In this sense, the study concludes that there are six types of jobs in the European Union which vary in quality: (i) active jobs are consid-

²⁵ M. AMABLE, J. BENACH, S. GONZÁLEZ: “La precariedad laboral y su repercusión sobre la salud: conceptos y resultados preliminares de un estudio multimétodos.” *Archivos de Prevención de Riesgos Laborales*, no. 4, 2001, pp. 169–184.

²⁶ E. TOMPA, H. SCOTT-MARSHALL, R. DOLINSCHI, S. TREEVITHICK, S. BHATTACHARYA: “Precarious employment experiences and their health consequences: towards a theoretical framework.” *Work*, vol. 28, no. 3, pp. 209–224.

²⁷ W. LEWCHUK, M. CLARKE, A. DE WOLFF: “Working without commitments: precarious employment and health.” *Work, Employment & Society*, vol. 22, no. 3, 2008, pp. 387–406.

²⁸ D. HOLMAN: “Job types and job quality in Europe.” *Human Relations*, vol. 66, no. 4, 2013, pp. 475–502.

ered high-quality jobs as they are characterized by high job resources, demands, wage, security, flexibility in working time and standard hours; (ii) saturated jobs and (iii) team-based jobs are qualified as moderate-quality jobs and they are characterized by high job resources, demands, and wages, but high non-standard hours and low worktime flexibility; and (iv) passive-independent jobs, (v) insecure jobs and (vi) high-strain jobs are all three considered low-quality jobs as a result of low job resources, demands, wage, security, worktime flexibility and/or high non-standard hours.

The literature also includes an approach to precarious employment from a power resources perspective. Among others, Puig i Barrachina²⁹ and Puig i Barrachina et al.³⁰ view precarious employment as an asymmetrical employment relationship, and related labour conditions and taking as a reference point the standard employment relationship, viewed as a fairly balanced labour relationship. Similarly, Rodgers³¹ tackles precarious employment from the perspective of worker vulnerability.

Combining a contractual and power relations perspective, Amable³² defines employment precariousness as a multidimensional concept including contractual and workplace social features of precarious work. Specifically, precarious employment is defined as a six-dimension concept. Among the contractual features of employment precariousness, it includes (i) instability, in terms of type and duration of the employment contract; (ii) disempowerment, in the sense of individual-level bargaining over employment conditions; (iii) low wages and possible economic deprivation; and (iv) limited workers' rights and social protection. The social dimension of precarious employment includes (v) worker vulnerability or defenselessness towards authoritarian, abusive, or threatening treatment and (vi) powerlessness to exercise legal rights.

²⁹ V. PUIG I BARRACHINA: *Monitoring employment-related health inequalities in Europe. The case of unemployment and precarious employment* [dissertation]. Spain 2013.

³⁰ V. PUIG-BARRACHINA, C. VANROELEN, A. VIVES, J. M. MARTÍNEZ, C. MUNTANER, K. LEVECQUE, J. BENACH, F. LOUCKX: "Measuring employment precariousness in the European Working Conditions Survey..."

³¹ L. RODGERS: *Labour Law, Vulnerability and the Regulation of Precarious Work*. Edward Elgar Publishing, 2016.

³² M. AMABLE: *La precariedad laboral y su impacto sobre la salud. Un estudio en trabajadores asalariados en España* [dissertation]. Universitat Pompeu Fabra, Barcelona 2006.

The construct of precarious employment was operationalized by Vives³³ and Vives et al.³⁴ as the Employment Precariousness Scale (EPRES). In the context of epistemological research, the EPRES is a questionnaire which includes the former six dimensions of the employment precariousness concept, aimed at assessing the impact of precarious employment on public health. The EPRES is the first measure of precarious employment that includes the dimensions of worker vulnerability, disempowerment and exercise of rights. Both studies show good psychometric properties among permanent and fixed-term workers.

III. Increase of labour instability: Ineffective promotion of indefinite contract vs. the rise of atypical work

IIIa. Quantitative study of the impact of the labour law reforms in Spain from 2000 to 2015 on labour stability

The analysis of the impact of the labour law reforms adopted in Spain in the past fifteen years in terms of increasing or decreasing employment precariousness and, specifically, job instability requires, first, a quantitative study on the labour law reforms passed in the Spanish legal system from 2000 to 2015.³⁵

Considering the 1995 Spanish Workers' Statute,³⁶ as well as other laws passed that affected labour issues regulated in the Workers' Statute from 2000 to 2015, the Spanish labour legislation has undergone

³³ A. VIVES: *A multidimensional approach to precarious employment: measurement, association with poor mental health and prevalence in the Spanish workforce* [dissertation]. Barcelona 2010.

³⁴ A. VIVES, M. AMABLE, M. FERRER et al.: "The Employment Precariousness Scale (EPRES)..."

