



International
Labour
Organization

NON-STANDARD EMPLOYMENT AROUND THE WORLD

Understanding challenges, shaping prospects



Legal implications and Regulatory Responses

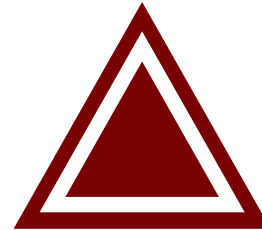
Content of the NSE Report

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**



**Multi-party
employment
relationship**



**Part-time
and
on-call work**



**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

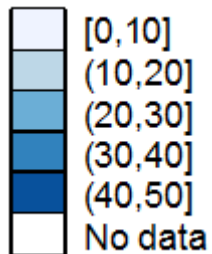
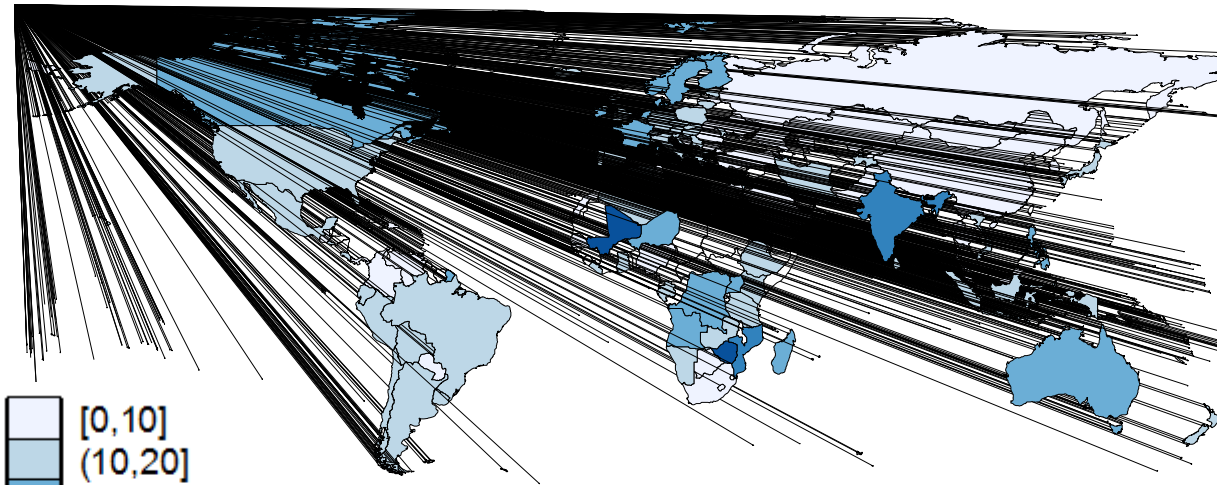
Fundamental principles and rights at work

