

# Policy responses to new forms of work

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## Executive summary

A recent survey by the OECD and the European Commission captures a snapshot of the policy actions being taken by 44 OECD, EU and G20 countries in response to new forms of work (including labour contract types that deviate from the standard model of full-time, permanent dependent employment). It shows that many countries are reflecting on whether existing policies and institutions are up to the task of addressing effectively the challenges of a rapidly changing world of work. A greater diversity of forms of employment can provide needed flexibility for both firms and workers but this should not be at the cost of greater insecurity and weaker employment and social protections. Building on recent actions that countries are taking, this document identifies a series of possible policy directions to guide policy makers in addressing these challenges:

- Classifying correctly the status of workers and tackling misclassification are essential to ensure that workers have access to labour and social protection, as well as to collective bargaining and lifelong learning.
- It is important to minimise incentives for firms and workers to misclassify employment relationships as self-employment in order to avoid tax and social contribution liabilities.
- Consider extending rights and protections to workers in the “grey zone” between dependent employment and self-employment.
- Greater efforts may be needed in some countries to ensure adequate working conditions in fixed-term, casual and platform work, and tackle the excessive and/or improper use of these forms of work.
- Social protection systems should be examined and, where necessary, reformed to improve access to benefits for workers in new forms of work.
- Consider adaptations to existing regulations to allow collective bargaining for: i) workers in the grey zone, where genuine ambiguity exists about their employment status; and/or ii) those with little/no bargaining power and few/no outside options.
- The existing strategies for Public Employment Services and public skills programmes may need adaptation to improve access and participation amongst those in new forms of work.
- Policymaking should be based on evidence rather than anecdotes and, while recognising differences across countries, peer learning can also contribute to better policies.
- Building on the recent G20 commitment to promote decent work in the platform economy, policy makers should consider ways of improving working conditions of platform workers with little say over their remuneration and working conditions who provide services globally – including best practice principles or guidelines, which governments and/or platforms could sign up to.

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## 1.1. Introduction

Recent labour market trends have prompted countries to reflect on whether existing systems of labour market regulation, lifelong learning, social protection, taxation and collective bargaining are still fit for purpose. While in some cases they are, in others policies may need to be adapted to ensure protection for vulnerable workers, to ensure that firms that comply with the regulations are not unduly disadvantaged, and to maintain the sustainability of social protection systems.

A recent survey by the OECD and the European Commission captures a snapshot of the policy actions being taken by countries in response to growing diversity in forms of employment, with the aim of encouraging cross-country peer learning. 44 OECD, EU and G20 countries (Ministries of Labour, or the ministry with responsibility for labour market policy) were surveyed<sup>1</sup>, primarily between June and August in 2018. This note describes the perceived challenges and opportunities associated with new forms of work and presents some policy directions to guide policy makers in G20 countries in consolidating, reviewing and adapting policies and institutions in response to greater diversity in forms of employment.

## 1.2. Which forms of work are capturing most policy attention?

While *new forms of work* can mean different things in different countries, there are some shared concerns about recent developments in the labour market. In recent years, many countries have seen the emergence of, and/or growth in, particular labour contract types that diverge from the standard employment relationship (i.e. full-time dependent employment of indefinite duration). These include temporary and casual contracts, as well as own-account work and platform work (i.e. work mediated by a digital platform company). While they may bring advantages in terms of flexibility for both workers and employers, concerns have been voiced around job quality and the potential negative impact of excessive and/or improper use of such contracts. Several countries have also seen growth in *false* self-employment, where employers seek to evade tax and regulatory dues and obligations.

## 1.3. What are the challenges and opportunities?

The survey shows that many countries are reflecting on whether existing policies and institutions are capable of addressing effectively the current (and future) challenges of a rapidly changing world of work. While each country's situation is different, the report highlights a number of areas of common concern.

One key issue mentioned by many countries is that of self-employment and, in particular, the issue of misclassification of labour relations and the challenge of classifying workers that fall in between the traditional definitions of dependent employment and self-employment. Many countries acknowledged that ensuring the correct classification is key to ensuring access to labour and social protection, as well as to collective bargaining and

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<sup>1</sup> Brazil, China, India, Indonesia and South Africa did not participate in the survey.

lifelong learning – but even beyond the issue of classification, countries have made efforts to extend rights, benefits and protections to previously unprotected workers.