³⁵ See a complete version of the study in A. GINÈS I FABRELLAS: "The rise of precarious work in Spain. The effects of increase labour market flexibility", in *Precarious Work. The Challenge for Labour Law in Europe*. Eds. I. FLORCZAK, J. KENNER, M. OTTO. Edward Elgar, 2019.

³⁶ Royal Legislative Decree 1/1995 (*Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*) (available at: http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html). The 1995 Workers' Statute, although recently repealed by the 2015 Workers' Statute (*Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*), was applicable during the time period analyzed in the study (2000–2015).

a total of 58 labour law reforms adopted in the Spanish legal system; 45 labour reforms that modified the Spanish Workers' Statute and 13 others that, despite not modifying it, affected labour issues or institutions regulated in the Workers' Statute.

The first conclusion that can be drawn from this analysis is that labour law reforms have been implemented in the Spanish legal system as an "anti-crisis" measure, aimed at promoting job creation and employment.³⁷ In this sense, of the total of 58 labour reforms analyzed in this study, 42 include in their preamble the intention to create jobs and reduce unemployment. This perspective of labour law reforms has intensified since 2008 (although surprisingly no reform was adopted that year) because of the economic and financial global crisis, when practically all labour law reforms aimed at creating jobs and promoting employment.

The second conclusion is that, the legislator's concept of labour law reforms as instruments to create jobs and reduce unemployment can also be seen in the issues affected by these reforms. The quantitative study shows that the labour reforms adopted in the past fifteen years have mainly affected issues related with the employment contract, labour conditions, and dismissals, that is, social policies to promote employment and flexibility measures.³⁸ From a mere quantitative perspective, the labour issues most affected by the reforms adopted in the past years have been social policies to promote employment, essentially employment of workers with risk of exclusion (long-term unemployed, disabled workers, young workers, mature workers, etc.) and permanent contracts. Other labour institutions significantly reformed in the past fifteen years have been atypical contracts (fixed-term, training, part-time contracts, and self-employment), dismissals and redundancies, workers' representative rights, Temporary Employment Agencies and work-life balance measures.

Finally, the third conclusions derived from the quantitative study is that the labour law reforms adopted in the Spanish legal system from

³⁷ A. MONTOYA MELGAR: "Las leyes laborales de la X legislatura (2012–2015)." *Nueva Revista Española de Derecho del Trabajo*, no. 183, 2016, pp. 15–26 and J. GARCÍA VIÑA: "La evolución de las relaciones laborales en los 25 años de vigencia del Estatuto de los Trabajadores (1995–2015)"...

³⁸ F. VALDÉS DAL-RÉ: "La reforma laboral de 2012–2014: reflexiones críticas sobre la fuente prioritaria de regulación y las materias reguladas"...

2000 to 2015 have had a diverse impact in terms of promoting stable work. On the one hand, multiple reforms have promoted indefinite contracts through reductions on Social Security contributions. Specifically, on 20 occasions the Spanish legislator has adopted legislative measures to promote employment and, specifically, indefinite employment, mainly through economic incentives. Although the qualitative study developed in next section will show the limited efficiency of Social Security contributions to promote employment, the frequent use of these measures to promote stable employment is undeniable. Nevertheless, on the other hand, the legislative efforts aimed at promoting permanent contracts have been (counterintuitively and simultaneously) offset with other reforms that promote and favour atypical forms of work, such as fixed-term, training, part-time contracts, and self-employment.

IIIb. Subsidies on Social Security contributions and special indefinite contracts to promote stable employment

A recurrent legislative practice adopted by the legislator in the past fifteen years – as shown in the quantitative study – has been the promotion of the indefinite employment contract. This promotion has been developed mainly through reductions and subsidies on Social Security contributions. Practically half of the labour law reforms adopted in Spain in the past fifteen years have introduced reductions and subsidies on Social Security contributions for the adoption of permanent contracts. Two of the most recent reforms in this sense have been the introduction of a flat rate of Social Security contributions of 100€ during 24 months for the hiring of workers through permanent contracts³⁹ and an exemption on Social Security contributions for the first 500€ in new permanent contracts for 24 months.⁴⁰

The indefinite relationship has also been promoted through the creation of new permanent labour contracts. A good example of this

³⁹ Royal Decree-Law 3/2014 (*Real Decreto-Ley 3/2014, de 28 de febrero, de medidas urgentes para el fomento del empleo y la contratación indefinida*).

⁴⁰ Royal Decree-Law 1/2015 (*Real Decreto-Ley 1/2015, de 27 de febrero, de mecanismos de segunda oportunidad, reducción de carga financiera y otras medidas de orden social*).

is found in the 2012 labour law reform that created the indefinite contract to support entrepreneurs.⁴¹ The main feature of this contract is the one-year trial period, giving the employer the right to extinguish the employment relationship at any time during this first year without the need to justify just cause nor pay severance pay. This contract can only be adopted as long as the Spanish unemployment rate is above 15% and it entitles employers with fiscal incentives and/or reductions on Social Security contributions given they hire workers identified as more vulnerable (mainly, young workers, unemployed, workers over 45 years and women) and employ the worker for more than three years and maintain the level of employment in the company during one year.

