

# Changing labor markets, changing social protection: The status of social protection policy

Graham Owen and Anne Marie Brady



TRANSATLANTIC EXPERT GROUP  
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## 1. Introduction

Globalisation, technological, and demographic change have profoundly affected labor markets in the United States and in Europe. Since the 1980s and 1990s, these changes have occurred as policymakers tried to reduce high unemployment and increase economic growth by making labor markets more flexible. Keeping labor costs down was seen as essential to remaining competitive and preventing the transfer of production elsewhere. There is evidence to suggest that this movement towards greater labor market flexibility, in part through increased deregulation, has contributed to a rise in nonstandard forms of work. Workers in nonstandard work arrangements tend to have fewer social protections. Their jobs are not predictable in terms of income and working hours, which has made securing economic and social security a major challenge.

Social protection is the mechanism that addresses amongst other issues, poverty reduction, education, health, social inclusion, and empowerment<sup>1</sup>. In the United States and in Europe social protections were initially designed between 1880 and 1945 with the full-time, dependent employee in mind.<sup>2</sup> Today, the standard employment relationship remains a critical, but not the only, mechanism through which social protections are provided to the employee by the employer (as is often the case with healthcare coverage in the U.S.) and/or through contributions made by both the employer and the employee into national social insurance funds designed to manage the risk of unemployment, ill health and disability, and retirement.<sup>3</sup> In all European countries, but not the United States, risk management includes paid leave for caregiving. The challenge that confronts the United States and Europe is that in the context of a changing labor market and the increase in nonstandard work, the classical mechanism through which social protections are provided is diminished.

This paper will consider the degree of change from standard to nonstandard work arrangements in the U.S. and in Europe and the implication this change has for social protection. This question is relevant because if we tie important social protections to our worker status, then any increase in nonstandard work will imply a loss of social (and labor) protections for a proportion of the working age population engaged in nonstandard work in the U.S. and in Europe. It then becomes a question of who manages the risk of unprotected (or less protected) workers—the individual, the state, or the private sector (i.e., the company) or a mixture? New forms of work that have ensued and/or increased in the last fifty years

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<sup>1</sup> Despite the diversity of social protection definitions, they nevertheless should contain common features that involve all private and public initiatives that seek to reducing economic and social vulnerability. To achieve this, the International Labour Organization's (ILO) concept of social protection floors suggests that systems should comprise of at least the following social security guarantees, as defined at the national level: access to essential health care, including maternity care; basic income security for children, providing access to nutrition, education, care and any other necessary goods and services; basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and basic income security for older persons.

<sup>2</sup> National social protection systems have primarily been developed using insurance-based schemes (those based on social contributions from the employee and the employer); benefits and services financed by taxes (i.e., family allowances, some forms of healthcare and long-term care); and means-tested benefits (i.e., social assistance and minimum income provisions for older people).

<sup>3</sup> In the case of retirement, there is an expectation in the United States and many EU countries that employees should also make private provisions to supplement their retirement income by using some of their disposable income to place in pension funds in order to supplement their state retirement benefit. But individuals with very little or erratic disposable income are vulnerable here as they are less (or are not) able to supplement their state pensions and as a result, they may face economic difficulties later in life. Due to an inability to supplement state pensions, this group, when retired, often becomes dependent on other benefits such as housing benefits to reduce rental costs and supplementary pension income.

have brought the incomplete protection of workers in nonstandard employment to the forefront of international policy debates. But the adverse effect of incomplete protection of individuals has never been made plainer than during the coronavirus pandemic where—especially in the US but also to varying degrees in European countries—coverage, the amount and the duration of benefits as well as sick and care leave were simply not adequate and as a result, had to be bolstered through emergency stimulus legislation.<sup>4</sup> Moreover, those in the least protected, most precarious employment were disproportionately women and people of color—exacerbating already long-standing gender, ethnic and racial inequalities in the United States and to varying degrees in Europe. The Covid-19 pandemic is the most traumatic and widespread public health crisis faced in modern times. The ‘extraordinary’ of the Covid-19 pandemic revealed the cracks in the ‘ordinary’ forms of social protection in both Europe and the United States. When social protection systems work well, they can have a stabilizing effect on the economy and promote socio-economic equality and stability. By contrast, lack of protection coupled with inadequate or ineffective systems can exacerbate income insecurity, poverty and economic inequality, which has broader implications for democracy.

But just how much is nonstandard work on the rise in the U.S. and in the EU? This paper will explore the status of nonstandard employment in the U.S. and the EU, especially the groups affected. This paper will then discuss three shared challenges—choice, motivation and costs—that the U.S. and the EU face to address the incomplete protection of workers through the prism of the employment relationship.

