

Non-regular Employment in Germany

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1. The Issue

Atypical or non-regular employment is not a new phenomenon. However it has become an issue in academic and political discussions since the passing in 2003/04 of the “Gesetze für moderne Dienstleistungen am Arbeitsmarkt” (Laws on Modern Services in the Labour Market, hereafter referred to as the “Hartz Laws”), which deregulated agency, fixed-term and marginal employment with the aim of promoting the use of atypical employment and thus raising overall employment levels. It was a continuation of the process of gradual deregulation that started in the mid-1980s with the Employment Promotion Law (Beschäftigungsförderungsgesetz). In 2001 the Part-time and Fixed-Term Employment Law (Teilzeit- und Befristungsgesetz) had already paved the way for an expansion of part-time working. Given this wave of deregulation it is not surprising that the proportion of atypical forms of employment has increased significantly in recent years to more than a third of all those employed. But the expansion of these forms of employment throws up new problems that were largely ignored during the process of deregulation and are now emerging in the form of an increased risk of precarity.

This paper looks at the development, extent and patterns of this type of employment and also at regulation problems. It starts by differentiating between standard and atypical employment and then examines the development and structures of the various forms during the relatively long period since German reunification in 1990. On the basis of explicitly indicated social criteria it then compares the differences between atypical and standard employment. The paper then examines the opportunities to move from atypical to standard forms of work. The paper ends by drawing a number of conclusions on regulation problems regarding atypical employment including the question of improving various dimensions of social security.

2. Standard Employment and Forms of Atypical Employment

Atypical employment is usually defined in negative terms in contrast to so-called standard employment (Mückenberger 1985). It is, a category that includes relatively heterogeneous forms of employment, and these need to be explicitly differentiated in a detailed empirical analysis. The starting point for this paper is standard employment characterised by the following features:

- Full-time employment with an income sufficient for subsistence,
- Permanent employment contract,

- Integration into the social security system (particularly unemployment, health and pension insurance),
- Work relationship and employment relationship are identical,
- Employees subject to direction by the employer.

In this paper we use the term exclusively in an analytical rather than a normative way (“this is how it should be”). The reason is that in some continental European countries, such as Germany, social security systems often use these criteria as a point of reference. For the functioning of the labour market it is significant that compared with standard employment, atypical forms of employment, whatever their differences, increase the potential flexibility of businesses and, to some extent also of the employees concerned.

Atypical forms of employment deviate from standard forms of employment in terms of at least one of the above criteria:¹

- Part-time work (without marginal employment), with regular weekly working hours less than under regular contractual level and pay reduced accordingly.
- Marginal employment, which represents a specific variety of part-time work defined in terms of remuneration below a certain level; the Hartz laws introduced in 2003 and 2004 distinguished between two categories: so-called mini-jobs and midi-jobs. Here, monthly remuneration limits of €400 and €800 apply, and the previous limitation of weekly working hours to a maximum of 15 has been abolished. Consolidated social insurance contributions and taxes amounting to 30% are paid exclusively by the employer.
- Fixed-term employment: since the mid-1980s the maximum duration of contracts has been successively extended to two years.²
- Agency work, which is different from all other forms because of the tripartite relationship between the employee, the agency and the company hiring the worker. This peculiarity results in a differentiation between the employment relationship (between the agency and the employee) and the work relationship (between the company and the employee). The Hartz laws resulted in far-reaching deregulation which removed the maximum length of assignment, the ban on synchronisation of the employment contract and the period of hire, and the ban on reassignment. In return, the principle of “equal pay for equal work” was introduced, although collective agreements are permitted to deviate from this.

A new form of self-employment is intended to replace the traditional freelancer category (for example lawyers or doctors), and this was promoted by the subsidy introduced by the 2003 Hartz laws for setting up so-called Ich-AGs/Familien-AGs (one person businesses/family businesses). From August 2006 onwards this form was merged with the similar instrument of so-called transitional allowances to form a new start-up subsidy scheme. It is not always easy to differentiate between employment and self-employment (“pseudo self-employment”), as the lines between the two can be rather fluid. We will not go into this form of employment in any further detail here (for an introduction and overview see Keller and Seifert 2007).³ Individual features can appear in combination form – thus, for example,

¹ Not included here are, amongst others: individuals working on a fee basis/freelancers, one-euro jobs for work experience, internships.

² Deviations are possible by collective agreements. The duration has been extended up to four years by collective agreements in the metal working industry.

³ Cf. also the IAB information platform, which is structured according to various criteria: <http://infosys.iab.de/infoplattform/thema.asp>.

agency workers or part-time workers can at the same time have a fixed-term employment contract.

The lines of demarcation between these forms of employment are not always clear-cut – for example when it comes to differentiating between full-time and part-time working. The threshold applied is a working week of 35 hours – if an employee’s contract provides for him to work fewer than 35 hours, then he is regarded as being in part-time employment. The Federal Office of Statistics uses a different approach, defining part-time working as being 21 or fewer hours per week (Wingerter 2009). This threshold is undoubtedly set too low and also is out of line with international conventions. For many years the OECD has defined part-time working as involving a weekly working time of less than 35 hours. A few years ago it reduced this to 30 hours or less (OECD 2009). Depending on where the line is drawn, the proportion of atypical employees obviously varies.

3. Development and Reasons for Increase

3.1 Development and extent

Since the early 1990s⁴ all forms of atypical employment have been on the increase, albeit at differing rates and starting from different levels.⁵

- As in other EU member states, part-time work is by far the most widespread form (more than 26% of all employees). Its long-term steady increase, whatever the stage of the economic cycle, is closely related to the growing number of working women, who still account for more than 80% of all part-time employees. In addition to those opting voluntarily for part-time work, there are also individuals who would prefer to work longer hours if they were offered appropriate options.
- About 20% of all employees fall into the “marginal employment” category. There was initially a marked increase in this form of employment following the amendments to the Hartz laws⁶ and it then stabilised at a high-level. An explicit differentiation has to be made between mini-jobs as an individual’s exclusive work and mini-jobs as a sideline in addition to non-marginal employment. The former, which in terms of social policy are definitely more problematic, predominate, accounting for almost 70% of all mini-jobs. However only 14% of all employees have this as their sole employment⁷ – the rest combine it with full-time or part-time employment. The importance of mini-jobs is (at about 700,000 or almost 2% of all employees) relatively slight compared with mini-jobs.
- Fixed-term employment, despite the wave of deregulation since the mid-1980s, has only grown by about 10% – a modest increase compared with other forms. Original fears that that would be a massive expansion of fixed-term employment have proved unfounded. What is crucial is the question of whether individuals manage to achieve the transition to permanent employment.

⁴ This date offers itself as a point of reference because of German reunification.

⁵ Empirical information on the development and current status of atypical forms of employment has improved significantly in recent years. By contrast, theoretical analyses remain rare and incomplete (cf. Keller/Seifert 2007).

⁶ The remuneration limit was raised from €325 to €400, working time limits were abolished. Reliable earlier figures are not available.

⁷ This percentage includes an unknown share of students and pensioners.

Table 1 Forms of atypical employment

Year	Total employees (in 1,000)	Part time work ¹⁾		Marginal employment ²⁾				Agency work ³⁾		Total employees (without trainees) (in 1,000)	Fixed-term employment (without traineeships)	
		(in 1,000)	(%)	Total (in 1,000)	(%)	Only on marginal wages (in 1,000)	(%)	(in 1,000)	(%)		(in 1,000)	(%)
1991	33,887	4,736	14.0					134	0.4	32,323	2,431	7.5
1992	33,320	4,763	14.3					136	0.4	31,891	2,495	7.8
1993	32,722	4,901	15.0					121	0.4	31,151	2,221	7.1
1994	32,300	5,122	15.9					139	0.4	30,958	2,322	7.5
1995	32,230	5,261	16.3					176	0.5	30,797	2,388	7.8
1996	32,188	5,340	16.6					178	0.6	30,732	2,356	7.7
1997	31,917	5,659	17.7					213	0.7	30,436	2,453	8.1
1998	31,878	5,884	18.5					253	0.8	30,357	2,536	8.4
1999	32,497	6,323	19.5			3,658	11.3	286	0.9	30,907	2,842	9.2
2000	32,638	6,478	19.8			4,052	12.4	339	1.0	31,014	2,744	8.8
2001	32,743	6,798	20.8			4,132	12.6	357	1.1	31,176	2,740	8.8
2002	32,469	6,934	21.4			4,169	12.8	326	1.0	30,904	2,543	8.2
2003	32,043	7,168	22.4	5,533	17.3	4,375	13.7	327	1.0	30,513	2,603	8.5
2004	31,405	7,168	22.8	6,466	20.6	4,803	15.3	400	1.3	29,822	2,478	8.3
2005	32,066	7,851	24.5	6,492	20.2	4,747	14.8	453	1.4	30,470	3,075	10.1
2006	32,830	8,594	26.2	6,751	20.6	4,854	14.8	598	1.8	31,371	3,389	10.8
2007	33,606	8,841	26.3	6,918	20.6	4,882	14.5	731	2.2	31,906	3,291	10.3
2008	34,241	9,008	26.3	6,792	19.8	4,882	14.3	794	2.3	32,232	3,106	9.6
2009	34,203	9,076	26.5	6,993	20.4	4,932	14.4	610	1.8	32,558	3,026	9.3

1) April in each case

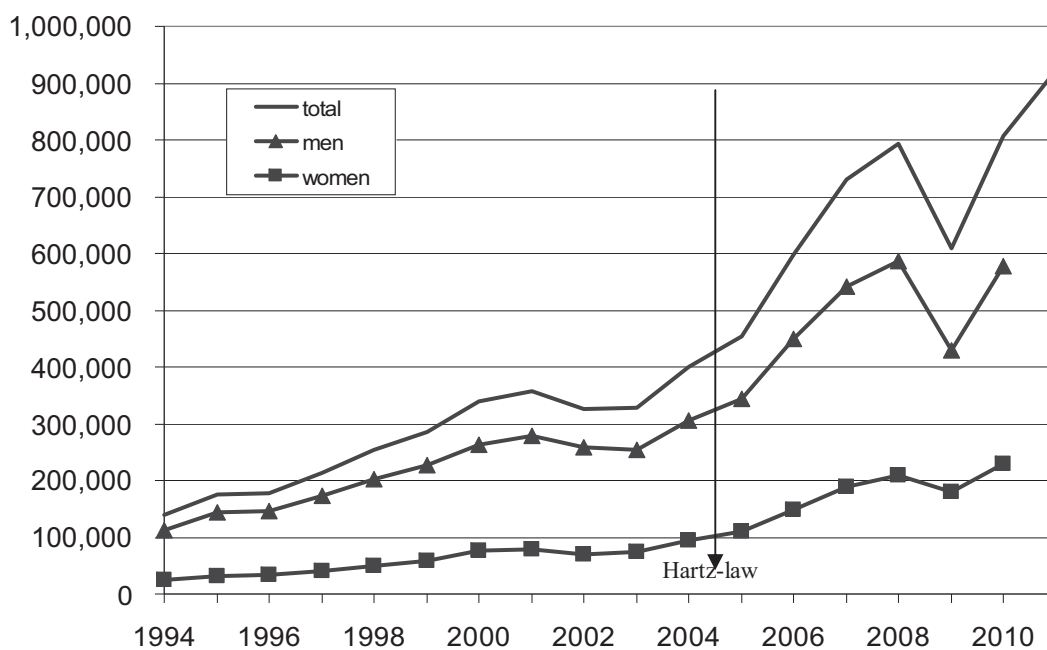
2) Mini-jobs on basis of €400

3) End of June in each case

Source: Federal Office of Statistics, F 1, Row 4. 1. 1., various years and <https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,sfgsuchergebnis.csp>;Bundesagentur für Arbeit (<http://www.pub.arbeitsamt.de/hst/services/statistik/detail/b.html>).

- Agency work continues to account for only a relatively small segment of the labour market and, in quantitative terms, is the least important form of atypical employment. However in the long term, especially since the deregulation of the Hartz laws, it has undergone an unusually strong expansion (to more than 2% of total employment), and its high growth rate (with a duplication within the last decade) has triggered a disproportionate level of public interest in this type of employment. However, with the onset of the economic crisis of 2008/2009 this development was abruptly reversed (figure 1), and the sharp increase was followed by an equally sharp decline.⁸ Since about mid 2009, as the economy has started to recover, the figures for agency workers have sharply increased. By autumn 2010, the proportion of agency workers had reached the record level of just under 3% (more than 900,000). Clearly many companies realized during the crisis that agency working is a highly flexible form of employment. Agency workers can be rapidly integrated into work processes and just as rapidly dropped, without any redundancy payments having to be made. However, companies making use of such workers have to pay the agencies an extra premium on top of the low wage involved. This illustrates the extreme degree to which agency work is affected by the state of the economy – it is one of the first forms of employment that will experience an upturn when recovery kicks in.

Figure 1 Temp agency employment 1994-2010



Source: Federal Employment Agency.

⁸ Between May 2008 and February 2009 the number of agency workers declined by about a third from 821,000 to a mere 550,000. Cf. Handelsblatt, No. 76, 6-4-2009, p. 3.

Allowing for double counts (such as part-time and fixed-term work), the proportion of those in atypical forms of employment has now increased to 37% of the workforce (Brehmer/Seifert 2008). Because of the different definition used, the Federal Office of Statistics put the proportion of those in atypical employment at 22% for 2008 (Wingerter 2009). In the early 1990s the figure was only 20%. Such jobs have thus long since ceased to be merely a marginal segment that could easily be excluded from any analysis of the labour market. Full employment as the norm is waning, and atypical forms are an increasingly common exception. The expansion of total employment between 2005 and 2008 was largely due to an increase in atypical forms, in particular the spread of marginal employment (mini-jobs) and agency work (Federal Office of Statistics 2008).

In view of this development, the term "pluralisation/differentiation of forms of employment" is a more appropriate description of the changes in the employment system than the frequently used reference to a "crisis" or even "erosion" of standard employment (for others Kommission für Zukunftsfragen 1996). As the employment landscape continues to change, we can expect – whatever the stage in the economic cycle and the overall employment trends – a further increase in atypical forms of employment, even though this does not mean that standard employment will become obsolete. In that regard, Germany does not constitute an exception. Whatever the type of welfare state involved (especially social democratic, conservative, or liberal) an increase in atypical forms of employment can be observed in the EU (above all in the old member states) (Schmidt/Protsch 2009).

3.2 Structural aspects

The employees in these different forms of atypical employment differ according to the usual criteria used for social statistics including gender, age and level of qualifications, as well as sector (Bellmann et al. 2009). These factors strengthen the segmentation of labour markets into core and marginal workforces, or "insiders" and "outsiders". In all forms – the only exception being agency work – women are either more (part-time work) or less over-represented (fixed-term). In this regard there is a clear gender-specific bias of atypical employment that is often neglected in public debate. The majority of women (57 per cent) are in atypical employment – indeed one can speak here in terms of a "new normality" that also marks a gender-specific division of the labour market. The increasing proportion of women in work (currently approx. 70%) is closely linked to the growth in atypical employment, especially part-time and fixed-term employment.

When it comes to skill levels, it is individuals without any officially recognised vocational training that are more frequently affected than those with vocational or tertiary qualifications. In terms of age, atypical employment can be found in all age groups, but younger employees (15 to 24), with fixed-term employment contracts that also start on a part-time basis, are over-represented. Finally, non-EU foreigners are more affected than EU foreigners and German nationals (Federal Office of Statistics 2008).