These two mechanisms of promotion of permanent contracts (Social Security contributions and special indefinite contracts) have proven to be, however, ineffective.⁴² Given the total number of permanent contracts subscribed, the percentage of subsidized contracts is 4.89% of all initial permanent contracts subscribed and 3.25% if we include converted fixed-term contracts.⁴³ The creation of special indefinite contracts aimed at the promotion of stable labour relationships is not highly effective. In this sense, the indefinite contract to support entrepreneurs introduced by the 2012 labour law reforms only represents 15.61% of the indefinite contracts subscribed.

Notwithstanding its systematic use by the legislator as means to incentivize stable employment, previously quoted data question the effectiveness of reductions on Social Security contributions and special indefinite contracts. It is true that these incentives are usually only applicable for specific groups of workers – essentially, workers with higher unemployment rates – not being available for the entire workforce. However, the statistical data provided shows that more than 80% of the total number of permanent contracts subscribed are ordi-

⁴¹ Article 4 Royal Decree-Law 3/2012 and Law 3/2012 (*Real Decreto-Ley 3/2012, de 10 de febrero* and *Ley 3/2012 de 6 de julio, de medidas urgentes para la reforma del mercado laboral*).

⁴² M. E. CASAS BAAMONDE, M. RODRÍGUEZ-PIÑERO Y BRAVO-FERRER, F. VALDÉS DALRÉ: "La huida del derecho del trabajo hacia el 'emprendimiento', las reformas de la Reforma Laboral de 2012 y otras reformas: la L 11/2013 y el RDL 11/2013." *Relaciones Laborales*, no. 10, 2013, pp. 1–25 (digital version).

⁴³ Data from May 2016 obtained from the Spanish Public State Employment Service (available at: http://www.sepe.es/contenidos/que_es_el_sepe/estadisticas/datos_estadisticos/contratos/index.html).

nary non-subsidized indefinite contracts; thus, confirming its ineffectiveness to promote stable employment.

A more recent legislative technique has focused on subsidizing, not the initial subscription of an indefinite contract, but rather the conversion of a fixed-term contract into a permanent contract. An example of this formula to promote stable employment is found in the contract for first youth employment introduced in 2013.⁴⁴ This fixed-term contract (aimed at providing a first labour experience for unemployed young workers) recognizes employers who convert this contract into an indefinite contract a reduction on Social Security contributions of 500€ a year during three years; this reduction is equivalent to 700€ when the contract is concluded with a woman.

The subsidy of the conversion of fixed-term contracts into permanent ones proves to be slightly more effective, as 33.57% of the permanent contracts concluded were converted fixed-term contracts. Nonetheless, if we consider the total number of temporary contracts concluded, the percentage of fixed-term contracts transformed into permanent represent only 3.07%.⁴⁵

IIIc. Legal encouragement of atypical forms of work to promote employment

The ineffective measures aimed at promoting stable employment have been simultaneously adopted with other reforms that encouraged atypical forms of work, mainly fixed-term contracts, part-time work and, more recently, self-employment.

Fixed-term contracts and the duality of the Spanish labour market

In the perspective of the Spanish legal system, temporary employment is subject to the causality principle,⁴⁶ allowing the employer to sub-

⁴⁴ Article 12 Royal Decree-Law 4/2013 and Law 11/2013 (*Real Decreto-Ley 4/2013, de 22 de febrero* and *Ley 11/2013, de 26 de julio, de medidas de apoyo al emprendedor y de estímulo del crecimiento y de la creación de empleo*).

⁴⁵ Spanish Public State Employment Service, May 2016.

⁴⁶ R. AGUILERA IZQUIERDO: "El principio de «causalidad» en la contratación temporal." *Revista del Ministerio de Trabajo*, no. 33, 2001, pp. 99–122.

scribe a fixed-term contract only when there is legal cause. The main types of fixed-term contracts regulated by the Workers' Statute adheres to temporary work requirements related with the characteristics of the work (specific project or service, temporary increase in workload or temporary replacement of absent workers) or workers' characteristics, such as: training, internship, or professional experience.⁴⁷ As a result of the causality principle, the indefinite contract is the legally preferred form of employment, reserving the fixed-term contract for temporary needs and situations.

