NON-STANDARD EMPLOYMENT AROUND THE WORLD

Understanding challenges, shaping prospects

Legal implications and Regulatory Responses
Content of the NSE Report

1. What is non-standard employment?
2. Understanding trends in non-standard employment
3. Women, young people and migrants in non-standard employment
4. Why firms use non-standard employment and how it affects them
5. Effect on workers, labour markets and society
6. Addressing decent work deficits in non-standard employment
Defining Non-standard employment

- Temporary employment
- Part-time and on-call work
- Multi-party employment relationship
- Disguised employment/dependent self-employment
Defining Non-standard employment

- Temporary work
  - Fixed term contracts; casual work
- Multiparty employment relationship
  - Agency work, subcontracting, franchising, supply chains, “fissurisation”
- Part-time
  - Marginal PT, On-call and zero-hours contracts
- Disguised employment and dependent self-employment
  - Bogus self-employment, “intermediate categories”, the gig-economy
Fundamental principles and rights at work

- Freedom of association and collective bargaining
  - Use of multiparty arrangements dividing the workforce and fragmenting bargaining units
    - Legal obstacles and thresholds
  - General legal exclusions for some categories of NSE
    - Self-employment and antitrust
  - Fear of retaliation and non-renewal of temporary contracts
- Forced labour
  - Recruitment agencies and supply chains (ILC 2016)
- Child Labour
  - Exclusion from labour protection and supply chains
- Discrimination
  - Exclusion from labour protection and over-representation of groups at risk of discrimination
Part-time wage employment

MEN

WOMEN

Less than 35 h a week
Making Jobs Better

Legislative Responses

Plugging Regulatory Gaps
- Ensure Equality of Treatment
- Implement Minimum Hours & Safeguards
- Ensure Freedom of Association & Collective Bargaining
- Address Employment Misclassification
- Assign Obligations & Liabilities
- Restrict Non-Standard Employment
Ensuring equality of treatment

➢ Non-discrimination between non-standard and standard workers
   ➢ ILO Convention No. 175
   ➢ EU Directives
   ➢ National legislations

➢ Possible issues even when non-discrimination is established
   ➢ Exceptions and legal loopholes
   ➢ Lack of comparable workers
   ➢ Need of specific protections

➢ Equal treatment before the law
   ➢ Exclusion of some NSE from equal treatment
   ➢ Qualifying periods and continuity of employment
Protecting part-time, on-call and casual workers

- Granting minimum hours for part-time workers
  - Increase in contractual hours if average hours exceed agreed hours over a reference period
- Providing notice periods
- Providing minimum payment for cancellation of shifts
- Banning exclusivity clauses
Addressing employment misclassification

Employment Relationship Recommendation, 2006 (No. 198)

- Primacy of fact: “the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker”
  - Statutory provision, case law, general principles of law
- Allowing a broad range of means for determining the existence of an employment relationship
  - Multifactor test beyond the control test
  - Broad interpretation of the control test
- Providing for a presumption
  - General
  - Based on specific indicators
- An intermediate category of workers (for the gig-economy)?
Restricting the use of non-standard employment

- Prohibition of using FTC for permanent tasks
- Limitations on the use of TAW
- Limitation of renewals or overall duration of FTC, TAW and casual work
- Restricting or prohibiting on-call contracts
- Limiting the percentage of non-standard workers
- Limiting NSE to non-core activities
Examples of restrictions: regulation of FTC
Assigning obligations and responsibilities

- Ensuring awareness of rights and obligations as mandated by Private Employment Agencies Convention and Recommendation
- Joint and several liabilities in TAW
- Shared liabilities in OSH
- Joint and several liabilities in subcontracting
  - Possible mitigation: e.g. duty of information or no “losing contracts”
- Shared liabilities in chains of contracts and “hot cargo” provisions
- Joint employment
Ensuring freedom of association and collective bargaining

- Removing legislative barriers to the affiliation of all workers to unions
- Removing impediments to collective action disproportionately affecting non-standard workers
- Preventing discrimination against non-standard workers based on union affiliation
  - Prohibiting non-renewal or “zeroing-down” of contracts for discriminatory reasons
Thank you!

Report and data are available at: