

**Progetto di Ricerca n. 1403,  
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**DOMESTIC WORK, TELEWORK  
AND ECONOMICALLY DEPENDENT WORK:  
GUIDELINES AND GOOD PRACTICE FOR RISK PREVENTION  
IN A REFORMED LABOUR MARKET,  
FROM A COMPARATIVE PERSPECTIVE**

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## DEFINITIONS<sup>1</sup> AND SCOPE

### 1. Introduction.

These categorisations of work are part of the ILO concept of informal work and the informal economy and its further work on campaigning for ‘Decent Work’. The ILO states:

‘People throughout the world face deficits, gaps and exclusions in the form of unemployment and underemployment, poor quality and unproductive jobs, unsafe work and insecure income, rights which are denied, gender inequality, migrant workers who are exploited, lack of representation and voice, and inadequate protection and solidarity in the face of disease, disability and old age’.

For an EU perspective on this, see the European Commission report ‘*Decent Work for all*’<sup>2</sup> which is a report on the EU contribution to the promotion of decent work. The report addresses the following elements: (1) decent work as an EU commitment, (2) the mobilisation of non-state actors, (3) the EU contribution at international, multilateral and regional level, (4) the mobilization of EU internal and external policies, (5) the ratification and implementation of ILO conventions by EU Member States and (6) conclusions. It contains an assessment of progress made since 2006 as well as proposals where further headway could be made as part of the strategies outlined in the 2006 Communication on “Decent Work”, taking into account new developments.

A relevant report published by the European Agency for Safety and Health at Work<sup>3</sup> suggests that the new forms of organisation that have emerged in the shift from an industrial mass production to a knowledge intensive/service based society are varied. There has been an increase in decentralisation in organisations with a low ‘human factor orientation’ such as in lean production. There has also been an increase in network based organisations. Companies have retreated to their core competencies and outsourced other functions and formed chains of suppliers and sub contractors. These changing contractual relationships result in an increase in self-employment (especially those without employees); increases in part-time employment and those that work long hours; increases in temporary employment.

The speed of change has resulted in an increase in the feeling of job insecurity. Some authors have made the link between increasing job insecurity and stress.

When looking at conditions of employment we can describe two scenarios:

1. The transfer of risks in the (practical) conditions of work to non permanent employees and to subcontractors.
2. Segmentation of the workforce based on differences in contractual conditions of employment (working hours, job insecurity and qualifications).

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<sup>1</sup> [www.eurofound.europa.eu/areas/industrialrelations/dictionary/](http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/)

<sup>2</sup> “Decent work” is a term that was coined by the International Labour Organization and its Director-General Juan Somavia in a June 1999 report, where it was defined as follows: “The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. [...] Decent work is the converging focus of all its four strategic objectives: the promotion of rights at work; employment; social protection; and social dialogue.” In short, the ILO says, decent work is “the heart of social progress”.

<sup>3</sup> ‘New forms of contractual relationships and the implications for occupational health and safety’ Goudswaard, Anneke (2002) European Agency for Safety and Health at Work

In respect of 1, risks directly related to working conditions (bad ambience and ergonomic conditions) are shifted towards non-permanent workers and sub contractors, who have less protections and/or knowledge of how to cope with these risks. Not easy to verify in terms of quantitative data, although often shown in case study research. A relationship has been shown between bad ergonomic conditions and non-permanent contracts; also relationship between agency temporary work and accidents.

Such workers are not as well protected as permanent workers, because they often fall outside the scope of trade unions or committees that monitor working conditions. This is sometimes because they are not around long enough to participate in safety training.

In respect of 2, there is more quantitative data – employees on temporary or fixed-term contracts have less access to training, including OSH training.

A number of authors have tried to analyse the relationship between different contractual relationships and occupational safety and health. Quinlan et al<sup>4</sup> concluded:

1. The vast majority of studies (74) found a relationship between precarious employment and a negative indicator of OSH;
2. With regard to outsourcing and organisational restructuring/downsizing, well over 90% of the studies found a negative association with OSH;
3. With regard to temporary workers, 14 of 24 studies found a negative association with OSH;
4. The evidence is less strong with regard to small businesses;
5. Findings of a small number of studies of part-time workers found no clear relationship between part-time work and negative OSH outcomes.
6. Five out of seven studies that considered gender issues concluded that women were especially vulnerable to adverse health effects.