Notwithstanding the foregoing, temporary work in Spain has traditionally been quantitatively significant. Although the percentage of fixed-term workers decreased during the economic crisis (doubtless of the exponential increase of unemployment) it is now again one of the countries in the European Union with a higher rate of fixed-term contracts. In this sense, 93.74% of all contracts subscribed were temporary contracts,⁴⁸ representing fixed-term workers 25.04% of the entire workforce.⁴⁹ The percentage of fixed-term workers is especially high for young workers (54%) and in the agricultural (63.41%) and construction sectors (41.28%). This level of temporary work clearly exceeds the average in the European Union (11.2%) and the euro area (12.2%) and is significantly higher than the one registered in other countries, such as the United Kingdom (4.7%), Belgium (7.3%), Germany (10.1%), or France (13.9%).⁵⁰

In has been argued that in legal systems with high protection for permanent workers, high levels of temporary work reflect the employer's need to facilitate lay-offs to adapt the company's workforce to its productive needs.⁵¹ This has been claimed to be the situation of the Spanish labour market, characterized by an important duality where permanent workers benefit from strong protective labour laws in com-

⁴⁷ M. LUQUE PARRA, A. GINÈS I FABRELLAS: "Fixed-term contracts in Spain." *Comparative Labor Law Dossier. Temporary work and fixed-term contracts*, IUSLabor, no. 1, 2014, pp. 45–54.

⁴⁸ Spanish Public State Employment Service, May 2016.

⁴⁹ Labour Force Survey, National Statistics Institute, first trimester 2016 (available at: https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176918&menu=ultiDatos&idp=1254735976595, access date: 5.3.2020).

⁵⁰ Labour Force Survey, Eurostat, 2015.

⁵¹ J. RODGERS (ed.): *Precarious Jobs in labor market regulation: The growth of atypical employment in Western Europe*. Geneva 1989, pp. 1–16.

parison with temporary workers.⁵² However, the Spanish literature has also identified as cause of such high temporality rate the adoption in 1984 of temporary contracts to promote employment,⁵³ which allowed the adoption of fixed-term contracts regardless of the existence of a temporary need or circumstance. As an exception to the causality principle mentioned previously, it has been argued that this reform introduced the culture in many companies to use fixed-term contract for a relatively fix percentage of the workforce.⁵⁴

In addition to the measures aimed at promoting stable employment, during the past fifteen years the Spanish legislator has also adopted labour reforms aimed at reducing the duality of the labour market. Although the temporary rate has been uniformly high throughout this period, there have been multiple reforms of fixed-term contracts. However, the legal approach has varied significantly.

During the first stage from 2000 to 2010, the strategy adopted was to protect labour rights of fixed-term workers and to discourage (from a legal and economic perspective) temporary contracts. In this sense, the 2001 labour law reform introduced the equality principle between indefinite and temporary workers, according to which fixed-term workers are entitled to the same labour rights as permanent workers, including seniority.⁵⁵ The 2001 labour reform also increased Social Security contributions for short-term temporary contracts.⁵⁶

Fixed-term contracts were legally discouraged by introducing in 2006 of the chaining rule of temporary contracts. According to this rule, workers that have been employed in a company with more than one fixed-term contract for more than 24 months in a period of 30 months

⁵² A. VIVES: *A multidimensional approach to precarious employment: measurement, association with poor mental health and prevalence in the Spanish workforce* [dissertation]. Universitat Pompeu Fabra, Barcelona, Spain, 2010.

⁵³ Royal Decree 1989/1984 (*Real Decreto 1989/1984, de 17 de octubre, por el que se regula la contratación temporal como medida de fomento del empleo*).

⁵⁴ J.A. LINARES POLAINO: "La movilidad geográfica, la modificación sustancial de las condiciones de trabajo y las cláusulas de inaplicación salarial", in *Las reformas laborales de 2010*. Coord. J. MORENO GENÉ, A. SOLÉ PUIG. Barcelona 2012, pp. 217–237.

⁵⁵ Article 1.9 Royal Decree-Law 5/2001 and Law 12/2001 (*Real Decreto-Ley 2/2011, de 2 de marzo*, and *Ley 12/2001, de 9 de julio, de medidas urgentes de reforma del mercado de trabajo para el incremento del empleo y la mejora de su calidad*).

⁵⁶ Sixth Additional Provision Law 12/2001.

automatically acquire the status of permanent workers.⁵⁷ Furthermore, in 2010 the legislator introduced a maximum duration of three years for fixed-term contracts for a specific project or service (article 15.1.a) Workers' Statute).⁵⁸

Economic disincentives for fixed-term contracts were also introduced by the 2010 labour law reform.⁵⁹ This reform increased severance pay for temporary workers from 8 to 12 days of salary per year of service. Simultaneously, it introduced a direct liability of the public wage guarantee fund (Fondo de Garantía Salarial) of 8 days of salary of the severance pay for objective dismissals. Employers that fired workers based on business grounds (economic, technical, productive or organizational causes) only paid 12 days per year of service of the 20- days severance pay legally recognized to affected workers. As a result, from the perspective of severance pay, employers were economically indifferent between hiring temporary or permanent workers, as severance pay was equal in both cases.