## 2. Two different systems with common challenges

The European Union is a political and economic union between 27 countries, otherwise known as ‘the member states.’ The development goals and the recommendations of the EU commission are important aspects for bringing member states in line with overall policy and values. Nevertheless, the difference in social protection legislation and levels of economic support provided at the national level is evident.

Most member states have social protection schemes that can also cover nonstandard employees but exclude certain categories of employees such as casual and seasonal work, on-call workers and temporary agency contracts. The self-employed may be completely excluded from social protection. The coverage available to nonstandard employees is fragile as they often do not meet eligibility criteria in the form of duration of employment and/or number of working hours.<sup>5</sup>

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<sup>4</sup> In the United States, see for example the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020 and the American Rescue Plan Act of 2021.

<sup>5</sup> Many member states have introduced reforms to cover nonstandard workers and the self-employed between 2017 -2019. For example, Ireland extended social protection for the self-employed in some key areas: dental and optical care, invalidity benefits (in 2017) and unemployment benefits (in 2019). In Spain, as of January 2019, unemployment and accidents at work are covered on a mandatory basis, not only on a voluntary basis. In Denmark, the new unemployment scheme, which entered into force in 2018, includes all forms of earned income and allows for the protection of those who combine several types of activities. In 2017-2019, Belgium took a series of measures to improve or create family-related leave for the self-employed (maternity leaves, paternity leaves, foster parent leaves) and shortened or abolished waiting periods in other domains (sickness benefits, pensions). European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Access to social protection for workers and the self-employed*, October 2020.

Despite this progress, it is evident that significant gaps remained in March 2020 when the COVID-19 pandemic revealed failings in the system. “21 Member States lack formal coverage for at least one group of non-standard workers in at least one branch of social protection that fall under the material scope of the Recommendation on access to social protection for workers and the self-employed.”<sup>6</sup> It is still the case that the highest level of protection is available for full-time employees with permanent contracts. In Europe increased attention has been given to nonstandard employment over the last few decades particularly the self-employed, and an increasing number of member states are bringing these categories in line with standard work. But it is important to consider that the degree of social protection is also affected by the various rules which differ from country to country. These rules include qualifying periods; waiting periods; duration of benefits; and replacement rates.

The European Pillar of Social Rights (EPSR) is the ambitious structure used to promote social rights and social protection, on the one hand, and as a political compass used to set the course for member states to provide adequate social protection for all workers, on the other. The preliminary background documents recognized the changes in the labor market and the emergence of gaps in social protection resulting from these changes. The Pillar consists of 20 principles which are organized under three headings: equal opportunities and access to the labor market; fair working conditions; and social protection and inclusion. The initiative was adopted by the European Parliament, The European Commission, and the Council in 2017. All EU countries agreed to implement the 20 principles.

The Pillar itself is not legally binding and does not give the EU more power but aims to be a tool to promote social rights in collaboration with Member States, civil society, social actors, and social partners. A fundamental problem with implementation is that the EU has a weak legal basis for social protection and inclusion because most of the policies are at the core of national welfare states.

As part of the implementation of the European Pillar of Social Rights, the European Commission adopted in November 2019 a council recommendation aimed at further strengthening the support for people in nonstandard employment and self-employment that included allowing nonstandard workers and the self-employed to adhere to social security schemes (closing formal coverage gaps). The proposal covers social security schemes for unemployment, sickness and healthcare, maternity or paternity leave, accidents at work and occupational diseases, disability, and old age. Member States were recommended to implement the principles of the recommendation and to submit a plan setting out the corresponding measures to be taken at national level in May 2021. The Commission will review the progress made in the implementation of this recommendation and a follow-up report is due to be made to the Council by in November 2022. On the basis of the results of this review, the Commission may consider making further proposals.

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<sup>6</sup> Ibid.

The United States is a federation of states where national legislation provides a framework, but states have great discretion in deciding the rules, regulations, administration, eligibility and much more as it pertains to healthcare, unemployment benefit, cash benefits like TANF and SNAP. This results in fifty very different systems of protection—with those states in the South being notorious for excessively stingy benefit systems (states with high African American populations tend to have shorter benefit durations and less generous benefits).<sup>7</sup> The unemployment system, for example, is jointly financed by states and the federal government through payroll taxes paid by employers. But the states decide, with few exceptions, eligibility, benefit levels and benefit duration. During normal economic times, state tax funds pay for the benefits their workers receive and federal tax funds underwrite the cost of administering the program. The federal government finances 50 percent of the Extended Benefit program.

