

Atypical Forms of Work

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Notion of Atypical Forms of Work

The theory of labour law defines a typical form of work as:

1. Performance of work for stated weekly working hours (full-time work+),
2. Employment contract is concluded for unfixed term,
3. Employment contract is concluded directly between an employer and an employee,
4. Work is performed at the employer's workplace

EU law regulates

1. Part-time work,
2. Fixed-term employment contracts or relationships,
3. Temporary work (agency employment),
4. Telework

In practice, employees performing atypical (precarious, flexible) work are less protected compared to employees performing typical work – e. g. termination of employment relationship, collective labour law, benefits arising from employment

Part-time Work

- Promotion of part-time work is considered as one of the means of reconciliation of professional and family life,
- Secondary law - Directive 97/81/EC concerning Framework Agreement on Part-time Working concluded by the UNICE, CEEP and ETUC,
- Part-time worker - an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker,
- Comparable full-time worker - a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills.

Forms of Protection of Part-time Workers

- Promotion of quality of part-time work – the number of part-time workers has been increasing in EU Member States,
- Elimination of discrimination against part-time workers – unequal treatment based on the length of working hours that in practice may constitute indirect discrimination based on e. g. gender, age, disability, Less favourable treatment shall be justified on objective grounds.
- Promotion of opportunities for part-time work,
- Facilitate development of part-time work on a voluntary basis – part-time work should be based on an agreement between an employer and an employee

Fixed-term Work

- Definition – a form of work where the end of a contract or relationship is stated in advance by the date, termination of specific work, completion of specific task or occurrence of a specific event.,
- Secondary law - Directive 1999/70 concerning the Framework Agreement on Fixed-term Work concluded between UNICE, CEEP a ETUC,
- Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship,
- Scope of application – employers in public and private sector,
- Employment contracts/relationships concluded directly between the employer and the employee

Forms of Protection

- Promotion of quality of fixed-term work by ensuring the application of the principle of non-discrimination – unequal treatment based on the type work. Working condition of fixed-term workers shall be the same as those of comparable permanent workers,
- Establishment of framework to prevent abuse arising from the use of successive fixed-term contracts between the same parties,
- Information on job opportunities at the employer for unfixed-term

Measures to Prevent Abuse of Successive Fixed-term Contracts/relationships between the Same Parties

Member States or social partners shall adopt one or more of the following measures:

- objective reasons justifying the renewal of such contracts or relationships,
- the maximum total duration of successive fixed-term employment contracts and relationships,
- the number of renewals of fixed-term employment contracts and relationships,

Temporary Work (Agency Employment)

Temporary work means a specific form of employment. There are three parties:

1. employment agency (employer),
2. employee performing the work,
3. user undertaking (assigns the work, controls its performance)

The agency employs workers with the purpose to temporarily post them to perform work at the user undertaking

Protection of Agency Employees at International Level

ILO Convention 181 (Private Employment Agencies Convention) and Recommendation 188.

- Protection of collective rights of workers,
- Necessity to ensure that employees are covered with national systems of social security,
- Prohibition of discrimination on the grounds of sex, race, religion, political opinion, social origin,
- Protection of personal data,
- Prohibition for agencies to require fees from natural persons who are employees

EU law

Secondary Law – Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship

Directive 2008/104/EC on Temporary Agency Work

Scope of Application

- Temporary agencies both public and private performing gainful or non gainful activities
- User enterprises
- Employees who are assigned to another employer (user)

Forms of Protection of Temporary Workers

Agency – shall be recognised as an employer

Principle of non-discrimination – basic working conditions and conditions of employment of temporary workers for the duration of their assignment at a user undertaking shall be the same as those of employees employed directly by the user undertaking,

Prohibition for temporary-work agencies to charge workers any fees in exchange for arranging for them to be recruited by a user undertaking

Access of Temporary Workers to Employment, Collective Facilities and Vocational Training

Information of employees – the key idea is to secure permanent employment for temporary employees. They have the right to information on vacant post at the user undertaking.

Prohibition to conclude a clause or an agreement prohibiting or preventing establishment of employment contract directly between undertaking and temporary workers on the base of standard contract after the end of assignment,

Access of temporary workers to amenities or collective facilities in the user undertaking (e.g. canteen, child-care facilities and transport services) under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reason

Telework

- Definition - a form of organizing and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis.
- EU law – European Framework Agreement on Telework signed between European social partners in 2002 Not implemented by the directive

Protection of Teleworkers

The Framework Agreement on Telework regulates certain aspects of telework i.a.:

- Voluntary basis of telework,
- Elimination of discrimination against teleworkers,
- Protection of personal data,
- Use of equipment,
- Health and safety of teleworkers,
- Working conditions of teleworkers