However, mainly as a result of the economic crisis, since 2012 the labour reforms adopted have promoted fixed-term contracts, with the objective of creating jobs and allowing flexible forms of employment for companies.⁶⁰ Given the high rates of unemployment, the Spanish legislator aimed labour market policies at promoting the creation of employment – any type of employment, including unstable and atypical forms of employment. A clear example of this optic is the contract for first youth employment,⁶¹ which is a fixed-term contract for unemployed young workers without a prior labour experience. The main characteristic of this contract (and main source of criticism) is that it imposes an exception to the causality principle of fixed-term contracts as it allows employers to use this contract for any type of job, including permanent jobs, leading to an increase of instability for young workers.⁶²

⁵⁷ Article 12.2 Royal Decree-Law 5/2006 and Law 43/2006 (*Real Decreto-Ley 5/2006, de 6 de junio* and *Ley 43/2006, de 29 de diciembre, para la mejora del crecimiento y del empleo*).

⁵⁸ Article 1 RD-L 10/2010 and Law 35/2010.

⁵⁹ Articles 1.5 and Third Transitional Provision RD-L 10/2010 and Law 35/2010, respectively.

⁶⁰ P. ORTÍZ GARCÍA: "Cambios en la legislación laboral y contratación temporal en España." *Cuadernos de Relaciones Laborales*, vol. 31, no. 1, 2013, pp. 141–165.

⁶¹ Article 12 RD-L 4/2013 and Law 11/2013.

⁶² A. GINÈS I FABRELLAS: "Nuevas modalidades contractuales para trabajadores jóvenes. A razón de la Ley 11/2013, de 26 de julio, de medidas de apoyo al emprendedor

Fixed-term contracts have also been promoted as a result of the elimination in 2014⁶³ of the liability of the public wage guarantee fund, which aligned severance pay for termination of fixed-term contracts and dismissals based on business causes. Since January 1, 2014, severance pay for dismissals based on business grounds of a permanent worker is 20 days of salary per year of service, while for the termination of fixed-term contracts it is 12 days. The reintroduction of such economic difference promotes temporary contracts as employers benefit from lower severance pay, as well as higher flexibility in adapting human resources to its productive needs.

The reforms on temporary work agencies throughout the period 2000–2015 have generally aimed at promoting agency work. On the one hand, the equality principle between permanent and fixed-term workers was recognized to agency workers in 2010⁶⁴ due to the transposition of Directive 2008/104/EC.⁶⁵ However, on the other hand, some reforms adopted during this period strongly promoted agency work. For example, the 2001 labour reform reduced from 13.5 to 12 months the prohibition to hire agency workers when the job post had been covered for more than 12 months in a period of 18 months by agency workers;⁶⁶ and then eliminated by the 2006 labour law reform.⁶⁷ Furthermore, the 2010 labour law reform reduced the list of prohibited dangerous activities, extending agency work to objectively dangerous activities such as construction, mining, offshore platforms, manu-

y de estímulo del crecimiento y de la creación de empleo”, in *Retos del Derecho del Trabajo frente al desempleo juvenil. XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales*. Coord. J. L. MONEREO PÉREZ. Monografías de Temas Laborales, Consejo Andaluz de Relaciones Laborales, 2014, pp. 887–903.

⁶³ Fifth Final Provision Law 22/2013 (*Ley 22/2013, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2014*).

⁶⁴ Article 17 Royal Decree-Law 10/2010 and Law 35/2010 (*Real Decreto-Ley 10/2010, de 16 de junio* and *Ley 35/2010 de 17 de septiembre, de medidas urgentes para la reforma del mercado de trabajo*).

⁶⁵ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

⁶⁶ Article 13 Royal Decree-Law 5/2001 and Law 12/2001 (*Real Decreto-ley 5/2001, de 2 marzo, de Medidas Urgentes de Reforma del Mercado de Trabajo para el incremento del empleo y la mejora de su calidad* and *Ley 12/2001, de 9 de julio, de medidas urgentes de reforma del mercado de trabajo para el incremento del empleo y la mejora de su calidad*).

⁶⁷ Article 13 RD-L 5/2006 and Law 43/2006.

facturing, jobs with explosives and high-voltage electrical hazards.⁶⁸ Given the short duration of agency contracts and lower training and experience of agency workers, this reform contributed to reducing the quality of agency work and increasing the risk of occupational accidents and diseases. In 2013 agency workers were able to enter into training contracts⁶⁹ and Temporary Employment Agencies could act as recruitment agencies.⁷⁰

Part-time work and working time flexibility

Part-time work has been promoted over the past fifteen years by redefining its regulations regarding working time,⁷¹ questioning the possible use of this contract to achieve work-life balance.⁷²

The first important reform regarding part-time work took place in 2001, increasing worktime flexibility for this type of contracts.⁷³ In this sense, prior to this reform, part-time work was defined as the provision of services for several hours a day, a week, a month or a year for less than 77% of the working time of full-time workers. However, since 2001, part-time work is defined as having less working time than a comparable full-time worker (article 12.1 Workers' Statute). Hence, any reduction on working hours compared to a full-time worker qualifies as part-time.