As in Europe, the coronavirus shone a spotlight in the United States on an aging, crumbling federal-state unemployment insurance system. It fails to serve many workers through strict eligibility criteria that proves exclusionary, it ramps up too slowly and unevenly to stabilize the economy during recessions and it sets perverse incentives for states and employers to undermine program integrity, for example through misclassification of workers. Temporary programs were first enacted as part of the CARES Act at the start of COVID-19 that sought to address some of these long-standing and well-known deficiencies in U.S. social protection systems. Some of these included bolstered unemployment insurance programs (including extending eligibility, benefit amount and duration) through the Pandemic Unemployment Compensation (PUC) program. The creation of a Pandemic Unemployment Assistance (PUA) program that brought jobless aid to workers ineligible for traditional unemployment insurance (the U.S. does not have a social assistance program for those not eligible for unemployment insurance). Moreover, the CARES Act extended the amount, duration and eligibility criteria for Food Stamps and suspended the requirement that recipients of Temporary Assistance for Needy Families (TANF) demonstrate they are seeking work as a criterion for benefit receipt. While these changes bolstered these systems, they nevertheless have proven ultimately inadequate forcing a much needed and long-overdue call in the United States for universal minimum standards for benefit eligibility, duration and levels that address both the immediate needs arising out of the pandemic, but also the long-term needs of a changing labor market.

### 3. Is there evidence for a rise in nonstandard work?

Abraham and colleagues point out that in the United States, the current discussion about alternative work arrangements is similar to earlier discussions that arose in the late 1980s and 1990s.<sup>8</sup> The concern then, as now, is whether there was a dramatic growth in the number of

<sup>7</sup> Floyd, I., Pavetti, L., Meyer, L., Safawi, A., Schott, L., Bellew, E. and Magnus, A. *TANF Policies Reflect Racist Legacy of Cash Assistance*, Center on Budget and Policy Priorities, 2021.

<sup>8</sup> Abraham, K., Haltiwanger, J., Sandusky, K., Spletzer, J., "Measuring the Gig Economy: Current Knowledge and Open Issues," NBER Working Papers 24950, National Bureau of Economic Research, Inc August 2018. See also for example Abraham, K. "Flexing Staffing

people working in jobs that were contingent or precarious, defined as jobs where workers no longer had a connection to a particular business, but were employed to complete a specific task for an agreed to period of time. “The recent resurgence of interest in non-traditional work arrangements reflects the perception that new technology, along with the restructuring of business enterprises made possible by this technology, is producing an accelerated pace of change in the organization of work that is having important effects on both workers and firms.”<sup>9</sup>

But how much are changes in the labor market indicative of a larger trend in the rise in nonstandard work today? One of the biggest challenges to answering this question rests with national data sources in the United States that are not consistent—at times conflicting—if not outright limited in what they can tell us about the nature and breadth of nonstandard work.<sup>10</sup> Different sources sometimes provide conflicting information on incidence and trends or differ in comprehensiveness of their measures. This is especially true as it pertains to understanding the size and significance in the United States of the platform economy, both locally and nationally. Moreover, another challenge is that there are different categories of workers, and these are not necessarily mutually exclusive, and, in some cases, a job might fall into more than one category. In addition, any one person may have multiple jobs and work under multiple arrangements. “The current system of economic measurement is designed for a world in which workers have a traditional employment relationship or operate a formal business.”<sup>11</sup> Understanding the breadth is critical in determining whether a trend is indicative of a wider shift that needs to be addressed through policy change. Moreover, limited government data means it is difficult to understand the demographics of the workforce and the challenges different groups of people may face. And finally, any growth in nonstandard work matters for the measurement of economic activity.

In Europe, researchers face a similar set of data challenges. But in addition to these, the institutional arrangements as well as the prevalence of nonstandard work varies across countries and makes it difficult to make comparisons and reliable generalizations. That all being said, below is a brief review of what the available evidence suggests on changes in employment relationships.

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Arrangements and Employers’ Short-term Adjustment Strategies,” in R.A. Hart, ed., *Employment, Unemployment and Labour Utilization*, London: Unwin Hyman, 288-311, 1988; Abraham, K. “Restructuring the Employment Relationship: The Growth of Market-Mediated Work Arrangements,” in K.G. Abraham and R.B. McKersie, eds., *New Developments in the Labor Market: Toward an Institutional Paradigm*, Cambridge, MA: MIT Press, 85-119, 1990; Baker, K. and Christensen, K. *Contingent Work: American Employment Relations in Transition*, Ithaca, New York: Cornell University Press, 1998.

<sup>9</sup>Abraham, K., Haltiwanger, J., Sandusky, K., Spletzer, J., “Measuring the Gig Economy: Current Knowledge and Open Issues,” 2018: p. 1.