Several countries also report significant media and public debate on the topic of platform work: how to classify these workers and how to ensure adequate working conditions. At the same time, many countries acknowledged opportunities associated with platform work, namely: its advantages in terms of flexibility and autonomy for workers, its ability to provide an additional source of income and opportunities for self-employment, and the contribution that platforms make to economic growth. A number of countries have already taken policy action in relation to platforms in the passenger transport sector, regulating the way they operate and imposing reporting obligations in relation to taxation.

Concerns are also raised about working conditions in fixed-term contracts and in variable hours contracts, the potential excessive and/or improper use of these working arrangements, as well as the potential disproportionate impact on younger people and on new entrants to the labour market. Regulation has attempted to strike an appropriate balance, allowing flexibility while preventing firms from using these arrangements to circumvent regulations associated with standard employment.

Gaps in social protection for those in new forms of work are also high up the list of concerns, and several countries mentioned ways to improve coverage for vulnerable self-employed workers, to enhance portability for individuals moving between different employment statuses, and to provide multiple *layers* (contributory, means-tested and universal) of social protection. Some countries are also considering ways to extend the right to collective bargaining rights to previously excluded groups of workers.

#### 1.4. How can policy makers respond?

These policy directions are intended to guide policy makers in consolidating, reviewing and adapting policies and institutions in response to the emergence and growth in new forms of work. They draw on a broader set of future of work policy directions, which will be set out in the *OECD Employment Outlook 2019*, due to be published on 25 April 2019.

The policy directions are illustrated by country examples from the G20 countries that responded to the survey: Argentina, Australia, Canada, France, Germany, Italy, Japan, Korea, Mexico, Russia, Saudi Arabia, Turkey, the UK and the US. These country examples should not be read as recommendations as the specific circumstances and challenges of each country vary, and most of these country examples have not been formally evaluated.

##### 1.4.1. First things first: Getting employment status right

Employment status acts as a gateway to various worker rights and protections. ***Classifying correctly the status of workers and tackling misclassification are essential to ensure that workers have access to labour and social protection, as well as to collective bargaining and lifelong learning.*** In recent years, countries have strengthened compliance with existing regulations by:

*Strengthening the capacity of labour inspectorates to monitor and detect breaches of labour regulations.*

- The UK and Italy have restructured the bodies responsible for labour inspection. In 2016, the UK government created a new statutory role of Director of Labour Market Enforcement, with responsibility for providing strategic direction to labour market enforcement bodies to ensure effective coordination and targeting of enforcement efforts. In 2015, a new labour inspectorate agency was established in Italy, with the objective of strengthening labour market intelligence and increasing the efficiency of inspections.
- Mexico and Turkey have developed new strategies for labour inspection. In Mexico, changes in the regulatory framework for labour inspection in 2014 aimed increase coordination between labour inspection authorities, promote voluntary compliance through provision of guidance, and increase transparency in inspections. In light of recent work trends and seeking a more sustainable, efficient and effective approach, the Turkish Labour Inspection Board said that it was moving towards a more prevention-oriented and “risk-based” sectoral approach, which would include scheduled inspections of temporary employment relationships and in sectors and areas where flexible work is prevalent.
- Many countries reported recent efforts to increase the capacity of the labour inspectorate, including: modernising systems and using new technological tools (Argentina, Mexico, Saudi Arabia); increasing the number of labour inspectors (Germany and Saudi Arabia); providing additional funding (Australia, Canada); giving the inspectorate additional powers to gather evidence (Australia); and providing training for inspectors specific to false self-employment and/or other new forms of work (Argentina and Turkey).

*Making it easier/less costly for workers to challenge their employment status.*

- In some countries (including Italy and Saudi Arabia), there is already a presumption of an employment relationship meaning that the burden of proof is placed on the employer (rather than the employee) in disputes about employment status. In Canada, the *Canada Labour Code* was amended in 2018 to require the employer to demonstrate that a person who has made a labour standards complaint against them is not their employee.
- Many countries reported efforts to provide guidance and information (in many cases, online and in multiple languages) to firms and workers that would enable them to classify their working relationship correctly. The Australian government provides an online decision tool, which asks contractors 16 questions to help them determine what type of working relationship they are likely to have. Additionally, in 2016, the Australian Fair Work Ombudsman launched an online anonymous tip-off tool that allows workers and other members of the public to report suspected unlawful workplace practices.
- In Saudi Arabia in 2018, the Ministry of Justice started to run labour courts, facilitating the online filing of cases and imposing a time limit on court decisions.