Jobs which result from outsourcing may enter the category of dependent self-employment and may be the cause of insecurity. This in turn may characterise them as being part of the precarious work that can result from new forms of working.

The OSHA experts forecast<sup>5</sup> stated that there was growing evidence that there are specific risks for health and safety in the workplace connected with the conditions that characterise these forms of work. Their report cited Rodgers and

Rodgers<sup>6</sup> as proposing four dimensions to precarious working:

- the low level of certainty over the continuity of employment;
- low individual and collective control over work (working conditions, income, working hours);
- low level of protection (social protection, protection against unemployment, or against discrimination);
- insufficient income or economic vulnerability.

Precariousness, according to the report, is caused by a combination of these elements rather than by one aspect only. Work bearing such characteristics is generally considered to increase the risk of illness and injury. Precarious work takes different forms on today's job market. In the scientific literature it is often associated with non-standard forms of work such as temporary, part-time, on-call, day-hire or short-term positions and also with the increase in the prevalence

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<sup>4</sup> Quinlan, Michael, Mayhew, Claire, Bohle, Philip, 'Contingent work: health and safety perspectives or the global expansion of precarious employment, work disorganisation and occupational health: a review of recent research', Paper presented to 'just in time employed — organisational, psychological and medical perspectives', European Union Research Workshop, Dublin 22–23 May 2000, organised by Gunnar Aronsson and Kerstin Isaksson, National Institute of Working Life, Stockholm.

<sup>5</sup> Expert forecast on emerging psychosocial risks related to occupational safety and health (2007) European Agency for Safety and Health at Work [osha.europa.eu/en/publications/reports/7807118](https://osha.europa.eu/en/publications/reports/7807118)

<sup>6</sup> G. Rodgers and J. Rodgers, Precarious jobs in labourmarket regulation: the growth of atypical employment in western Europe, International Institute for Labour Studies, Free University of Brussels, Brussels, 1989.

of self-employment. Additionally, work at home and multiple jobs also contribute to the increasing significance of ‘non-standard’ forms when considering precarious work.

The analysis cites Eurostat data to show that temporary contracts are especially prevalent in Spain (33 % of all employees had this kind of contract in 2005), and quite popular in Portugal (19 %), Finland (16.5 %) and Sweden (16 %), whereas they are rather rare in the United Kingdom (6%), Luxembourg (5.3%) and Ireland (4%). Eurostat data showed that in 2005, in all EU-25 countries, 15% of women and 14% of men had a temporary job.

Additionally, the employees who seem to be at a special risk of precarious employment are migrant workers. The analysis cites the presentation of national data in the report by the Dublin Foundation<sup>7</sup> showing that in many countries temporary contracts are more prevalent among migrant workers than among national employees.

Quinlan et al, according to the report<sup>8</sup>, identified three sets of factors which appear to explain why precarious employment was linked to inferior OSH outcomes:

1. Economic and reward systems:

There is greater economic pressure in terms of competition for jobs; pressure to retain a job and earn a liveable income; a significant group is engaged on piecework or task-based payment systems; there may be ‘corner cutting’ on safety; pressure to take on high risk activities that have been offloaded by a larger organisation or refused by permanent workers.

2. Disorganisation:

Workers are liable to be less experienced; workers perform unfamiliar tasks and are less familiar with OSH rules; more difficult to coordinate decisions and anticipate dangers. These workers are also less likely to belong to unions or to have bargaining power; also multi-employer work-sites with more complicated lines of management control and more fragmented work processed.

3. Increased likelihood of regulatory failure:

OSH regulatory regimes are designed to address full time and secure workers in large workplaces. In a large number of industrialised countries most of the self-employed subcontractors and home based workers fall outside this regulatory protection.

