

GOOD PRACTICE

Social dialogue for stable and adaptable labour markets: The case from Spain

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CONGRESO DE LOS DIPUTADOS



GLOBAL DEAL

THE RISE OF TEMPORARY WORK: A MEGATREND

Labour markets have grappled for many years with the megatrend of increasing non-standard forms of employment. While open-ended contracts still tend to constitute the majority, the type and number of employment contracts¹ that provide employers with more flexibility to decide when employment ends and starts has significantly expanded. This includes, among other things, fixed-term contracts, agency work, daily contracts and on-call arrangements. These contracts provide businesses with the flexibility they need to address unexpected changes from volatile markets. At the same time, non-standard forms of work also risk weakening the stability of the employment relationship, possibly leading to a more insecure, less loyal and demotivated workforce and reduced business productivity. Moreover, because arrangements such as fixed-term work or agency work allow the employment relationship to be ended more quickly, they may also make economies less resilient by intensifying the immediate impact of negative shocks on jobs.

This casualization of the labour market has been particularly significant in Spain, where [one out of four employees](#) are hired as a temporary worker. In the health sector, where workers stood at the frontline of the pandemic, the [rate of temporality](#) reaches 41.9%, with health staff accumulating one contract after the other and finding it difficult to obtain an open-ended one. Overall, more than [four out of five new hires](#) in Spain are temporary contracts.



1- Standard forms of employment are usually understood as comprising open-ended employment and employment on a full-time basis. Given the focus of the reform in Spain, we limit the discussion in this good practice case study to the former type of employment.

PROMOTING STABLE EMPLOYMENT RELATIONSHIPS...

The Government of Spain, as a partner to the Global Deal, has committed to support decent work by significantly reducing the use of temporary forms of employment in the Spanish labour market. As part of this commitment, a tripartite agreement to reform labour law and promote the use of open-ended contracts was concluded after several months of intense negotiations between the Government, employer organisations (CEOE and CEPYME) and trade unions (CCOO and UGT) on 23 December 2021.

To promote stable employment relationships, the December 2021 agreement starts by changing a key principle in labour law. Previously, labour law reflected a more neutral stance regarding the use of different types of labour contracts. This reform demonstrates a clear preference for open-ended contracts.

This key principle is backed up by several measures.

To start with, the presumption that an employment contract is concluded for an indefinite period is strengthened by more precisely and restrictively defining the cases in which a fixed-term contract is deemed legitimate. This provides better guidance to labour courts and obliges those who pretend to claim a contract to be temporary, to provide more and better evidence for it.

A second measure aims to limit the practice whereby chains of temporary contracts are

used to cover work that is actually regular and recurring work. Workers, who over a period of 24 months, spend 18 months working in the same job or different jobs in the same company or group of companies by means of several temporary work contracts, including agency work, will be entitled to an open-ended contract. Previously, this threshold was higher, with workers considered to have open-ended contracts after 24 months of work within a period of 30 months.

This preference for open-ended contracts is further strengthened by reducing the number of types of temporary contracts. Besides training, apprenticeships and internship contracts



concluded for a specific duration, only two other types of temporary contracts will be allowed: either a contract to substitute for a worker who is temporarily absent, or a contract that is temporary because of occasional production circumstances, i.e. occasional fluctuations in demand generating a mismatch between the



core labour force and the one required. If the increase in demand, but not the extent to which this will occur, could have been anticipated, the maximum duration of the temporary contract is limited to 90 days. The latter period cannot be prolonged by collective bargaining. However, where the increase in demand could not have been expected, the temporary contract can have a maximum duration of six months if these production circumstances were unforeseen. Moreover, this period can be prolonged by up to one year by a sector-level collective agreement, in which case one extension of the temporary contract is possible as long as it does not exceed the maximum mentioned.