<sup>10</sup> Non-employee work may not be fully captured in existing data sources. Each month, for example, the Current Population Survey (CPS) collects information from households about work that done for pay or profit. Like the questions asked on other household surveys, the CPS employment questions may not always cue respondents to report work outside of a conventional job or business and are not designed to probe the nature of the arrangements under which work occurs. Further, they focus primarily on the main job a person holds, with a more limited set of questions asked about additional work activity. Other surveys collect information from businesses on the number of people they employ and the hours those employees work, but do not attempt to measure the labor input of people who are not on those businesses’ payrolls. *Ibid.*, p. 2-3. The consensus panel of National Academies of Sciences, Engineering, and Medicine recently recommended major revisions to Contingent Worker Supplement (CWS) of Current Population Survey to address these problems and gaps.

<sup>11</sup> *Ibid.*, p. 2.

## 4. Standard employment relationship

Despite ongoing changes in the U.S. labor market, standard employment still accounts for the largest share of work in the labor market. These are jobs where a worker is paid a wage or salary, receives a paycheck issued by the organization or company for which work is performed and has a regular, predetermined work scheduled with predictable hours and earnings.<sup>12</sup> This means that those working who receive a wage or salary in the U.S. are covered by unemployment insurance, workers compensation, the Fair Labor Standards Act, and other labor market laws and regulations that are applicable to employees but generally not those who are in nonstandard work arrangements.<sup>13</sup>

In the European context, legally defined contract types governing standard versus nonstandard work are of crucial importance. Social protection is affected by factors such as the legal definition of type of contract, social insurance coverage, remuneration/contributions, and the duration of employment. Employees who have a standard work relationship represents roughly 60 percent of the workforce in Europe.<sup>14</sup>

## 5. Nonstandard employment relationship

In Europe there are five main types of nonstandard work that include fixed-term contracts, temporary agency work, solo self-employment, platform-based work, and (marginal) part-time. While recent legislation has extended access to social protection to groups previously not protected, some forms of nonstandard workers and self-employed still face some gaps in social protection. But as with contradicting findings that have emerged from an analysis of different sources of data in the United States, so too have contradictory findings emerged from different sources of data in Europe. Analysis of the Labor Force Survey suggests that nonstandard work and self-employment made up 41 percent of the EU-27 workforce in 2019.<sup>15</sup> But analysis from the OECD suggests that about 22 percent of all workers in Europe are employed in nonstandard employment. Significantly, more than two-thirds of those who became unemployed were in nonstandard employment prior to their unemployment.<sup>16</sup> The truth may lie somewhere in between, but nevertheless in Europe these numbers represent a non-negligible part of the labor market.

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<sup>12</sup> This construct has been used by the Bureau of Labor Statistics (BLS) as the basis of its definition of contingent work. In the published BLS statistics from the Contingent Worker Supplement to the Current Population Survey (CPS), a contingent worker is anyone for whom no implicit or explicit contract for a continuing work relationship exists. Polivka, A. "Contingent and alternative work arrangements, defined," *Monthly Labor Review*, October 3-9, 1996.

<sup>13</sup> Abraham and colleagues point out that the application of these laws and regulations to the owners of incorporated businesses who pay themselves a wage or salary is complicated, but in many states business owners are permitted to opt in to coverage under the employment insurance and workers compensation systems. Abraham, K., Haltiwanger, J., Sandusky, K., Spletzer, J., "Measuring the Gig Economy: Current Knowledge and Open Issues," 2018.

<sup>14</sup> European Union, "Social Protection in the EU: State of play, challenges and options," 2018.

<sup>15</sup> European Commission, *Access to social protection for all forms of employment*, p.9, 2018.

<sup>16</sup> OECD Employment Outlook 2020.



## 5.1. Independent contractors

In the United States, workers who work on a contractual basis are defined as those who are not W-2 employees (they are ‘1099 workers’) but who also do not own a business or have significant capital investment. Important here is that in the United States most online platform workers (also referred to as ‘gig’ workers) are considered independent contractors. In the United States, recent estimates suggest a range from seven to 15 percent of those employed are independent contractors. That said, the findings are contradictory. Analysis of U.S. tax data suggest significant growth, but not in government surveys. Evidence from tax data and special household surveys indicate that main government household surveys (Contingent Worker Supplement, Current Population Survey) significantly understate prevalence of independent contracting. They miss non-employee informal work. They are prone to coding workers who are employed by an organization but who are not W-2 employees. And crucially, they miss a lot, or they do not measure at all, independent contracting on secondary jobs. This is a heterogeneous group that includes a range of workers—from those in professional positions to those engaged in low-wage work who are disadvantaged in the labor market, with evidence suggesting that there is more growth in contractual work among disadvantaged workers in recent years.<sup>17</sup>

Platform work, as defined in government surveys, is work obtained through an online platform or mobile device and where the payment for the work or task performed is mediated by the platform company. Again, a challenge in understanding the trend is the limitation in data sources. But what the data does suggest is that the incidence of platform work is small but rapidly growing. Recent estimates suggests that between 1 and 3 percent of the U.S. workforce work for online platforms in the week prior. The incidence was higher among younger workers and African American men and women. Analysis of national datasets suggest that platform work is often intermittent and used to supplement income, for example during a spell of unemployment.<sup>18</sup> But smaller studies suggest that the ability of the platform companies to provide their services depends on a smaller number of people who work full time (or more) and depend on that work as their primary source of income. For example, in a study of delivery and ride-hailing work in San Francisco, which was specifically designed to obtain a representative sample of the work being done in the city, more than 50 percent of the delivery workers in the sample worked more than 40 hours a week, with 28 percent working more than 50 hours a week. Some 76 percent of respondents said that platform work accounted for more than half of their monthly income, with 50 percent saying it was their only source of income.<sup>19</sup> A study of Seattle ride-hailing drivers found that a third of drivers account for 55 percent of all trips, and nearly three-fourths rely on driving as their sole source

<sup>17</sup> Abraham, K. and Houseman, S., *What Do We Know about Alternative Work Arrangements in the United States? A Synthesis of Research Evidence from Household Surveys, Employer Surveys, and Administrative Data*, U.S. Department of Labor, 2021.

<sup>18</sup> Ibid.

<sup>19</sup> Brenner, C., Johansson, E., Feng, K., Witt, H. *On-demand and on-the-edge: Ride hailing and Delivery workers in San Francisco*, Institute for Social Transformation, U.C. Santa Cruz, 2020.

of income.<sup>20</sup> It was concluded that the platform companies could not provide the services they provide without this core full-time workforce.

In Europe, there are data issues with this category which can be considered as a category of self-employment. One to two percent are employed with platform work as their main income source. However, as many as 10 percent have at some point in time worked for a platform.<sup>21</sup> These findings suggests that this type of work appears to be a source of temporary employment for a certain group but a main source of employment for a few. Young people, those who are seeking temporary income and those who are seeking to bolster their income through a second job who can be both low- and high-skilled are those most likely to work for the platform economy. The legal concerns are in the definition of the type of contract which opens the window for use of legal grey zones that build on the current diverse definitions of employment and self-employment at the national level.

## 5.2. Contract company workers

Contract company employees can include temporary agency workers.<sup>22</sup> A direct-hire temporary worker is someone who is employed for a limited term. Direct hire temporary workers include seasonal employees such as lifeguards for the summer or salesclerks hired for the winter holiday season. An alternative to using workers hired directly onto a firm's payroll is to use contract company workers on either a short- or long-term basis. Temporary help agencies supply labor to businesses with intermittent, seasonal, or other temporary demands for labor; professional employer organizations (PEO) provide workers or services on a more permanent basis; and other contract firms may provide services on either a short- or long-term basis. Individuals in these arrangements are employees, but the firm on whose behalf work is being performed (the client) is a different entity than the firm issuing the worker's paycheck (the temp agency, the PEO or other contract firm). Recent estimates in the United States suggest that 1.6 percent to 2.0 percent of wage and salary workers work in this capacity which is ultimately a small subset of all contract work. The Incidence is higher among older, minority, and low-educated workers.<sup>23</sup> Business-to-business contracting is where a company outsources work to another company. There is some evidence that it has grown in recent years in the United States, but this is not well measured. The challenge is that outsourcing of work may be a mechanism to lower compensation. That in fact outsourcing

<sup>20</sup> Parrott, J. and Reich, M., *A Minimum Compensation Standard for Seattle TNC Drivers*, The New School, Center for New York City Affairs, 2020.

<sup>21</sup> Eurofound, *Labour market change: Trends and policy approaches towards flexibilisation, Challenges and prospects in the EU series*, Publications Office of the European Union, Luxembourg, 2020.

<sup>22</sup> This characteristic is associated with what is referred to as fissuring in the labor market that has been identified by some scholars as having weakened the opportunities and protections for workers who previously would have been employed directly by the firm for which they provide services but now are employed by a different company. See Weil, D. *The Fissured Workplace*, Cambridge MA: Harvard University Press, 2014.

<sup>23</sup> Abraham, K. and Houseman, S., *What Do We Know about Alternative Work Arrangements in the United States? A Synthesis of Research Evidence from Household Surveys, Employer Surveys, and Administrative Data*, 2021.

may be used by firms to avoid employment and labor regulations and lower legal liability for workers in the U.S.<sup>24</sup>

In Europe, short-term contracts are referred to as fixed-term contracts and can include temporary agency help. There are significant differences across countries and the business cycle as to the use of fixed-term contracts but in the EU, the average is about 12 to 13 percent of workers are on fixed-term contracts. Younger individuals (15-24 years of age) make up a significantly higher proportion of people in this type of contract (46 percent) and consist of youth who are first entering the labor market both without education and training as well as those with university degrees. Fixed-term contract work in Europe therefore runs the gamut from positions requiring highly skilled to those requiring low-skilled workers. Moreover, temporary work can act as an important steppingstone into the regular labor market. But there is also a high proportion of cases in which individuals find themselves in repeated spells or a succession of short-term contracts with little chance of obtaining permanent employment contracts. But if these short-term contracts are linked to vocational training, there is a greater chance of the work serving a steppingstone function to permanent employment.

There are major differences in the scope of temporary agency work across countries and business cycles in Europe. That said, temporary agency work comprises of 8 percent who are full-time and 4 percent of the European workforce who are part-time temporary employees.<sup>25</sup> The main groups who participate in this type of employment are primarily blue-collar and low- to medium-skilled workers. Temporary agency work is typically found in the service sector and manufacturing. In Europe, the main factors evident in this category are a lower degree of employment protection in relation to regular and fixed-term workers and differences in collective agreements and business policies regarding the outsourcing of certain tasks especially in the context of deregulation of temporary agency work which has enabled companies to take on temporary agency help for longer periods of time. There is a high incidence of recurrent spells of unemployment for this category of work. Moreover, as we saw with COVID-19, in times of economic downturn, it is temporary employment which is at a higher risk of being immediately eliminated. In the end, this category takes on a large share of the flexibility in the labor market. Efforts are also being made in this industry to improve agency workers' access to social protection.

### 5.3. Unpredictable work schedules

On-call workers and other direct-hire workers with varying schedules also appear on the payroll of the firm where they are employed, but their hours change depending on the needs of the firm and there may be days or weeks when they do not work at all (for example, waitstaff in the restaurant industry).

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<sup>24</sup> Ibid.

<sup>25</sup> Milotay, N., *Social protection in the EU: State of play, challenges and options*, European Parliamentary Research Service, 2018.

People with unpredictable work schedules include those performing on-call work and those who receive short notice of their work schedules (i.e., less than 1 week). In the narrowest measure, on-call workers have no guaranteed hours and comprise of 0.8 percent of wage and salary workers in the United States. In the United States, those workers who received their work schedule less than a week out range from 5.3 percent to 9.3 percent of wage and salary workers. There is a higher incidence among older, minority, and low-educated workers who are in these jobs. It is well documented that this group of workers suffer especially adverse health effects of unpredictable schedules—e.g., conflict, stress, and sleep problems.<sup>26</sup>

## 5.4. Self-employed

There is considerable diversity among the various categories of self-employment. The self-employed include business owners who may have a well-established clientele and a relatively predictable flow of work. In the United States, such businesses may be incorporated, organized as partnerships or operate as unincorporated sole proprietorships. But the self-employed also include independent contractors or freelancers who earn money by performing one-off tasks for which they are paid an agreed sum. Such workers may not be able to count on steady work and their hours and earnings may be volatile. In the U.S. Current Population Survey (CPS) and other household surveys the percentage of the workforce that is self-employed has shown no upward trend and in fact has been drifting downwards since at least the mid-1990s. But this could be due to misclassification of workers in the household surveys.<sup>27</sup> In contrast, administrative data derived from tax filings suggests that self-employment is growing.<sup>28</sup>

In Europe, the self-employed averages about 10 percent of the workforce. Self-employed is a diverse group covering high-, medium- and low-skilled workers. Also diverse in terms of remuneration and economic development. Coverage by social insurance is more limited in many countries given that only a few countries provide mandatory unemployment insurance or voluntary unemployment insurance for the self-employed. This also has long lasting consequences like low public pension claims or if you are in a vulnerable type of self-employment those workers cannot accumulate a significant amount of private savings if this is done for a prolonged period of time. This causes volatility which has triggered some national reforms notably to improve social protection coverage of the self-employed, in the context of the 2019 Council recommendation on access to social protection.

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<sup>26</sup>Some efforts have been made to address the lack of protection for on-call work through legislation. For example, eight states and Washington, DC require that workers who must report to work but are sent home be compensated. Several cities and Oregon regulate work scheduling practices, including typically good faith estimate of schedule 2 weeks in advance. In Europe, the 2019 directive on transparent and predictable working conditions established rules aiming to improve working conditions by promoting more transparent and predictable employment while ensuring labor market adaptability. This includes some provisions specifically targeted at improving the working conditions of on-call workers and at improving the predictability of work.

<sup>27</sup> Abraham, K., Haltiwanger, J., Sandusky, K., Spletzer, J., “Measuring the Gig Economy: Current Knowledge and Open Issues,” 2018.

<sup>28</sup> Katz, L. and Kruegar, A. “The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015”, NBER Working Paper 22667, 2016.

## 5.5. (Marginal) part time work

In Europe part-time work is considered nonstandard. But there is a wide variation in scope of part-time work. In the EU, 18 percent of the workforce is on average part-time, comprising primarily of women who are also mothers (29 percent female/ 8 percent male). Part-time work is considered the least precarious type of work within the nonstandard work category except for marginal part-time work that has low weekly hours, lacks full unemployment insurance, pension, and sickness rights because of specific exemptions. The challenge with marginal part-time work is the significant lack of or reduced level of benefit entitlements, e.g., unemployment benefits, low pension claims (especially for single parents or after a divorce). As we have seen during Covid-19, marginal part-time jobs have been shed much more quickly and in much greater numbers than regular part-time work or full-time work in an open-ended contract.<sup>29</sup>

## 6. Common challenges with nonstandard work

Without question, the standard employment relationship remains a significant share of the workforce in the U.S. and European labor market. But nonstandard work, while not a new phenomenon, nevertheless is as the data suggests increasing. This increase though varies greatly from country to country and depends on the type of nonstandard employment, as this paper illustrates. The challenge that nonstandard work poses for the U.S. and the EU is that so long as nations tie most (but not necessarily all) social protections to one's status in the labor market—the standard employment relationship remaining for many, but certainly not everyone, the 'gold standard' for protection—those who are in nonstandard employment relationships lack the social (and labor) protections that, in turn, undermine individuals' and families' immediate and long-term economic security.

Nonstandard employment can be a matter of choice—it may suit one's current schedule and lifestyle—or it can be a matter of necessity—if given the choice, one would not choose nonstandard employment, but is confronted with either doing a particular job or not working at all. For example, someone, like a student, pensioner or family member who wishes to supplement the "regular" wage or household income is different from the person whose income from a nonstandard/precarious/low-wage job is the main source of income for them and/or their family. Nonstandard work can be both a steppingstone and a frustrating dead end. Young workers, older workers, women, people with migrant/immigrant/refugee backgrounds, the low-wage worker and those who have previously experienced long-term unemployment are at risk of remaining in involuntary nonstandard work. But young people first entering the labor market may see it as a steppingstone to a permanent contract and

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<sup>29</sup> Monthly Labor Review, "Employment recovery in the wake of the COVID-19 pandemic", Bureau of Labor Statistics, December 2020; Congressional Research Service, "Unemployment Rates During the COVID-19 Pandemic", August 2021; *OECD Employment Outlook 2021: Navigating the COVID-19 Crisis and Recovery*, Paris: OECD.

therefore willingly choose employment in a nonstandard job. Nonstandard work may also be a useful short-term tool to help (re)integrate individuals into the labor market.

In fact, one argument often heard is that the main appeal of, for example, online platform work is the flexibility—both to the worker and the employer. For the worker, it allows them to set their own hours and work part-time to earn money on the side. Hurst and Pugsley argue that self-employed workers enjoy substantial non-monetary benefits such as being their own boss, being able to set their own schedule and they appreciate the flexibility to better match their skills to work projects.<sup>30</sup> Yet while the increased opportunities for flexible work could be a benefit for both workers and employers, it could have other ramifications too. First, the evidence suggests that increasingly many [New Yorkers] seem to rely on app-based jobs to make ends meet.<sup>31</sup> That in fact, the idea of part-time, supplemental, schedule-your-own-hours is increasingly replaced by those who rely on this type of work as full-time. Indeed, some of those performing ‘gig work’ are not doing so by ‘choice’.

But what is less explored is whether one chooses to voluntarily go without adequate social protection, whatever the job may be. And here the problem is two-fold. On the one hand, it is a question of the ‘motivations’ of employers for hiring nonstandard workers (or advocating for its use or crafting regulations that incentivize a move towards nonstandard employment). The motivations may well be that nonstandard work means lowering the firm’s financial compensation for work done, avoiding more costly labor regulation and costs for occupational safety and health, avoiding employer-based wage or social-protection related benefits. For the employer, use of nonstandard forms of work allows them to adjust their labor costs easily to supply and demand swings. On the other hand, workers, whether doing work mediated by online platforms, or working on-call or in a fixed-term contract, lack the type of labor market participation and working hours that provide income security. The worker therefore incurs a double risk.<sup>32</sup> The worker can be dismissed if demand drops, *and* they cannot rely on the insurance function of the standard employment contract as the first line of defense against demand fluctuations because they are ineligible based on their status as nonstandard workers. They therefore have less access to some form of income replacement when demand for their work drops. Firms, on the other hand, have the dual advantage of avoiding social insurance payments and taxes while also not having to pay employees during down-times.<sup>33</sup>