The challenges for OSH as a result of these developments are, according to the report:

1. Organisations are becoming more dynamic and complex, which, in turn, requires a dynamic approach in OSH prevention;
2. OSH representatives and management must learn how to deal with complexity and integrated approaches to OSH prevention;
3. Employees may lose their understanding and influence over the changes, whilst, at the same time, self-control and self-steering become more important;
4. The interdependency between companies has grown, including in the field of OSH prevention, while, at the same time the pressure on subcontractors is high;
5. An important challenge is to put OSH prevention on the agenda of companies as a beneficial investment, and not just a cost.

Benach et al<sup>9</sup> describe three impacts of new types of employment on health. Firstly, there is strong evidence that unemployment is associated with ‘mortality and morbidity, harmful lifestyles and reduced quality of life’. They suggest that new forms of work organisation and flexibility of employment will share some of these characteristics, in relation to insecure jobs. They cite one study<sup>10</sup>, for example, which showed that perceived job security was the single most important indicator of a number of psychological symptoms such as mild depression.

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<sup>7</sup> M. Ambrosini and C. Barone, ‘Employment and working conditions of migrant Workers’ European Foundation for the Improvement of Living and Working Conditions, 2007 [www.eurofound.europa.eu/ewco/studies/tn0701038s/tn0701038s.htm](http://www.eurofound.europa.eu/ewco/studies/tn0701038s/tn0701038s.htm)

<sup>8</sup> supra

<sup>9</sup> Benach, Joan; Gimeno, David; Benavides, Fernando G. (2002) ‘Types of employment and health in the European Union’ [www.eurofound.europa.eu/pubdocs/2002/21/en/1/ef0221en.pdf](http://www.eurofound.europa.eu/pubdocs/2002/21/en/1/ef0221en.pdf)

<sup>10</sup> Dooley, D., Fielding, J. and Levi, L., ‘Health and unemployment’, *Annual Review of Public Health*, Vol. 17, 1996, pp. 449-65.

Downsizing also has shown to be a risk to some employees. Secondly, the working conditions on non-permanent workers are worse than those of permanent workers, so those in flexible employment are exposed to more hazardous and dangerous work. Temporary workers, when compared to permanent ones, are also more likely to have poor working conditions such as vibration, loud noise, hazardous products or repetitive tasks. Thirdly, some studies have suggested that different types of flexible employment have worse health impacts than more standard types of employment.

The study selected a number of health indicators, which included stress, fatigue, back ache and muscular pain, and measured these against different types of employment. Small businesses and the self-employed showed high levels in all of these indicators.

## **2. Domestic work.**

Domestic work is here defined as home working and those workers involved in domestic duties related to the home.

According to the ILO Encyclopaedia of Health and Safety<sup>11</sup> domestic work is characterised by labour for another family within their home.’ Employment within a home is a unique and often isolated work environment. ‘The position of domestic worker is almost always considered menial or inferior to the family for which they are employed. Indeed in the past, domestic work was sometimes done by slaves or indentured or bonded servants’.

Whilst domestic workers can be either female or male, female workers are both much more commonly employed and most often paid less than males. Domestic workers are customarily immigrants or members of ethnic, national or religious minorities of the country of employment.’

There is a distinction between domestic workers who are employed as live-in servants from those who live in their own home and commute to their place of work. Live-in workers are isolated from their own family, as well as often from their own country of nationality. Because of the worker’s disenfranchisement, work contracts and health and other benefits are negligible. This situation is particularly critical for the overseas worker. ‘Sometimes, infractions concerning agreed-upon salary, sick leave, working hours, vacation pay and regulation of hours and duties cannot even be addressed because the worker is not fluent in the language, and lacks an advocate, union, work contract or money with which to exit a dangerous situation. Domestic workers usually have no workers’ compensation, nowhere to report a violation, and are often unable to quit their employment.

Places where major employers of domestic workers are found include Britain, the Persian Gulf and Arab States, Greece, Hong Kong, Italy, Nigeria, Singapore and the United States. These workers are from various countries, including Bangladesh, Brazil, Colombia, Ethiopia, Eritrea, India, Indonesia, Morocco, Nepal, Nigeria, the Philippines, Sierra Leone and Sri Lanka (Anderson 1993).