The atypically employed are distributed unevenly across the various sectors. Part-time working can be found above all in the services sector (42%). Short term contracts are mainly used in sectors that are not affected by the economic cycle such as health and social services, education and teaching and also public administration (Hohendanner 2010). What is striking is that the proportion of short term contracts for new recruits rose significantly between 2001 and 2009 from 32% to 47%. The proportion is also bigger the larger the company.

The picture is similar for those in marginal employment. The main sectors here are the retail sector, the hotel and catering industry and building cleaning, which account for 13.2%,

9.0% and 7.2% respectively. Some 30% of all the marginal jobs are carried out in addition to the individual concerned having a job subject to social security payments. In addition, this category of work includes a number of schoolchildren, students and pensioners that is difficult to quantify but probably accounts for about a quarter of all those in marginal employment. The relatively high proportion of this category of person also explains why a significant proportion of these jobs (almost 25%) last for only six months, although another quarter or so lasts for longer than 3 ½ years.

Agency working, by contrast, is largely found in manufacturing industry, though the services sector is also increasing in importance in this respect. The majority of workers involved – 71% – are male and work mainly in the metalworking and electrical industry but also as casual employees in other manufacturing industries. Probably because the Hartz Laws of 2004 removed the ban on short term contracts, the average length of employment has increased. Whereas in 1999 only 38% of all agency workers were employed for three months or longer, 10 years later the figure was 56%. Conversely, however, this also means that 44% of employees in this category are not employed for longer than three months. To this extent, this remains a relatively short term form of employment.

3.3 Reasons for increase

In Germany, theoretical attempts at explanation are relatively rare – the majority of studies are empirical in nature. It is possible to speak of a theory-deficit in this field, which may have to do with the fact that this is a collective category covering various different forms of employment that only have in common the fact that in at least one central feature they do not meet the criteria defining normal employment. This is a negative form of demarcation rather than a positive categorization. If, however, despite the heterogeneity of atypical forms of employment, one tries to find a common denominator, one can say that all these forms of employment increase the scope for flexible deployment of labour compared with normal employment. This applies above all for companies, when it comes to individual forms such as part-time working and also, to some extent, mini-jobs; but it also applies to the employees themselves.

Generally speaking it can be said that there are specific factors explaining the expansion of the individual forms of atypical employment. It is not possible to come up with a theoretical approach that would explain all forms of atypical employment – indeed given the heterogeneity involved it would be difficult to formulate this.

Depending on the form of employment involved, the expansion of atypical employment can be explained both in terms of supply and demand. The reforms resulting mainly from the Hartz Laws changed the regulatory framework from the point of view both of supply and demand and boosted the expansion of atypical employment.

The first theoretical approaches tried to explain this expansion in terms of human capital and transaction costs theories (Nienhüser 2007; Sesselmeier 2007; Neubäumer/Tretter 2008), taking as their starting point the demand side of the labour market. The argument is that in times of volatile demand the use of atypical forms of employment (above all agency and short time working) can reduce labour and redundancy costs and also increase flexibility in terms of deployment of human resources. It also enables external revenues to be generated as, in the case of crisis, no core employees – in whose training considerable sums of money have often been invested – have to be made redundant. If, as demand declines, these employees were made redundant, then the companies would not be able to get any return on their investment and there would also be high redundancy payments due to individuals with many years of

service in the company. Moreover there would be no guarantee that, when demand recovers, these individuals could be reemployed, thus avoiding expensive recruitment and induction costs. Against this, however, one has to take into account transaction costs for induction, information and monitoring of “marginal” agency workers.

Various developments have contributed to changing the cost structures. Persistently high unemployment has increased the pressure for those without work to accept low wages. The Hartz Laws have contributed to this by reducing the length of time that unemployment benefit is paid and introducing stricter conditions when it comes to unemployed individuals accepting jobs with considerably worse working conditions than in their previous job.

It is further argued, on the basis of transaction cost theory, that greater division of labour means that induction costs, particularly for simple activities in the services sector, have gone down, thereby reducing the costs involved when new workers are taken on. In addition – at least in cases where redundancy payments are involved – the costs are lower when the period of service is shorter. The size of the redundancy payment depends on the period of service of the individual concerned. To this extent, it can be advantageous for companies, in addition to their core workforce, to have a second category of employees recruited on a short term, flexible basis. The current crisis illustrates very well how various forms of reduction of working time have enabled companies to maintain their core workforce despite a sharp drop in demand, while at the same time radically reducing their use of agency workers (Herzog-Stein/Seifert 2010).

The changes that have occurred are particularly obvious when one looks at the development of agency working. The deregulation of agency working under the so-called Hartz Laws made it more attractive for companies to take on agency workers. The ban on short-term contracts, synchronization and repeated recruitment has gone. As the experience of the current crisis shows, companies can use this instrument to shed labour rapidly and without redundancy costs when they face volatile demand for goods and services as the economic cycle waxes and wanes. It is possible to speak in general terms of a change in the function of agency working since deregulation. Whereas agency work was originally mainly used to fill short term gaps in the workforce resulting from illness, vacation or periods of leave, companies are now increasingly using this form of employment to try out and recruit staff and also as a flexible tool to avoid recruiting new staff or replacing members of the core workforce (Seifert/Brehmer 2008). In particular this last function offers companies a number of advantages related to the particular structure of agency working. Unlike normal working, there is a differentiation between the working relationship and the employment relationship. Agency workers sign a contract with the agency, with whom they also agree on the wage and working hours. But the actual work to be carried out is defined by the company itself, which has managerial authority over the worker. This particular legal structure means that the wage and working conditions of the agency worker can deviate from those in the company. If the agency workers receive the collectively agreed wage for the agency sector, then the gap between their pay and the salary received by the core workforce widens, the higher the level of wages is in the company concerned.