*Strengthening penalties for firms that misclassify employees.*

- Although not specifically targeted at new forms of work, another amendment to the *Canada Labour Code* introduces new penalties such as public naming of

violators and exclusion from the awarding of federal contracts in the case of repeated serious offences.

- The UK government has committed to strengthening penalties for employers who break the law, including: quadrupling the maximum penalty for aggravated breach of employment law; introducing uplifts in compensation for repeated breaches in similar cases; and introducing a scheme to name and shame employers who fail to pay employment tribunal awards.
- In Saudi Arabia, the Ministry of Labour can suspend services for employers who repeatedly break the law.
- In Australia, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* introduces higher penalties for deliberate and systematic underpayments, increased penalties for record keeping and payslip failures, and new penalties for deliberately hindering or obstructing inspectors. The Australian government is also consulting with stakeholders on increased penalties for sham contracting.

#### **1.4.2. Reducing incentives for misclassification**

**Countries should aim to minimise incentives for firms and workers to misclassify employment relationships as self-employment in order to avoid tax and social contribution liabilities.** Large discrepancies in taxes and social contributions between employment and self-employment (particularly where these are not compensated by similar differences in benefit entitlements), create tax arbitrage opportunities for firms and workers in their selection of contractual arrangement, and can therefore encourage employment misclassification. Some countries have already taken steps to address this concern by:

*Assessing tax incentives and reducing large discrepancies in tax treatment where they exist.*

- In the United Kingdom, the government found that the tax system implicitly led to an effective subsidy of GBP 1 240 per person per year for the self-employed; this subsidy was said to no longer be justified. An increase in social contributions for self-employment was announced in the Spring 2017 budget but this was later reversed.

*Bringing work in the platform economy into the tax system.*

- In France, a 2016 amendment to the Finance Act stipulates that, from 2019, all online platforms (whether based in France or abroad and regardless of area of business) would be obliged to send directly the earnings of their workers to the tax authorities.

#### **1.4.3. Extending rights and protections to workers in the grey zone between dependent employment and self-employment**

Despite efforts to ensure correct classification, there might be still some ambiguity about employment status for some workers who share some characteristics of self-employed workers (e.g. autonomy over how they carry out their work) and some characteristics of dependent employees (e.g. economic dependence on a single client). **Countries may want**

**to consider extending rights and protections to these workers in the “grey zone” between dependent employment and self-employment.** The following examples demonstrate different approaches countries have taken to extend coverage of labour law and social protection:

*Extending rights and protections to specific occupations.*

- Although these are not new developments, in Germany and France, artists and writers have special social protection entitlements adapted to specific characteristics of these professions. Reforms introduced in France at the start of 2019 are expected to improve the speed and reliability of processes and give these authors and artists the ability to acquire rights in return.
- In Turkey, taxi drivers and other public transport drivers, domestic workers, and some groups of artists specified by the Ministry of Culture and Tourism have the opportunity to pay for missing days, and social welfare entitlements and general health insurance similar to employees.

*Extending rights and protections to the economically dependent self-employed.*

- Italy’s collaboratori category was created in 1997 with the purpose of improving access to social protection for those in between independent contractor and employee status. Unfortunately, this new category of worker created clear incentives for employers to replace “standard” employees with workers in the less protected (and cheaper) intermediate category. To address this issue, the pension contribution rates for collaboratori have been gradually increased since 2012, with the aim of reducing incentives for misclassification. Unemployment benefit for collaboratori was established in 2017, along with new protections in case of maternity, illness or accident.
- The Korean response to the questionnaire reported that the government plans to improve the employment insurance system, allowing workers who fall into the grey area between the employed and the self-employed to enroll in employment insurance, specifically those directed by and strongly dependent on their employers. It also mentioned that the government has been considering the adoption of employment insurance for “artists”, as one of these dependent worker groups. Dependent contractors in Korea are already entitled to occupational accident insurance.

Regardless of the approach taken, the driving principle should be to extend rights and protections to vulnerable workers left in the “grey zone” between employee and self-employed status, while being careful not to create opportunities to take them away from workers who previously had them.