A fourth measure is to repeal the [contract for a specific work or service](#) as of 30 March 2022. This type of contract had already been the subject of criticism by the Supreme Court of Spain². This temporary contract, which was present in all sectors of activity and specifically in the services one, was used by employers to link the duration of labour contracts with the

commercial contracts they had with clients. Any reduction in the volume of activity could then be handled by terminating the labour contracts corresponding to the work or service concerned, providing workers with lower severance compensation compared to an open-ended contract (12 instead of 20 days of pay for each year of service, or even 33 if the objective cause that was specified to end the labour contract is ruled to be inappropriate). Workers could be engaged on these flexible contracts for a period as long as up to four years.

Finally, temporary employment contracts of a short duration are being discouraged by using a financial penalty. Whereas an additional social security charge, to be paid by the employer, was already in place for short temporary contracts lasting no more than five days, this contribution will now be levied on fixed-term contracts with a duration of less than 30 days. Moreover, infractions on the use of temporary contracts will be fined between €1,000 and €10,000 for each of the workers concerned and not, as was

2- Supreme Court Plenary 1137/20 of 29 December 2020 decided the use of such contracts was illegitimate when the activity of the company is none other than that of providing services to third parties.

... WHILE ENSURING ADAPTABILITY

While the tripartite agreement discourages the use of temporary work contracts by restricting and even abolishing a number of flexible labour market practices, it also provides business with [other possibilities](#) to smoothly adapt the organisation's labour force to changing circumstances.

[One such measure](#) is to promote the so-called fixed-discontinuous contract (*contrato fijo-discontinuo*), which is a contract that can be used for all types of jobs that are structural but only performed during certain periods of the year. This contract already existed but was hardly used beyond the range of seasonal activities, as other forms of temporary contracts were being used so widely. The intention is to shift those jobs that were previously carried out through the contract for a specific work or service into this fixed-discontinuous contract, including those offered by work agencies. In this way, businesses can mobilise and demobilise labour with ease, according to the evolution of demand for its products and services.

At the same time, the tripartite agreement ensures that the flexibility provided to business by this specific contract is balanced by measures providing stability and security to workers. Stressing the fact that the contract is still an open-ended one, workers' [seniority](#) will be calculated on the entire duration of the employment relationship, and not only for the period of work in which was actually delivered. Importantly, workers are granted access to unemployment benefits

during periods of inactivity. In addition, in case workers are performing activities that have been contracted out or subcontracted, this period of inactivity cannot exceed [three months](#), after which the company must reinstate the worker or proceed to dismissal. This three months period can also be extended by collective agreement.

A social dialogue framework to manage this contract has also been agreed upon. A company using this particular type of contract will need to inform the legal representatives of the workers at the beginning of each year to what extent it plans to make use of this form of work. It will also need to report the periods during which workers were effectively engaged in fixed-discontinuous contracts. At the sector-level, the tripartite agreement provides the option, through collective bargaining, to set up an employment exchange pool, so that workers on these contracts can be hired by other employers during a period of