- 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

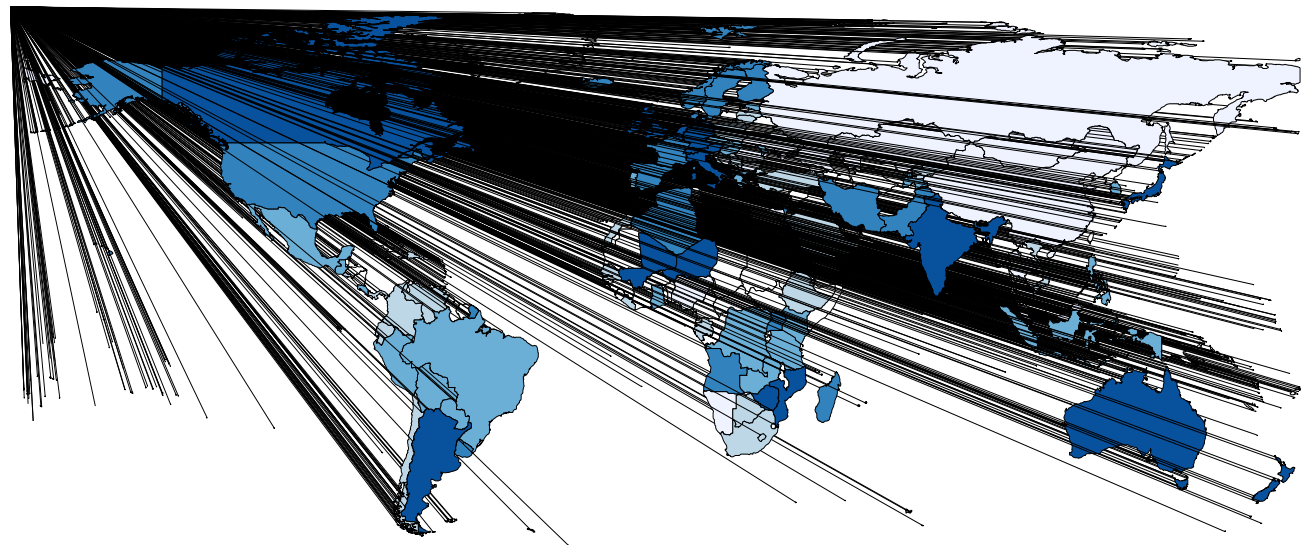
Part-time wage employment

MEN

Less than 35 h a week



WOMEN



TRANSFORMING NON-STANDARD EMPLOYMENT



MAKING JOBS BETTER

SUPPORTING WORKERS

1



LEGISLATIVE RESPONSES

3



SOCIAL PROTECTION

2

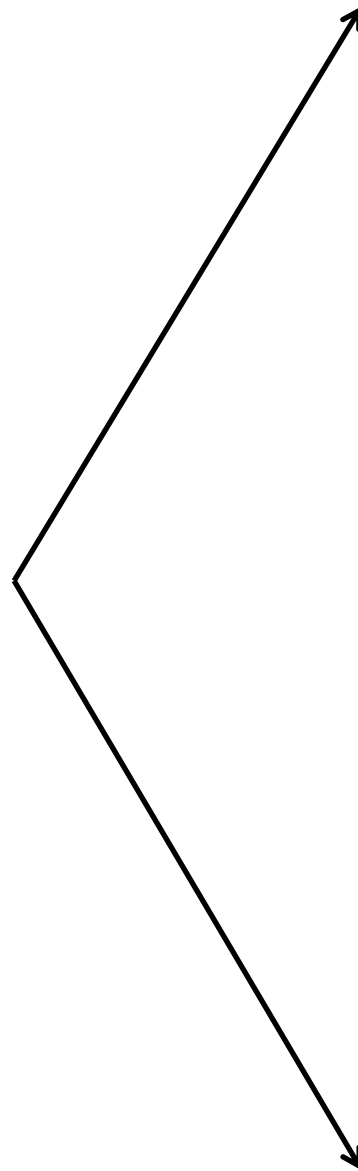


COLLECTIVE RESPONSES

4



EMPLOYMENT/SOCIAL POLICIES



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

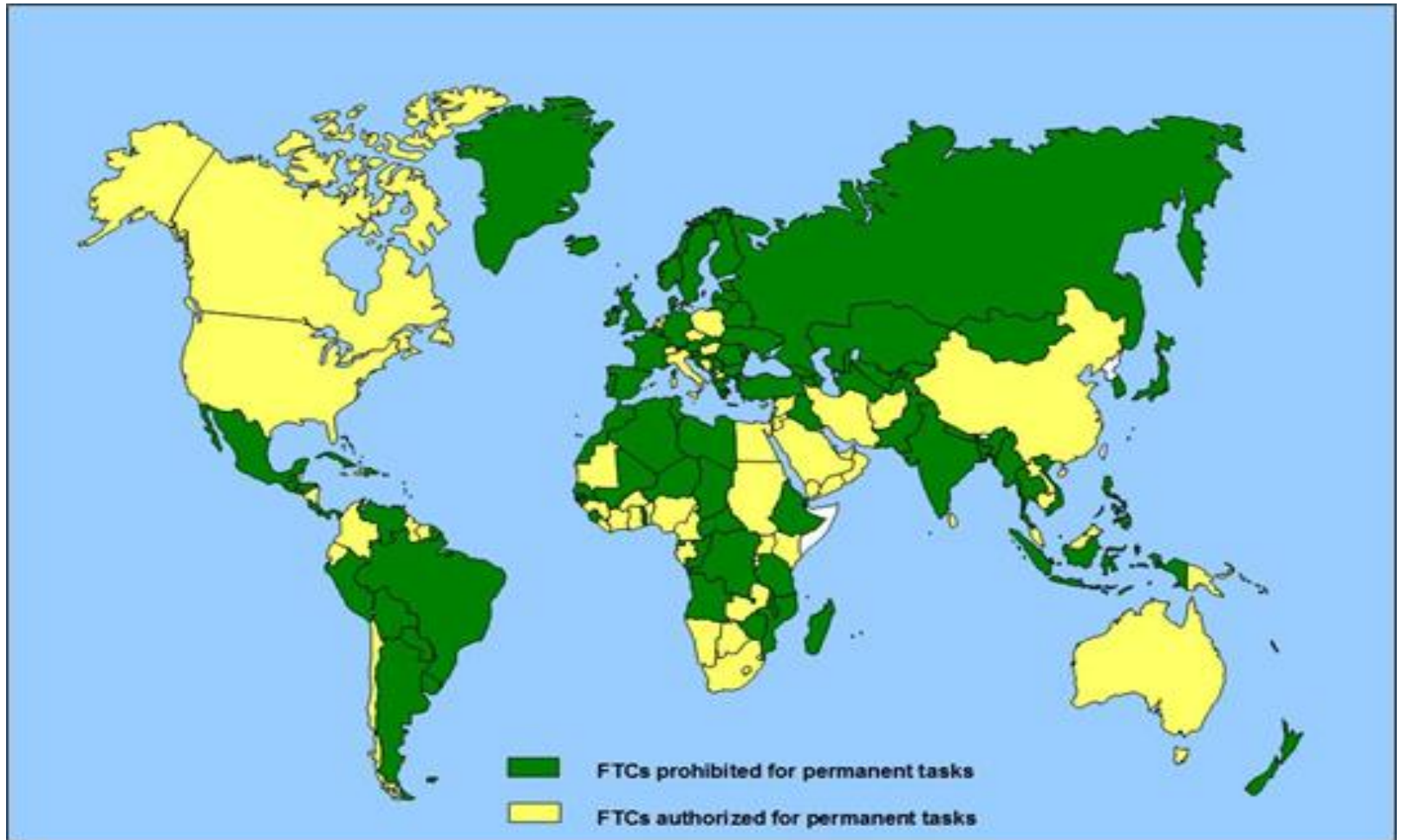
Employment Relationship Recommendation, 2006 (No. 198)

- 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:

<http://www.ilo.org/global/topics/employment-security/non-standard-employment/lang--en/index.htm>