According to work done by the ILO<sup>12</sup>, typical occupations of domestic workers are housekeepers, gardeners, watchpersons or drivers. The particular human characteristics are that:

- most domestic workers are housekeepers and women;
- more and more immigrants, national and international, are looking for employment in the sector; and
- domestic service draws an important number of child workers

Domestic work is often exploitative. Major problems include

- Long hours of work and heavy workloads;
- Inadequate accommodation and inadequate food;

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<sup>11</sup> [www.ilo.org/safework\\_bookshelf/english](http://www.ilo.org/safework_bookshelf/english)

<sup>12</sup> Ramirez-Machado, José Maria (2003) ‘Domestic work, conditions of work and employment: A legal perspective’ Conditions of Work and Employment Series No. 7 ILO Geneva



- Lack of privacy and interference in personal matters;
- Being vulnerable workers subject to abuse; arbitrary changes to work contracts, pay cuts or non-payment;
- Low pay;
- Lack of working benefits;
- Violence at the workplace;

There are two avenues for exploration with regard to domestic workers. One is the occupational health and safety issues associated with domestic work; the second is the well being of live in domestic workers who are often migrant women and the particular issues associated with them.

In its 2009 document 'Decent work for domestic workers' the ILO states that domestic work is 'undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected.' This is partly due to the invisibility of domestic work as a form of employment. The report outlines the various conventions that allow for the exclusion of domestic workers. These include the Occupational Safety and Health Convention 1981 (No 155) and includes those concerned with holidays (132), termination of employment (158), night work (171), part-time work (175) and maternity protection (183). The report is necessarily international in its scope so is not confined to the EU, but it provides information which will be helpful our full report. The ILO has placed the subject of decent work for domestic workers on the agenda for its 2010 session of its conference and is working towards the adoption of international standards for the protection of these workers. The objectives of the proposed convention will be to ensure, firstly, broad coverage to reach as many domestic workers as possible; secondly, wide immediate ratification and continuous improvement of domestic workers' working and living conditions; and finally, provision of sufficient guidance and incentives to enable the provisions to be meaningfully implemented into practice.

### 3. Telework.

Telework is a form of organising and/or performing work using information technology, in the context of an employment contract, where the work, which could also be performed at the employer's premises, is carried out away from those premises, on a regular basis.<sup>13</sup> A teleworker is a person who performs telework. The characteristic feature of telework is the use of computers and telecommunications to change the accepted location of work. There are further refinements to this definition distinguishing between 'teleworker homeworkers' and 'home based teleworkers'. The former being those who work mainly from home in their main job and the latter being those who work in various locations, but use their home as a base.<sup>14</sup> The development of electronic networking means that teleworking can take place from almost anywhere. The underlying concept, however, is a combination of the notion of distance from the traditional workplace and the use of communications technology.<sup>15</sup>

A Eurofound consolidated report<sup>16</sup> offered a number of definitions from different national contributors:

The Belgian, Swedish, Austrian and Irish rapporteurs defined telework as a form of work involving the use of telecommunications which is not done on a fixed traditional location. This may be the home of the worker, a tele-cottage or any other place.

The Italian rapporteurs analysed collective agreements and found that teleworkers are workers who have transferred their workplace from their office to home and who do home-based

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<sup>13</sup> This is also the definition of telework contained in the Social Partner's Agreement on Telework signed in 2002

<sup>14</sup> Hotopp, Ulrike (2002) 'Teleworking in the UK' *Labour Market Trends* 110/6 311-318

<sup>15</sup> Di Martino (2001) 'The high road to teleworking' ILO Geneva

<sup>16</sup> Pennings, Frans (2006) 'Social Implications of Teleworking: the social security position of teleworkers in the European Union' [www.eurofound.europa.eu/pubdocs/1997/27/en/1/wp9727en.pdf](http://www.eurofound.europa.eu/pubdocs/1997/27/en/1/wp9727en.pdf)

teleworking. Workers who have a mobile job (such as maintenance and technical assistance to clients or sales personnel) are considered as teleworkers only in a broad sense, on the basis of the consideration that they were mobile personnel before the introduction of telecom equipment and that these instruments did not change the main characteristics of their work.