#### **1.4.4. Improving working conditions in, and preventing abuse of, fixed-term, casual and platform working arrangements**

**Greater efforts may be needed in some countries to ensure adequate working conditions in fixed-term, casual and platform work, and tackle the excessive and/or improper use of these forms of work.** While some firms and workers will require additional flexibility beyond that offered within a standard employment relationship, growth in new forms of work should not be driven by firms’ attempts to cut costs by circumventing labour market

regulations. Such behaviour would also undermine firms that do comply with the regulations. Some recent measures taken to prevent abuse of, and improve working conditions in, new forms of work include:

*Regulating the use of fixed-term and casual contracts.*

- In Japan, following the Action Plan for the Realization of Work Style Reform adopted in March 2017, the government introduced regulations to eliminate “irrational inequalities” in the working conditions of irregular workers (including fixed-term workers as well as part-time and dispatched workers). In practice, this means that fixed-term workers are now entitled to equal treatment to regular workers with the same duties and same “scope of shift in duties and personnel positioning” (including opportunities for advancement/promotion). Employers are also now obliged to explain working conditions to fixed-term workers and, if they differ to those of regular workers, why this is.
- In Australia, as a result of a 2017 decision by the independent Fair Work Commission, some eligible casual employees with 12 months of regular service now have the right to request conversion to permanent employment. Employers may only refuse the request on reasonable grounds. The Government has committed to extend this right to all eligible casual employees.

*Promoting better working conditions in the platform economy, at the national and international level.*

- In France, where a platform determines the characteristics of the service provided, it must also take responsibility for occupational liability and professional training.
- In response to growth in platform work, the Korean government plans to extend the Occupational Safety and Health Act to cover “all working people” (including dependent contractors, on-demand workers who use delivery apps and other non-regular workers) and to require employers to take specific health and safety measures (e.g. providing protective equipment and training) for these workers.
- The United States response noted that the regulation of relationships between workers and platforms was an active area at state level. They said that several states had recently passed laws providing that platform workers are independent contractors, rather than employees, if several conditions are met such as that the platform cannot unilaterally prescribe hours during which the worker must be available to accept service requests, and that the platform does not prohibit the worker from using other platforms.

**1.4.5. Ensuring that more workers are adequately covered by social protection**

***Social protection systems should be examined and, where necessary, reformed to improve access to benefits for workers in new forms of work.*** Fixed-term, casual and self-employed workers may face difficulties in meeting contribution thresholds for social protection schemes. In addition, within many social protection systems, self-employed workers are simply not entitled to the same suite of benefits as employees. While countries may choose different approaches (given that social protection systems have

different starting points and experiences with accommodating new forms of work), here are a few ways countries might attempt to fill these gaps:

*Reviewing entitlement criteria for social protection and identifying any gaps in provision for those in new forms of work.*

- In Italy, the eligibility conditions for the new universal unemployment benefit scheme introduced in 2015 lowered the contributions thresholds, thereby increasing (statutory and effective) access for fixed-term and temporary workers.
- The Korean response reported that the government was revising the law to ease the requirements for unemployment benefits for “short-time” workers who work less than 15 hours a week. The employment period requirement will be changed from 180 working days over an 18-month period to 180 working days over a 24-month period before the termination of employment.
- Regulation in the United States, which took effect in August 2018, enables qualifying workers in non-standard forms of employment (referred to as working owners, including qualifying sole proprietors and other self-employed individuals) to participate in Association Health Plans. The new rule clarifies the definition of “employer” allowing small entities and working owners without other “employees” to join together and participate in these health plans.

*Boosting the portability of entitlements and consolidating existing programmes to extend their reach to new forms of work.*

- In France, a major reform to social protection is being implemented between 2018 and 2020. It brings coverage of the self-employed under the general social protection scheme, limiting the administrative changes required if a person moves between employment and self-employment.

*Increasing the role of tax-financed social protection elements to help address gaps in existing provisions, i.e. use universal and means-tested benefits to complement benefits linked to employment status and/or the level of contributions.*

- In Italy, in October 2017, an inclusion income (*Reddito di Inclusione*) was introduced to tackle poverty, combining means-tested income support with activation measures and reinforced services. The Italian Government has recently introduced a minimum income support (*Reddito di Cittadinanza*) aimed towards poor and at-risk-of-poverty households.
- The Korean questionnaire response reported that the Korean government was considering the introduction of “Korean-style unemployment assistance”, a means-tested (based on income and asset levels) unemployment benefit that would cover those that do not meet the contribution threshold.