Further flexibility in part-time work was introduced by increasing the number of complementary hours – that is, hours performed above ordinary working time. The above-mentioned 2001 labour reform increased the maximum of complementary hours from 30% to 60% of

⁶⁸ Second Additional Provision RD-L 10/2010 and Law 35/2010.

⁶⁹ Third Final Provision RD-L 4/2013 and Law 11/2013 and article 3 Royal Decree-Law 16/2013 (*Real Decreto-ley 16/2013, de 20 de diciembre, de medidas para favorecer la contratación estable y mejorar la empleabilidad de los trabajadores*).

⁷⁰ Article 1 RD-L 3/2012 and Law 3/2012.

⁷¹ J. GARCÍA VIÑA: "La evolución de las relaciones laborales en los 25 años de vigencia del Estatuto de los Trabajadores (1995–2015)" ...

⁷² A. GINÈS I FABRELLAS: "Contrato para la formación y el aprendizaje y contrato a tiempo parcial", in *Las novedades de la Ley 3/2012, de reforma del mercado laboral, y su impacto en el sistema de relaciones laborales*. Dir. S. DEL REY GUANTER. La Ley, Madrid 2013, pp. 63–122.

⁷³ Article 1.3 RD-L 5/2001 and Law 12/2001.

the number of ordinary hours. The 2012⁷⁴ and 2013⁷⁵ labour reforms (sometimes through contradictory reforms) insisted to pursue this direction: (i) overtime in part-time contracts in addition to complementary hours was allowed in 2012, although banned again one year later; (ii) worker's ability to waive the agreement to perform complementary hours was limited; (iii) and the number of complementary hours was further increased, reaching 90% of ordinary hours.

As a result of these reforms, the current regulation recognizes two types of complementary hours that can be performed by part-time workers (article 12 Workers' Statute):

- Agreed complementary hours require an express written agreement establishing the worker's willingness to perform complementary hours when required by the employer. Such agreement can only be entered into with workers with minimum 10 hours per week of ordinary hours. Complementary hours cannot exceed 30% of ordinary working time (or between 30–60% when increased by collective agreement) and the agreement. After one year of subscribing the agreement, workers may waive the covenant, however only due to work-life balance reasons, incompatibility with another part-time contract or with training.
- Voluntary complementary hours can only be performed by permanent workers with minimum 10 hours per week of ordinary hours. They are voluntary and cannot exceed 15% of ordinary hours (or 30% of agreed in the collective agreement).

Finally, part-time work was also promoted by the introduction of new forms thereof, like the formative part-time contract introduced in 2013 for workers without experience, unemployed, or training that combine part-time work with formative training.⁷⁶

Training contracts: Increased age of workers and maximum duration

Training contracts have also been legally promoted mainly by increasing the age of workers allowed to conclude this contract and their

⁷⁴ Article 5 RD-L 3/2012 and Law 3/2012.

⁷⁵ Article 1.1 RD-L 16/2013.

⁷⁶ Article 9 RD-L 4/2013 and Law 11/2013.

maximum duration.⁷⁷ In this sense, the maximum age for the training contract went from 21 years in 2001, to 24 for unemployed workers in 2006,⁷⁸ to 25 in 2011,⁷⁹ and to 30 in 2012, and until the unemployment rate in Spain is below 15%,⁸⁰ which occurred in 2018. There have also been increases when it comes to the maximum duration of training contracts, from two to three years.⁸¹ Training contracts have also been promoted allowing their formalization by temporary employment agencies⁸² and through the creation of new special training contracts, such as the previously mentioned formative part-time contract.⁸³

Since training contracts are recognized, a 15–30% wage reduction compared to an “ordinary” worker (Article 11 Worker’s Statue), the promotion of training contracts clearly increases precarious employment, especially regarding young workers.

Nevertheless, training contracts represent less than 2% of the total number of contracts concluded,⁸⁴ as companies willing to train workers have more attractive legal options. In this sense, the legislator has also promoted training of young workers outside the employment relationship, by regulating academic and non-labour internships in companies.⁸⁵

Self-employment

Finally, self-employment has been heavily promoted in recent years. Many labour reforms adopted in the analyzed timeframe have includ-

⁷⁷ A. GINÈS I FABRELLAS: “Contrato para la formación y el aprendizaje y contrato a tiempo parcial”...

⁷⁸ Article 12 Royal Decree-Law 5/2006 and Law 43/2006 (*Real Decreto-Ley 5/2006, de 9 de junio and Ley 43/2006, de 29 de diciembre, para la mejora del crecimiento y del empleo*).

⁷⁹ Article 1 Royal Decree-Law 10/2011 (*Real Decreto-ley 10/2011, de 26 de agosto, de medidas urgentes para la promoción del empleo de los jóvenes, el fomento de la estabilidad en el empleo y el mantenimiento del programa de recualificación profesional de las personas que agoten su protección por desempleo*).