The Greek report defined telework as work at a distance, which is done, either under an employment relationship or as a self-employed worker, for an enterprise by means of telecommunications. This report remarks that telework is mainly done in the services sector and is therefore white collar work.

The Dutch report mentions a definition of the Netherlands department of Social Affairs and Employment: telework is a form of work in which the working place is divided geographically from the (central) working place of the enterprise. The choice of the working place is determined by the need of the person who does the work. The geographical distance is bridged by means of telecommunication and micro-electronics.' Teleworkers may be: (1) (A) persons working at home (B) persons who visit their customers regularly, whose office is at home; (2) persons working in special 'teleoffices'.

A multi-national 2003 report<sup>17</sup> included a wide range of activities: home teleworking, satellite centre working, (where an office provides the means for one firm's employees to work at a distance from the firm), telecentre working, (where an office is shared by several firms), distance group working and teleservices provision as in telesecretariats, and telemaintenance. The main areas of potential application, according to this report, were in data and text processing (50%); programming (40%); writing, editing, translating and accounting (30%); secretarial functions (20%); marketing and training (15%) and research/consultancy activities (14%).

It is clear from the Social Partners' Implementation Report of the Framework Agreement on Telework in 2006 that different Member States adopt different definitions. The Report states that:

'In France for example, the notion of teleworker includes "nomad workers". In Italy, two different types of telework are defined: the teleworker working from home and the teleworker working at a distance. The Irish code of practice stipulates explicitly that the notion of teleworker is synonymous with e-worker and that the code also applies to telecommuters and mobile e-workers'.

It is possible that teleworkers may be employees, self-employed or dependent self-employed (see following section on economically dependent work). Generally, it appears that a person transferring to telework will retain their employee status.

The Eurofound report<sup>18</sup> showed this to be the case specifically in the Netherlands, where if a person has been engaged under a regular contract of employment, and later starts to work, full-time or part-time, at home, it is generally assumed that his or her contract remains a contract of employment (unless s/he agrees otherwise with his or her employer). The same is true of Ireland and the United Kingdom. Under Dutch law, however, a contract of employment is a contract by which one party, the worker, does work during a certain period for a certain wage under the supervision of the other party, the employer. As teleworkers do not work on the employer's premises, there may be a problem with the criterion of supervision. Homework or telework as such does not exclude supervision by definition, as supervision can be realised by requiring a teleworker to reach a certain minimum production (per hour, or per week, or per month) and to provide that s/he cannot refuse work without a good reason and the right to refuse work exists only to some limits. If the teleworker is by contract allowed to refuse work at will, the criterion

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<sup>17</sup> 'Legal, Organisational and Management Issues in Telework. New ways to work in the virtual European company. The Opportunities and Constraints for Teleworking and Business Restructuring in Europe.' Written by a large group of authors from different companies, chiefly ATTICA, PRACTICE and COBRA. Available as a PDF file at [www.etw.org/2003/Archives/LEGAL\\_OR.pdf](http://www.etw.org/2003/Archives/LEGAL_OR.pdf)

<sup>18</sup> Pennings, Frans (2006) 'Social Implications of Teleworking: the social security position of teleworkers in the European Union' [www.eurofound.europa.eu/pubdocs/1997/27/en/1/wp9727en.pdf](http://www.eurofound.europa.eu/pubdocs/1997/27/en/1/wp9727en.pdf)



of supervision is not satisfied. Whether the extent to which instructions are given is decisive for the question whether a person is (or is not) an employee depends on the circumstances; for this purpose a comparison with the same type of work which is done on the employer's premises is important.

An example is Denmark where the general rule is that persons are considered employees unless a person has no principal from whom he or she receives orders, or if he has his/her own company. A person working free-lance will, for example, be seen as an employee because each part of his or her work is ordered and supervised by another person or company. This implies that most teleworkers will be considered as employees unless their income has been at a high level for a substantial period and they bear the risk of their own enterprise.

In Portugal the reality of the situation is decisive and the entity which intends to change the initially settled relationship has the onus of proof that the real situation has changed. This implies that changes in the factual situation may lead to a change in the legal position, which may be difficult for employees starting teleworking.

The report mentions that in Italy the criteria for an employee may prove to be difficult for teleworkers, as an employee is defined as a worker who operates under the direction and control of the employer, inside the space (and the organisation) of the enterprise and with an obligation of a continuous relationship. This definition may be problematic for teleworkers, because it refers to the employer's premises and to 'a continuous relationship'. There is a special definition of homeworkers which may be helpful to many teleworkers, but not to all of them. Italian law defines a homeworker as a person who is aided only by his family, who works under the direction of an employer who pays remuneration to him or her, when equipment is in the possession of the homeworker or the employer. Homeworkers are considered a particular category of employees.

The Report concludes that, with regard to teleworkers, the distinction between employee and self-employed is far less important than one might. This is due to the fact that schemes exist in which self-employed persons and homeworkers are to a large extent assimilated to employees or to schemes which are based on residence. 'Few problems exist, in general, in the area of sickness benefit and, even less, disablement benefit, survivors benefit, old age benefit. It must be acknowledged, however, that for the self-employed who are covered by such provisions, the benefit rate is often lower'.

We also include in this report material on home working, where relevant, as telework is clearly a category of home working. Home working is defined as a form of work away from the factory or office in which the employment status of the worker, as an employee or a self-employed person, is sometimes uncertain. Home working can cover a diverse range of occupational sectors, ranging from traditional craft-based industries (e.g. textiles) to modern information technology-based sectors.

#### **4. Economically dependent work.**

The concept of 'economically dependent worker' falls between the two established concepts of employment and self-employment. It refers to those workers who do not correspond to the traditional definition of employee because they do not have an employment contract as dependent employees. However, although formally 'self-employed', they are economically dependent on a single employer for their source of income. The status of these workers falls in between self-employment and dependent employment, and they have some characteristics of both forms. First, they are formally self-employed, in that they usually have a sort of 'service contract' with the employer. Second, they depend on one single employer for all or much of their income. They are often similar to employees in a number of ways. They may lack a clear organisational separation, working on the employer's premises and/or using the employer's equipment. There may be no clear distinction of tasks: they may perform similar tasks to existing employees, or of those formerly undertaken by employees, before the work was

outsourced. Finally, their ‘services’ fall outside the traditional professions, in that they often do not require specific skills or professional knowledge or competence.

One submission to an EU Committee<sup>19</sup> stated that the concept of ‘economically dependent workers’ refers to those workers who do not correspond to the traditional definition of ‘employee’. This is because they do not have an employment contract as dependent employees. The submission stated that ‘Despite their similarities to employees, such economically dependent workers do not generally benefit from the protections granted to employees both by law and collective bargaining. Such ‘economically dependent employment’ has been regulated by law in the EU Member States in a number of ways, including:

- (i) presumptions that these are employees and fall within the scope of employment protection legislation (France, Greece, Luxembourg);
- (ii) reversal of the burden of proving employee status (Belgium);
- (iii) listing criteria that enable identification of workers as either employees or self-employed (Austria, Belgium, Germany, Ireland);
- (iv) extending protection to specified categories, even though they are not presumed to be employees (Denmark, France, Germany, Greece, Italy);
- (v) creating a special and separate status for such categories of workers who fall outside the established binary division of employee and self-employed (Germany, Italy, the Netherlands, Portugal);
- (vi) extending basic protections to all workers, but specific protections for specific categories (Italy)’.

The submission further stated that the legal characterisation of such workers should not deprive them of at least the protection available to employees.<sup>9</sup> At least, because it may be necessary for EU law to intervene to provide special protection, for example, for agency workers. A step in clarifying responsibilities of various parties with a triangular employment relationship was the 1991 Directive on health and safety of temporary agency workers. This precedent should be built upon.

The essential element is that the dependent self-employed do not have a contract of employment, but still provide their labour to their principal. They work on the basis of a private contract according to private law.<sup>20</sup> The Fourth European Working Conditions Survey produced figures on employees without contracts: ‘on average in the EU27, 7% of employees report having no employment contract; Cyprus has the highest proportion of such employees (42%), followed by Malta (39%), the UK (15%) and Slovenia (10%). The sectors that have the most employees without contracts are agriculture (24%) and hotels and restaurants (20%). In terms of occupational categories, agricultural workers and unskilled workers report the highest incidence of being without a contract (24% and 14% respectively)’.

There is an issue about definition and when a person is self-employed, rather than ‘dependent self-employed’. The number of self-employed as a share of total employment is particularly high in many southern Member States including Greece, where the share is around 40%, and in Cyprus, Italy and Portugal where it is of the order of 25%. Of the remaining Member States only Poland has a share above 20%, at around 29%, although such a high share is quite atypical for central and northern European Member States and reflects the still high share of self-employment in agriculture in that country.<sup>21</sup>

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<sup>19</sup> Select Committee on the European Union; Sub-Committee G (Social Policy and Consumer Affairs) Inquiry into the EU Commission’s Green Paper “Modernising labour law to meet the challenges of the 21st century” Submission by The Institute of Employment Rights

<sup>20</sup> See Muehlberger, Ulrike ‘Dependent Self-Employment; workers on the border between employment and self-employment’ Palgrave MacMillan

<sup>21</sup> Employment in Europe 2005: Recent Trends and Prospects, This report was produced by DG Employment, Social Affairs and Equal Opportunities in close collaboration with EUROSTAT, September 2005, [c.europa.eu/social/keyDocuments.jsp?type=0&policyArea=81&subCategory=0&country=0&year](http://c.europa.eu/social/keyDocuments.jsp?type=0&policyArea=81&subCategory=0&country=0&year)

It is clear that different countries have different approaches. What is common is the increasing flexibility of the new forms of work and, therefore, the employment relationship as a result of employer demands and Government facilitation of more flexible employment relationships. The issue here is to what extent this compromises the health, safety and well being of workers when in a non standard employment relationship. The ILO Report<sup>22</sup> on ‘The Scope of the Employment Relationship’ states that

‘Employment has become much more versatile and, alongside traditional full-time employees, employers are increasingly tending to employ workers in ways which allow them to use their services as efficiently as possible. Many people accept short-term contracts, or agree to work certain days of the week, for want of better opportunities. But in other cases these options are an appropriate solution, both for the worker and for the enterprise. Recourse to various types of employment contract is in itself a legitimate response to the challenges faced by enterprises, as well as meeting the needs of some employees for more flexible work arrangements. These various types of contract lie within the framework of the employment relationship. At the same time, there are also civil or commercial contracts, under which the services of self-employed workers may be procured, but on terms and conditions which differ from those of an employment contract. Frequent recourse to such contracts has become increasingly widespread in recent years, and is also associated with new forms of employment’.

The general question of the protection of workers raises a wide range of issues which must be understood and addressed in the wider context of changes in the labour market and the organization of work. The nature and pace of change in the world of work have had, and continue to have, a profound impact on employment relations. Patterns of employment have changed the range and variety of work contracts have expanded and new risks. These developments impact directly on employment and labour markets and challenge traditional concepts and old certainties. Frequently, they offer new employment opportunities and more flexibility for both employers and workers. Job security and the protection built around the employment relationship is being challenged as alternative notions of independent work and different forms of self-employment become more widespread’.

## **5. Risk prevention.**

In this study, this is taken to mean the measures and good practice taken to provide for the health and safety of these categories of workers. The European Industrial Relations Dictionary provides that: ‘Health and safety is given a very wide definition in the EU context, going beyond the avoidance of accidents and prevention of disease to include all aspects of the worker’s well-being.... The significance of this broad scope of ‘health and safety’ is immense, as it underpins the potential of EU health and safety policy to prescribe minimum standards to protect all aspects of the worker’s well-being.