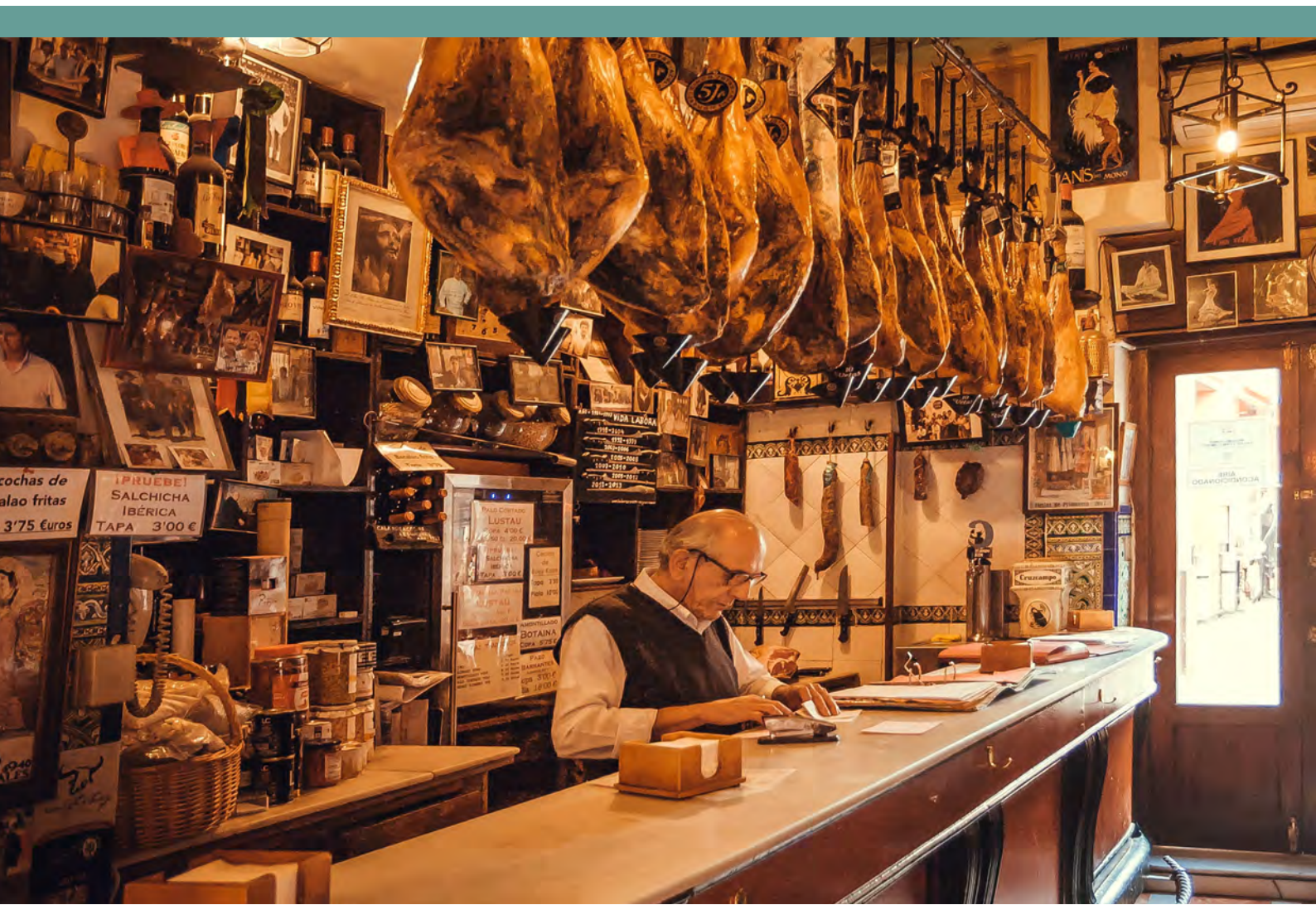


inactivity or, alternatively, can be given access to training. Finally, in case of contracting and subcontracting, there is the principle that the agreement of the sector of the activity carried out in the contract or subcontract should apply.

Another measure to provide businesses with margins of adaptability is inspired by the good experiences with the short-time working schemes (ERTES) agreed during the COVID-19 crisis, whereby labour contracts are suspended or working days reduced, social security contributions are lowered for employers and workers receive unemployment benefits.

Here, the tripartite agreement consolidates existing, but also puts into place new, forms of internal flexibility so that companies can avoid costly redundancies in times of crisis. Regarding the former, the changes introduced to ERTES to speed up their processing, including the

shortening of the deadlines to seven days to consult the worker representation on the introduction of short-time work that were decided during the COVID-19 crisis have been made permanent. Regarding the latter, a new form of short time work arrangement, called Mechanism for Employment Flexibility and Stabilisation, has been agreed. It has two modalities. In case the difficulties experienced by the company are of a cyclical nature, short time work can be introduced for a maximum of one year. When the issue is not related to a business cycle downturn but is caused by a shift in demand of a more permanent nature confronting an entire sector or sectors and thus requiring intensive retraining and professional transitions of workers, a training plan for those workers concerned needs to be drawn up. In the latter case, the maximum duration of one year of short time work can be twice extended by six months.