Similar calculations play a role in the use of short-term contracts. During the economic crisis this form of employment also took on an additional function. More than half of all young people, on completion of their vocational training under the dual system, were initially taken on only on the basis of a short term contract. Within companies, management and works councils often negotiate an agreement to take on all trainees, but at the price of their

initially being employed on a short term basis. Otherwise the companies would only take on a proportion of the trainees.

An example of this particular situation and the efforts of the social partners to ensure that young people are employed, at least on the basis of short-term contracts, can be found in the agreement signed in the chemical industry. The IG BCE trade union and the employers agreed on a funding deal entitled “Bridge to Employment” that was designed to ensure that trainees were all taken on. All 1,900 companies in the chemical industry have to contribute to a fund amounting to some €25 million which is then used to support companies who – despite the difficult economic situation – take on trainees after their apprenticeship is finished. Each trainee taken on is subsidized to the tune of up to €1,000 per month for a period of up to a year. In 2010 and 2011 this will mean that each year, at least 1,000 trainees will be given jobs. In order to avoid abuse of the system, a commission is to be set up with equal representation of employers and employees. The scheme only applies to companies that are members of the chemical industry employers’ association and trainees who are members of the IG BCE trade union. These short-term contracts are designed as an alternative to unemployment and to win time, so that a later stage the short-term contract can be converted into a permanent one.

Other reasons for short-term employment include temporary coverage for pregnancy and parental leave – both of which are becoming more significant as more women enter employment. In addition, short-term contracts are often signed in scientific research institutes and universities because of time constraints on budgets and project funding. Thus three quarters of academic staff at German universities only have a limited term contract (Hohendanner 2010).

In the case of part-time working, the main influencing factors are related to supply. But they also play a role in the case of mini-jobs. It is mainly women who like to reduce their working hours and opt for part-time working after they have started a family. This enables them to continue work and earn a salary, albeit a reduced one, and also to maintain pension eligibility. There is, however, a danger that if part-time working persists for a long time, the individual concerned will not accrue sufficient pension rights to ensure that she has an income above the poverty threshold on retirement. In this context it is perhaps significant that in Germany there is a lack of sufficient childcare institutions and schools offering all-day care. Given the current gender-specific distribution of roles, women often have no choice but to transfer to part-time working if they do not want to completely cut themselves off from the world of work.

Mini-jobs play a special role because of their particular status with regard to tax and social security contributions. The companies pay 30%, of which 2 percentage points go on tax, 13 on statute three health insurance and 15 on statutory pension insurance. This makes mini-jobs attractive for companies in terms of cost. As employees do not have to pay tax and social security, the companies can save this element of labour costs by paying low gross wages, as these are effectively net wages for the employees.

4. Actual Situation of Equal Treatment

4.1 Are atypical forms of employment precarious?

The increase in atypical employment implies an increase in social risks. These risks occur during and after the end of an individual’s working life. The question therefore arises of the link between atypical and precarious employment (Rodgers/Rodgers 1989). In political and academic discussion, atypical is often regarded as synonymous with precarious

employment (for others Dörre 2006). This commonly held position based, amongst other things, on concepts developed by Bourdieu and Castel, tries to put labour market trends into a broader social context – i.e. to create a bridge to research on social inequality. However, in terms of this investigation, such an approach remains rather unfocussed, because it does not differentiate between the objective dimensions of precarity detailed below and fails to take various contextual factors into consideration.⁹

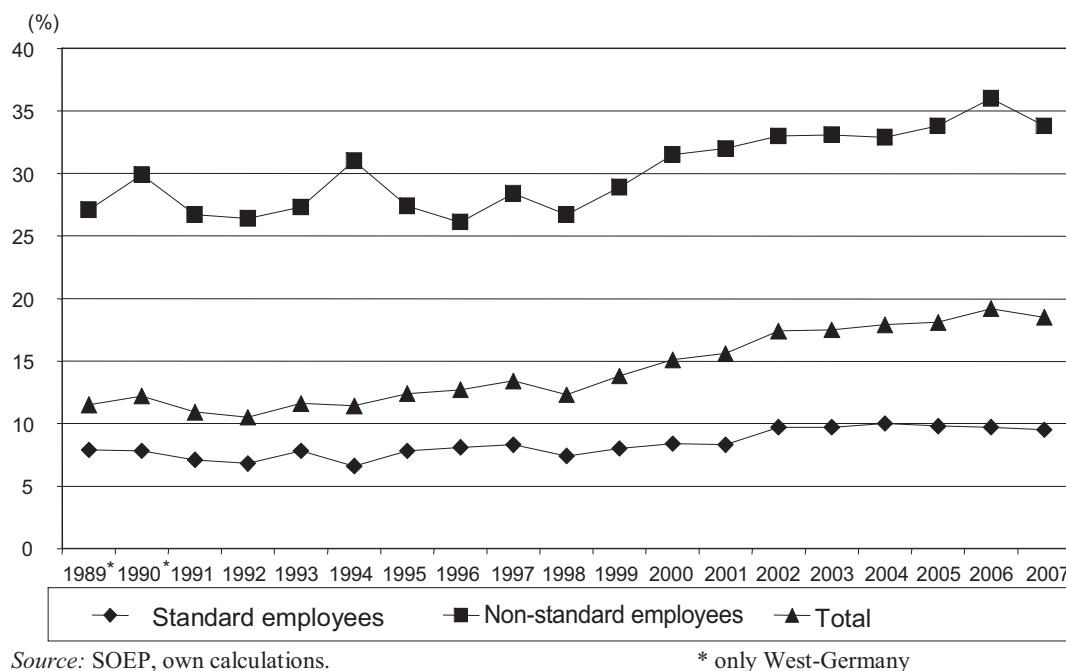
We propose differentiating between several easily applied and not purely subjective dimensions of precarity that can occur in combination:

- A subsistence income – usually internationally defined as two thirds of the median wage, although one has to explicitly differentiate between individual and household income,
- Integration into the social security system, above all pension insurance,
- Employment stability (in terms of continuity of employment and not just a specific workplace),
- Employability (as the individual, life-long ability to adjust to structural changes).

Broadly speaking, the many empirical analyses based on a variety of data now available categorise atypical employment as inferior to standard employment. However they also show that not every form of atypical employment can be classified as precarious. However, if the criteria defined and proposed above are applied, then the risk of precarity is considerably higher than in the case of standard employment – even though it is itself not free of precarity risks.

When it comes to wages, all forms of atypical employment come out worse than standard employment when individual features are examined (figure 2). There are differences not only between standard and atypical employment but also amongst the various atypical forms. The wage differentials are particularly crass in the case of the marginally employed (Anger/Schmid 2008, Brehmer/Seifert 2009, Wingerter 2009), rather less so in the case of agency work (Jahn/Rudolph 2002, Kvasnicka/Werwatz 2006, Sczesny et al. 2008, Seifert/Brehmer 2008), but even fixed-term (Giesecke/Gross 2007, Mertens/McGinnity 2005) and part-time workers (Wolf 2003) are not on the same level as those in standard employment. The striking wage discrimination of the marginally employed probably has to do with the indirect subsidising of this form of employment. Even if one takes into account the individual household context, this situation creates problems for subsistence and can bring a risk of poverty during and after an individual's working life. Already some 1.3 million – almost 4% – of all employees are in receipt of public benefit payments because of their marginal income (Möller et al. 2009).

⁹ A freely chosen, part-time job of unlimited duration can be unproblematic in both the short and medium term if, for example, it makes family and work more compatible and the family's material needs are covered by the income from standard employment.

Figure 2 Employees below the low-wage threshold, (in %)

There are also significant differences when it comes to employment stability. Agency work is categorised as particularly unstable¹⁰ compared with standard employment (Brehmer/Seifert 2008, Brenke 2008, Kvasnicka 2008), and a higher level of volatility is also diagnosed in the case of fixed-term employment (Boockmann/Hagen 2006, Giesecke/Gross 2007). In the case of part-time employment, recent studies (Brehmer/Seifert 2008) have identified a greater degree of employment stability compared with all other forms and attribute this to the fact that part-time work in particular enables women starting a family to remain employed. Without the possibility of changing from full-time to part-time work as their family situation evolves, they would probably often have to interrupt their working lives.

Those in atypical employment are also disadvantaged when it comes to access to company based further training (Baltes/Hense 2006, Reinkowski/Sauermann 2008). The scope for improving one's own employability on the internal and external labour market is limited. The risk of discrimination is greater for employees with reduced working hours than for those with fixed-term contracts. It is unlikely to compensate for such discrimination by taking the initiative oneself, as the precarity risks described above can be cumulative. The poorer level of remuneration means that the individual concerned does not have the necessary financial resources. In addition, the relatively high employment instability makes access to company based training more difficult. In the face of these multiple disadvantages, there is a danger of falling into a sort of vicious circle consisting of repeated periods of atypical employment punctuated by phases of unemployment that is difficult to break out of and brings considerable long-term social risks for the individual concerned.

¹⁰ The majority is employed for a period of less than three months.

4.2 Signs of re-regulation

Statutory regulations in the form of part-time and employment promotion legislation require all forms of employment to be treated in the same way in terms of income and working conditions. In practice, however, the situation is rather different, as has been shown. Compared to regular employees, those in atypical employment often run a considerable risk of being disadvantaged in terms of income and access to in-house training, and their general situation is much less stable. Given the social risks and the significant increase in this form of employment in recent years, the trade unions in particular are calling for new regulation in this sector aimed at putting it on the same footing as normal employment in social terms. In a not insignificant number of companies (23%) the works councils have succeeded in negotiating wages for agency workers that are comparable with those paid to the core workforce (Seifert/Brehmer 2008). One can, however, assume that this only applies to the basic wage and not to special payments, bonuses etc., so that even if the wage is the same, the effective income is not.

In autumn 2010, IG Metall achieved an important initial victory at sectoral level in the steel industry. Agency workers in all companies in the sector now receive the same remuneration as core employees. If the agency does not pay the same rate, then the steel company is responsible for remedying the situation. This collective agreement, which came into force in October 2010, runs to the end of 2012.

As the agreement only applies to an area with relatively few employees, the trade unions are calling for a general statutory regulation to ensure that agency working in areas not covered by collective agreements are put on the same footing. Only about half of all employees are covered by collective agreements. By the end of 2010 a decision had not yet been made as to whether the German government would introduce a minimum wage for agency workers. Given that in May 2011 workers from the new members of the European Union will have complete freedom of movement, a majority of the parties represented in the German Bundestag are in favour of such legislation.

Another topic under discussion in political and academic circles is the abolition of the privileged status of mini-jobs. In autumn 2010 the German Lawyers' Congress called for the special tax and social security provisions to be abolished (Waltermann 2010), and there is general agreement on this amongst academics. However, there is resistance in some parts of industry, above all those with a high proportion of mini-jobs, and politicians are therefore reluctant to change the situation.

5. Scenarios for Shifting to Permanent Employment

The social impact of the precarity risks described reduces to the extent that atypical employment serves only as a temporary solution and as a bridge to regular employment, as was the intention when the Hartz Laws were passed. However such upward mobility only functions to limited extent. When there is a change of job involved, transition from atypical employment to regular employment is considerably rarer than when an individual is moving from a full-time job (figure 3). Leaving aside unemployment, when individuals on short-term contracts or agency workers lose their job, a disproportionate number of them end up in similarly precarious forms of employment (Gensicke et al. 2010).¹¹ Another study showed

¹¹ The study looked at what happened over a period of 2 to 14 months to people in various forms of employment following termination of their contract either by the employer or the employee himself.

that in 2009 45% of all short-term contracts ended in permanent employment (Hohendanner 2010). Before the onset of economic crisis, this figure had been 52%. In the manufacturing sector, which was particularly hard hit by the crisis, the figure even declined from 68% to 38%. This illustrates the full extent to which short-term employment is dependent on the state of the economic cycle.

People in part-time and marginal employment – or on €400 jobs – only account for a tiny proportion of those who find regular employment on their return to working life. This probably has a lot to do with the fact that the vast majority are not interested in moving into regular employment. Of all those previously in a typical employment, former agency workers, at 17%, transfer most frequently into regular employment, whereas those previously on short-term contracts do rather less well. However, by far the greatest proportion (41%) of people finding regular employment were formerly also in full-time employment (Gensicke et al. 2010).

Table 2 Transition from unemployment to ... (in %)

Former employment form	new employment form					
	temp. agency	fixed-termed	marginal jobs	part-time < 35	regular work	un-employment
temp. agency	12	16	3	2	17	50
fixed-termed	4	27	6	4	15	45
marginal jobs	2	12	25	9	5	47
part-time < 35	3	16	11	19	10	41
regular work	3	13	3	3	41	37
total	4	19	7	5	23	42

Source: Gensicke et al. 2010.

There is a similar difference amongst the various forms of employment regarding the risk of ending up jobless following termination of an individual's contract. Whereas 37% of those in regular employment did not find a new job, the figures for agency workers and those on short-term contracts are 50% and 45% respectively. This finding is particularly surprising because agency workers are subject to much greater social pressure to take up a new job as they have fewer rights to unemployment benefit (Arbeitslosengeld 1) than individuals who have held regular jobs (Gensicke et al. 2010). An analysis by Lehmer and Ziegler (2010) came to a similar conclusion. Particularly for temp agency workers it is difficult to move from this form of employment to a regular job. The bridge leading to safe jobs with better working conditions is very narrow (Promberger et al. 2006).

The empirical findings briefly described above are also a robust indication that there is a strong (relative) path dependency when it comes to the type of employment: those previously in non-regular jobs as often as not end up in atypical employment, and the majority of those coming from regular employment find another full-time job.

When it comes to income mobility, there is also a strong tendency for the situation to remain unchanged. Over a period of four years, almost two thirds of those in the lower income segment remained in this position (Schäfer/Schmidt 2009), and in recent years this proportion has even increased. On a deregulated labour market is more difficult to break out

of the low-wage sector and achieve upward mobility. Clearly, greater flexibility does not automatically mean greater mobility. What is not clear is what factors restrict mobility – this is a question that so far has remained unanswered in labour market research.

6. Long-term Consequences

The profiles of atypical forms of employment not only generate the above problems during an individual's working life (above all in terms of income, employability and employment stability), but also creates significant long-term problems in terms of social security that have been ignored in existing analyses. The consequences go beyond the labour market and affect individuals' post-work lives, with a considerable impact on social security, especially pensions. In a conservative welfare state such as Germany, such systems are very much focused on working life and strictly linked to the criteria of standard employment (financed through contributions of employers and employees and based on the principle of equivalence). Analysis of the resulting social problems renders the traditionally strict demarcation between labour market and social policy obsolete.¹² Any approach to reform requires integrated solutions.

The accumulation of social risks means that, compared to people in standard employment, those in atypical employment are more likely to be only on low wages and are therefore more often in receipt of top-up transfer payments. Moreover, because of the greater employment risk and/or the short periods of employment involved, they more frequently can only claim Type 2 unemployment benefit (*Arbeitslosengeld II*) when they lose their jobs.¹³ The differences between agency workers and those in standard employment are particularly striking, with the exception of those on marginal wages, who are not covered by unemployment insurance. After getting job-less approximately one agency worker in two receives the lower Type 2 unemployment benefit, whereas the figure is only one in seven in the reference group. The main reason for this drastic difference is the fact that the previous period of employment subject to compulsory social insurance was not of sufficient duration. In addition, any claim to Type 2 unemployment benefit presupposes that savings above a certain threshold are first used for the purpose of subsistence. In these circumstances the greater degree of individual responsibility for old age provisions demanded of employees becomes unfeasible.

What is relevant in the long term in both individual and collective terms is the insufficient integration of such individuals into the pension insurance system. The low levels of contributions made as a result of long periods of part-time work or an entire working career spent on mini-jobs – but also unemployment after the expiration of fixed-term jobs – results in individuals only having a claim to pension benefits that are inadequate for subsistence purposes.¹⁴ The changes that have occurred in types of employment increase the risk of poverty in old age for the individuals concerned. For years, this issue was regarded as having been solved in Germany, but it could re-emerge in the future unless appropriate measures are taken. And from a collective point of view, the necessary top-up transfer payments represent a

¹² The consequences for individual lives or health are not examined here for space reasons. A broader introduction is provided by Kalleberg (2009).

¹³ There are two types of unemployment benefits. Type 1 is limited and provides compensation rates of the last net income (60% without and 67% with children). Type 2 is unlimited but the compensation rate is much lower.

¹⁴ With regard to pensions a differentiation has to be made between "classic", derived rights and provisions organised by the individual. From the perspective of equality it is the latter that is meant.

considerable drain on public budgets and bring with them the risk of gradual erosion of the basis for contributions.¹⁵

7. Outlook

In summary it can be stated that atypical forms of employment systematically display higher precarity risks than standard employment. Furthermore, in contrast to popular assumptions, their impact on total employment can be categorised as slight. As a result, any final assessment of deregulation measures is necessarily ambivalent.

In view of this conclusion, the question arises as to how these forms of atypical employment should be dealt with in the future. Should faith continue to be put in market mechanisms – and indeed, should these be promoted by further deregulation¹⁶ - or should they be subject to stricter forms of political regulation? The latter option would require mitigation – or in a best-case scenario, elimination – of the social risks described above through (re-) regulation. As forms of atypical employment are quite heterogeneous, any measures taken would have to be highly differentiated, which would necessarily result in a new complexity of regulatory instruments.

Nevertheless the general regulations and design principles described in what follows would help to reduce the analysed precarity risks. These include realising – i.e. implementing in practice – the principle of equal pay, thereby bridging the significant wage differentials between identical jobs in atypical and standard employment. Indeed, if market mechanisms operated properly, then one could even expect a risk premium as a result of the higher employment risks involved in atypical employment.

Germany is one of the few EU member states that do not have any statutory minimum wage. A collectively agreed wage can, on application, be declared generally binding for the sector concerned, but in reality this seldom happens. A disproportionate number of those in atypical employment receive “poverty wages”, i.e. less than two thirds of the median wage. Introduction of a general statutory minimum wage would improve their prospects of being able to subsist on the wage they receive.

General (statutory or collectively agreed) claims to company based further training would not only improve the employment prospects of individuals but also enhance the functioning of the labour market. It was not least because of the mediocre further training activities of German companies in international terms that mismatch problems worsened during the last economic upswing (Koppel/Plünnecke 2009). In the long term there is a real risk of serious malfunctioning of the labour market. Demographic change, ongoing progress in the technical and organisational spheres, and the switch to a service economy mean that a higher proportion of the workforce needs to receive vocational further training. But the spread of atypical forms of employment does not serve this need for lifelong learning. Such forms of employment are not conducive to the development of a knowledge-based society.

The high level of employment instability to be found especially in the case of fixed-term and agency workers justifies the introduction of a type of precarity premium that can be found in some EU states, in order to balance out the unequal burden of risks.

¹⁵ In terms of the differentiation between derived and own rights, it would have to be the latter in this case.

¹⁶ The CDU/CSU and FDP government elected in autumn 2009 is planning two measures: in the case of mini-jobs, an increase and dynamisation of the existing 400 euro limit, in the case of fixed-term contracts a further liberalisation of the 2 year maximum duration and introduction of the possibility of a renewal of the fixed-term contract with the same employer.

A third general area for future reforms concerns pensions. One alternative that would fit into the current system would be a transition to a three-part solution consisting of an element funded from general taxation, an element based on contributions paid during an individual's working life according to the current equivalence principle, and also a voluntary additional insurance. However this last, purely private, pension insurance element requires an appropriate level of income. A more far-reaching, more unconventional solution would be to introduce needs-based minimum old-age provisions not dependent on any previous employment requirement and funded from general taxation. The introduction of such a system has already been under discussion for many years, irrespective of the development of atypical employment and the growing problem of old-age poverty, but in our context is becoming increasingly relevant.

One possible approach that could combine the reforms suggested above is offered by the latest concept of flexicurity, which is shifting the direction of the debate on labour market regulation. The idea aims at achieving a better balance between companies' calls for greater flexibility and employees' interest in greater social security than has been achieved hitherto by exclusively focusing on flexibilisation and deregulation (cf., by way of an introduction and overview, Kronauer/Linne 2005). Following implementation of this attempt to combine flexibility and social security in individual EU member states – above all the Netherlands and Denmark – it has now been declared an official part of European employment policy by the EU Commission (Keller/Seifert 2008).

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