⁸⁰ Ninth transitional provision Royal Decree-Law 3/2012.

⁸¹ Article 2.2 RD-L 3/2012 and Law 3/2012.

⁸² Third Final Provision RD-L 4/2013 and Law 11/2013 and Article 1.1 RD-L 16/2013.

⁸³ Article 9 RD-L 4/2013 and Law 11/2013.

⁸⁴ Spanish Public State Employment Service, May 2016.

⁸⁵ Royal Decrees 1543/2011 and 592/2014 (*Real Decreto 1543/2011, de 31 de octubre, por el que se regulan las prácticas no laborales en empresas y el Real Decreto 592/2014, de 11 de julio, por el que se regulan las prácticas académicas externas de los estudiantes universitarios*).

ed measures to promote self-employment to reduce the unemployment rate and stimulate economic activity.

Examples are: the possibility to receive unemployment benefits in a lump sum for workers that join labour cooperatives,⁸⁶ reductions on Social Security contributions for self-employed workers that hire permanent workers⁸⁷ or the creation of specific labour contracts linked to reductions on Social Security contributions, like the indefinite contract for young workers hired by micro-companies or self-employed workers.⁸⁸

IV. Final remarks: Atypical work as flexible work

The quantitative and qualitative studies carried out in the article show that the labour reforms adopted in the past fifteen years have clearly promoted atypical forms of work (essentially, fixed-term, part-time, training contracts and self-employment) while relegating the promotion of stable employment to ineffective measures like reductions on Social Security contributions.

It is not possible to classify all forms of atypical work as precarious employment. For example, some fixed-term workers might not consider themselves as precarious as they might prefer short term jobs that offer high returns or because it allows them to combine work and training. Similarly, part-time workers are not necessarily precarious, as some can have permanent contracts and, hence, are protected like indefinite workers.⁸⁹ Workers with family responsibilities might prefer part-time contracts for an adequate work-life balance (although some researchers argue that in some cases voluntariness could be fictitious as women are forced to consider only available options to fulfill their family needs).⁹⁰ Finally, neither can self-employed workers be inevita-

⁸⁶ Article 1 Royal Decree-Law 1300/2009 (*Real Decreto 1300/2009, de 31 de julio, de medidas urgentes de empleo destinadas a los trabajadores autónomos y a las cooperativas y sociedades laborales*).

⁸⁷ For example, for the article 1 RD-L 1300/2009.

⁸⁸ Article 10 RD-L 4/2013 and Law 11/2013.

⁸⁹ G. RODGERS: "Precarious work in Western Europe: The state of the debate" ...

⁹⁰ N. TORBISCO CASALS: "Visibilizar la discriminación, revertir la vulnerabilidad: Reivindicando la trascendencia del análisis crítico de Ariadna", in *Jornada sobre Derecho privado y género Acto en recuerdo de la doctora Ariadna Aguilera Rull, InDret*, no. 1, 2016, pp. 30-38.

bly considered precarious. Although the Spanish case law shows many examples of worker misclassification,⁹¹ some self-employed workers can have stable, productive, and profitable economic activities.⁹²

Nevertheless, the review of the literature showed that atypical forms of work are a variable for precariousness. In general terms, it is possible to qualify these forms of atypical work as instable employment. For example, temporary workers are more liable to unemployment as their contract is, by definition, fixed-term⁹³ and statistically entails lower labour conditions.⁹⁴ Evidence of this is found in the Spanish economic crisis where temporary workers were the first to lose their jobs and enter unemployment.⁹⁵

Furthermore, workers employed under atypical contracts usually have to bear worse labour conditions and social protection. In spite of the principle of equal treatment between permanent and fixed-term contracts, there is statistical evidence of a significant wage gap related to these two groups of workers.⁹⁶ With respect to part-time workers, it was not until 2014 that Social Security law was amended to avoid indirect discrimination due to differences in contribution periods to access Social Security benefits for part-time workers⁹⁷ – although there are still unjustified differences between full and part-time workers.⁹⁸

⁹¹ For all, see decisions of the Spanish Supreme Court of September 20, 1995.

⁹² G. RODGERS: "Precarious work in Western Europe: The state of the debate" ...

⁹³ Ibidem.

⁹⁴ J. CABEZA PEREIRO: *Essay on precarious work and vulnerable workers*. Thomson Reuters Aranzadi, Cizur Menor (Navarra), 2016.

⁹⁵ In 2008, the number of temporary workers that obtained unemployment benefits was approximately 1,400,000, while permanent workers due to dismissal for business reasons reached only over 127,000 (unemployment benefits statistics, Spanish Ministry of Employment and Social Security, available at: <http://www.empleo.gob.es/estadisti-cas/PRD/welcome.htm>, access date: 5.3.2020).

⁹⁶ Annual survey of salary structure, Spanish National Statistics Institute, 2013 (available at: http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736061721&menu=ultiDatos&idp=1254735976596).