A NOTICEABLE IMPACT

Over the first quarter of 2022 the reform has already left its mark as can be seen from the following numbers.

In April 2022, of the 1,450,000 new employment contracts being signed, almost 700,000 or 48.7% were open-ended contracts. This represents a [trend break with the past](#) as that share has been stubbornly hovering around the 10% number for more than three decades.

This new trend is also showing up in the [share of open-ended contracts in total employment](#). Compared to the average over the 2015-2021 period, that share increased by 7 percentage points reaching 77% in April 2022. In the construction sector, the share of open-ended contracts in total employment even increased by 20 percentage points, from 50% on average in the 2017-2019 period to 70% in April 2022.

Moreover, the duration of employment contracts is also increasing. The share of temporary contracts with a very short duration (1 day and 2 to 7 day contracts) has collapsed in April from an average 75.8% over 2017-2019 to 28% in April 2022. Whereas in previous years just 8% of all contracts signed since the beginning of the year were still valid in March that figure is now up to 46.7%.

More in-depth [research](#) supports these numbers. Using econometric regression techniques, results show that the reform indeed fostered the creation of an additional 286,000 open-ended contracts in the first quarter of 2022 without holding back overall employment performance.



CONCLUSION

The tripartite agreement recently concluded in Spain vividly illustrates how social dialogue can play a positive role in managing the use of non-standard forms of employment and addressing the casualization of work: involving social partners in the reform of labour law allows for balanced approaches and consensus on shared compromises, thus combining the needs of workers in terms of more stable jobs and secure contracts with the pursuit by business of flexibility.

On the one hand, the tripartite agreement strengthens labour law regulation by restricting and even abolishing certain forms and practices of excessive labour market flexibility. At the same time, the agreement also provides alternative ways to ensure business can adapt labour input to market changes. The latter is achieved by enhancing a type of open-ended contract that incorporates certain elements of flexibility while balancing this with the promotion of temporary job suspension and short-time work schemes.

Moreover, another element of adaptability is introduced by providing collective bargaining at all levels (national, sectoral, company) with a leading role in the regulation of the different types of contracts as many issues may be subject to negotiation. As also argued by the [OECD](#), this allows labour regulation to be implemented in a way that is better adapted to the practical circumstances of business while still guaranteeing a fair outcome for workers.

Social dialogue thus produces “win-win-win” outcomes: Workers are more secure as they can rely on more stable labour contracts and employment relationships. Businesses, while also benefiting from a more stable labour force, are provided opportunities to adapt labour organisation to market changes. Governments no longer need to be concerned that negative economic shocks will result in mass job restructuring and unemployment shooting up immediately.



THE GLOBAL DEAL FOR DECENT WORK AND INCLUSIVE GROWTH

The Global Deal is a multi-stakeholder partnership that aims to address the challenges in the global labour market to enable all people to benefit from globalisation. It highlights the potential of sound industrial relations and enhanced social dialogue to foster decent work and quality jobs, to increase productivity, and to promote equality and inclusive growth. The Global Deal welcomes governments, businesses, employers' organisations, trade unions, as well as civil society and other organisations to join the partnership.

Check the [full list of partners](#)

GOOD PRACTICES FROM GLOBAL DEAL PARTNERS

The Global Deal encourages its partners to share examples of effective and innovative experiences in the area of social dialogue. These are published on the website in a repository that enables knowledge sharing and facilitates peer learning, helping Global Deal partners and other actors to improve social dialogue and sound industrial relations. It provides a valuable resource that illustrates different forms of social dialogue from a variety of regions and countries. Partners are welcome to send relevant experiences and working practices to the Global Deal Support Unit.

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