#### **1.4.6. Extending collective bargaining rights**

***Countries may want to consider adaptations to existing regulations to allow collective bargaining for: i) workers in the grey zone, where genuine ambiguity exists about their employment status; and/or ii) those with little/no bargaining power and few/no outside options.*** The right to organise and bargain collectively is usually restricted to employees. The self-employed tend to be excluded because of potential conflicts with

competition law. For most self-employed workers, this makes sense. Yet some self-employed workers share characteristics (and thus vulnerabilities) with employees, and there is an argument for extending collective bargaining rights to these workers. Moreover, some self-employed workers have little or no bargaining power (so that rates of pay are set unilaterally by their employers/clients) and they cannot easily switch to work for other employers/clients. Some approaches described in this report addressing these groups of workers include:

*Extending collective bargaining rights to dependent self-employed workers.*

- For instance, federal legislation for labour relations in Canada uses a definition of “employee” which explicitly includes dependent contractors, ensuring that they cannot be excluded from collective bargaining.
- In Australia, while the Competition and Consumer Act 2010 generally requires businesses to act independently of competitors, it also allows businesses to obtain an exemption allowing them to negotiate collectively with suppliers or customers, where such action is assessed as being in the public benefit. The Australian Competition and Consumer Commission is currently undertaking a public consultation process regarding the creation of a class exemption which would apply to small businesses (including independent contractors).

*Extending collective bargaining rights to specific occupations or sectors.* In some countries, workers in the creative sector have had collective bargaining rights for years, enabled by specific exemptions and special statuses.

#### **1.4.7. Supporting those in new forms of work to develop professionally**

Governments may need to adapt existing strategies for Public Employment Services and public skills programmes to improve access and participation amongst those in new forms of work. Some countries are attempting to enable all workers to harness the benefits of a changing world of work, by:

*Ensuring broad-based access to public employment services.*

- In light of new challenges in the labour market, Germany's Federal Employment Agency has enhanced the range of counselling services available for adults looking for reorientation in working life, regardless of employment status.

*Ensuring broad-based participation in adult learning.*

- For example, the French Individualised Learning Account allows any active person to acquire training rights that can be mobilised throughout their entire professional life, through employment, self-employment and non-employment.
- In Mexico, the Secretariat of Labor and Social Welfare runs the Remote Training Program for Workers, which provides free online courses for workers across the country. Since 2015, the virtual training environment can be accessed via mobile devices in addition to computers.

#### **1.4.8. Enhancing data collection and coordination at the G20 level**

- ***Policymaking should be based on evidence rather than anecdotes and, while recognising differences across countries, peer learning can also contribute to better policies.*** Some approaches described in this report include:

*Using data collection to build better evidence on new forms of work.*

- In the United States, a special supplemental survey on contingent and alternative employment arrangements was conducted in May 2017 as part of the household Current Population Survey. The supplement asked four new questions on electronically-mediated employment, generally defined as short jobs or tasks that workers find through mobile apps that both connect them with customers and arrange payment for the tasks.

*Addressing challenges through a comprehensive approach.*

- The Japanese government established an expert study group to analyse “Work Style Similar to Employment” in October 2017, and whether these arrangements should be considered merely business transactions between independent businesses or instead equivalent to relationships between an employer and employee.
- The Korean government has set up a taskforce composed of labour experts to design more concrete policies for non-regular workers, including dependent contractors.
- Australia and Canada mentioned that they had formed cross-government working groups to better coordinate policy relating to the future of work (including new forms of work).

*Addressing platform work that crosses borders*

While some platform work involves the matching of workers with services that are provided locally, other platform work is carried out online and can involve workers in one country providing services for a customer in another country. The latter type of platform work raises a number of issues of how to regulate this form of cross-border work. ***Building on the recent G20 commitment to promote decent work in the platform economy, policy makers should consider ways of improving the working conditions of platform workers with little say over their remuneration and working conditions who provide services globally – including best practice principles or guidelines, which governments and/or platforms could sign up to.***