This leads to the final challenge for the United States and for Europe: What is the implication of non-standard work over the long-term? What does voluntary or involuntary nonstandard employment mean for externalizing costs to society? If workers are not covered now, they will need coverage later, and these costs will not be borne by the employers but by the taxpayers. There is the issue of tax ramifications for the employers who avoid paying payroll

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<sup>30</sup> Hurst, E. and Pugsley, B. “What Do Small Businesses Do?” *Brookings Papers on Economic Activity*, 73-118, 2011.

<sup>31</sup> Figueroa, M., Guallpa, L., Wolf, A., Tsitouras, G., and Hernández, H. “Essential but Unprotected: App-based Food Couriers in New York City” ILR Worker Institute, 2021.

<sup>32</sup> OECD *The Future of Social Protection. What Works for Non-Standard Workers?*, OECD Publishing, Paris, 2018.

<sup>33</sup> Ibid.

tax and contributions to national insurance systems. But there is also the issue of who pays for healthcare coverage, retirement plans, sick or caregiving leave when those are not provided through work? Those who rely periodically, principally or even exclusively on nonstandard work are decidedly less likely to have health insurance or to have a retirement plan and have hours and earnings that are substantially more variable and less predictable.<sup>34</sup> Most pension systems are built on the assumption that employment is linear and stable so the effect on future generations of nonstandard workers causes concern. There is therefore the risk that pension schemes which do not consider nonstandard employees will lead to increased poverty for retirees which in turn will result in the need for more supplementary benefits and income support from the state.

Moreover, what happens when protections like job-protected paid sick leave,<sup>35</sup> the guaranteed right to a workplace free from health and safety hazards, and in the U.S. possible access to employer-provided health care are absent?<sup>36</sup> Or when, in the United States, as individual states enact progressive labor standards like statewide paid family leave or the expansion of paid sick days, those expansions include only the regular workforce, a sizable swath of the workforce will be excluded. These exclusions have cost implications both in the immediate and the long-term and not only for the individual worker, but their families as well. For example, evidence shows that money has a causal impact on children's outcomes. Children growing up in lower income households do less well than their peers on a range of wider outcomes, including measures of health and education. Poorer children have worse cognitive, social-behavioral and health outcomes in part because they are poorer, and not just because poverty is correlated with other household and parental characteristics.<sup>37</sup> Thus, an essential question is whose responsibility is it to bear these costs?

## 7. Conclusion

Europe and in the United States are confronted with the same challenge: to organize diverse forms of employment in a way that is suited to real economic conditions, while ensuring adequate security for workers in all forms of employment. Wage gaps and insufficient worker protections are persistent because of changes to job type and quality vis-à-vis the rise of nonstandard forms of employment. These are especially apparent when it comes to race, ethnicity, gender and immigration status. This has larger implications for the health and wellbeing of individuals and families across the United States and Europe. Given the changing

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<sup>34</sup> Jackson, E., Looney, A., Ramnath, S. "The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage," Office of Tax Analysis Working Paper 114. January 2017.

<sup>35</sup> In the United States and on account of the Corona Virus, in 2020 Congress created a temporary Pandemic Unemployment Assistance program that extended unemployment benefits to those not eligible for unemployment insurance (independent contractors being one such category of workers).

<sup>36</sup> In the United States, it is important to point out that healthcare is not a right (it is a right in that if a person goes to the hospital and does not have insurance, the hospital must nevertheless treat the person), and workplaces do not have to provide healthcare to their workers, no matter their status.

<sup>37</sup> Cooper, K. and Stewart, K. "Does money affect children's outcomes? An update," CASEpapers (203), Centre for Analysis of Social Exclusion, The London School of Economics and Political Science, London, UK, 2017.

nature of the labor market in the U.S. and the EU, reforms to social protection policies are needed in order to close the gap between those well protected and those less so (or not at all) protected. And while there are obvious differences between all 28 countries in terms of the institutional structure, financing and administration, among other differences, the objective of this working group is to establish the underlining principles that should inform the design of social protection going forward. Should social protection be a human right? Should social protections be universal? How do we best include those outside of traditional employment relationships in social protection systems and critically, who will pay? What responsibility do firms who profit from flexible labor markets have to cover the cost of protecting workers? Using key principles as our guide, this working group will explore in the next series of meetings how best to shore up national systems taking into account labor market change and differences in institutional arrangements—highlighting best practices, discussing how to apply lessons learned while exploring barriers (and how to overcome these) to policy changes needed.