⁹⁷ Article 5 Law 1/2014 (*Ley 1/2014, de 28 de febrero, para la protección de los trabajadores a tiempo parcial y otras medidas urgentes en el orden económico y social*).

⁹⁸ C. GALA DURAN: "Trabajo a tiempo parcial y Seguridad Social: un paso atrás en el camino de la equiparación de condiciones. Comentario de la STC 156/2014, de 25 de septiembre." *IUSLabor*, no. 3, 2014, pp. 1–14 (digital version).

As a result, it is possible to state that legal trends of promotion of atypical work can be defined as determinants of precariousness and provide evidence of deterioration of labour and social protection.⁹⁹ This is the situation in the Spanish labour market, where part-time contracts have increased approximately 16% prior the economic crisis, representing nowadays more than 15% of the entire workforce,¹⁰⁰ of which more than 70% is due to the impossibility to find a full-time contract.¹⁰¹ Fixed-term contracts have peaked, representing more than 94% of all employment contracts concluded and more than 25% of the workforce.¹⁰² Moreover, the duration of temporary contracts has decreased over the past years, resulting in an average duration of less than 33 days, where more than 26% of fixed-term contracts have a duration lower than 7 days and more than 44% lower than one month.¹⁰³

In conclusion, labour law reforms adopted in Spain in the past fifteen years have significantly increased atypical work and, thus, labour instability. Atypical work has become flexible work that allows companies to consign part of their productive needs to fix-term, part-time, or self-employed. Companies can (legally or illegally) achieve flexibility by adapting their workforce to economic and productive circumstances without having to bear the labour and social costs of permanent contracts.

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⁹⁹ G. RODGERS: "Precarious work in Western Europe: The state of the debate"...

¹⁰⁰ Labour Force Survey, Spanish National Statistics Institute, first trimester 2016.

¹⁰¹ Institute for Women, Spanish Ministry of Health, Social Services and Equality, 2014 (available at: <http://www.inmujer.gob.es/estadisticas/consulta.do?area=6>)

¹⁰² Labour Force Survey, National Statistics Institute, first trimester 2016.

¹⁰³ Data obtained from the Spanish Public State Employment Service, 2015.

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Praca atypowa jako praca elastyczna Wzrost niestabilności zatrudnienia na hiszpańskim rynku pracy

Streszczenie

Celem niniejszego artykułu jest analiza reform prawa pracy przeprowadzonych w Hiszpanii na przestrzeni ostatnich piętnastu lat, a także wpływu tych reform na poziom stabilności lub niestabilności zatrudnienia. W szczególności artykuł skupia się na podnoszeniu lub obniżaniu stabilności zatrudnienia poprzez promocję atypowych form zatrudniania. Artykuł kończy się wnioskami, zgodnie z którymi legislacyjne próby promocji zatrudnienia na podstawie umowy o pracę polegające głównie na obniżeniu obowiązkowych składek na ubezpieczenie społeczne płaconych przez pracodawcę zostały – w tym samym czasie i wbrew logice – zrównoważone przez reformy prawa pracy promujące atypowe formy zatrudnienia, takie jak umowy na czas

określony, staże, umowy na część etatu oraz promocję samozatrudnienia. W rezultacie wzrosła popularność atypowych form zatrudnienia, które stały się tym samym nowymi elastycznymi formami zatrudnienia, co spowodowało wzrost niestabilności na rynku pracy.

Słowa kluczowe: reformy prawa pracy, niestabilne formy zatrudnienia, umowa na czas nieokreślony, praca atypowa, niestabilność zatrudnienia

Travail atypique comme travail flexible La croissance de l'instabilité de l'embauche sur le marché du travail espagnol

Résumé

L'objectif du présent article est d'analyser les réformes du droit du travail menées en Espagne dans les dix / quinze dernières années, et aussi l'influence de ces réformes sur le niveau de la stabilité ou de l'instabilité de l'emploi. L'article se concentre en particulier sur l'augmentation ou sur la baisse de la stabilité de l'emploi résultant de la promotion des formes d'embauche atypiques.

Vers la fin de l'article, on conclut que les tentatives législatives de promotion visant à promouvoir l'emploi permanent surtout grâce à la réduction des cotisations pour la Sécurité sociale payées par l'employeur ont été équilibrées par d'autres réformes qui promeuvent et favorisent des formes d'embauche atypiques, telles que contrats de travail à durée déterminée, stages, contrat à mi-temps et travail indépendant. Par conséquent, la popularité des formes d'embauche atypiques a considérablement augmenté. Celles-ci sont devenues de nouvelles formes d'embauche flexibles, ce qui a contribué à la croissance de l'instabilité sur le marché du travail.

Mots clés: réformes du droit du travail, formes d'embauche instables, contrat de travail à durée indéterminée, travail atypique, instabilité de l'embauche