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<sup>22</sup> ILO 2003; [www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf)

## INTERNATIONAL PERSPECTIVES

### 1. Domestic work.

All data concerning domestic workers can only be an estimate as many work in the informal economy and are therefore in undeclared work. An ETUC report titled 'Out of the Shadows' 2005 stated, in respect of undeclared work:

'Undeclared work is widespread. Some estimate that 70-80% of jobs in the sector are undeclared, perhaps even more. The number of undeclared employees in Austrian households has been estimated at up to 300,000, whereas only 5,000 are registered with the authorities there. In France, a 1997 study found five undeclared workers for every declared worker in household services. In Italy, the estimate is 3:1'.

One ILO estimate was that there are some 100 million worldwide.<sup>1</sup> A further ILO report shows that domestic work is a significant proportion of the workforce. In developing countries it accounts for between 4% and 10% of the total employment, compared to industrialised countries where the figure is between 1% and 2.5% of total employment. Examples in the EU include France where 2.5% of employment was domestic work in 2005 and Spain where the figure was 3.85%.<sup>2</sup>

According to an ILO Report<sup>3</sup> in France, Greece, Italy and Spain domestic work or housekeeping is the most common occupation open to female migrants. The supply of domestic workers, both declared and undeclared is fed by migration to the EU. The EC report 'Employment in Europe 2008'<sup>4</sup> shows that migration from third countries outside the EU to countries in the EU has increased substantially in recent years, rising threefold between the mid-1990s and early 2000s. 'Indeed, recent non-EU migrants who have arrived since 2000 account for almost one-third of all non-EU migrants of working age. This recent flow of third country migrants has been notably higher (almost 2.5 times) than the recent internal movement of EU citizens between EU countries. The pattern of immigration flows has become more diversified, with a greater influx of migrants from Central and South America and much greater migration to countries in southern Europe than previously. Recently arrived immigrants, according to the Report, have contributed significantly to overall economic growth and employment expansion in the EU. They are responsible for around a quarter of employment growth since 2000. They have generally been complementary to EU-born workers rather than substitutes, and have added to greater labour market flexibility and have helped to alleviate labour and skill shortages, tending to be employed in those sectors and occupations where demand has been greatest, in particular at the low-skill end of the jobs spectrum, i.e. in private household, construction, hotel and restaurant sectors'. The high share of recent non-EU migrants in the private household sector is a feature which is likely to continue in the future as demographic ageing and greater labor market participation of women continue to create demand for childcare and elderly care services.

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<sup>1</sup> International Trade Union Confederation Publications - Spotlight interview with Barbro Budin (Equality Officer) March 7 2008 [www.ituc-csi.org/spip.php?article1895](http://www.ituc-csi.org/spip.php?article1895)

<sup>2</sup> 'Decent work for domestic workers' ILO 2009

<sup>3</sup> 'Towards a fair deal for migrant workers in the global economy'. International Labour Conference, 92nd Session, 2004, ILO Publications, International Labour Office 2004. [www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf)

<sup>4</sup> [ec.europa.eu/social/main.jsp?catId=119&langId=en](http://ec.europa.eu/social/main.jsp?catId=119&langId=en)

According to the ILO<sup>5</sup>, ‘the demand for foreign household and care workers has grown in the OECD countries with rising female employment rates, changes in family structures and an ageing population leading to higher dependency ratios. Within this framework, the need for household services is expected to increase. According to the latest SOPEMI report (2003), more than 10 per cent of foreign workers in southern Europe were employed in household services, especially in Greece, Italy and Spain. In France and the United States, about 51,000 and 150,000 foreigners respectively provide care for the elderly and children at home. More than 950,000 Italian families hired foreign workers to tend to the needs of the elderly or children in 2002. Another important aspect of this is that many of these workers may be in irregular status as shown by regularization exercises’. Undeclared work<sup>6</sup> and illegal employment are the main pull factors of illegal immigration. Indeed one of the main factors encouraging illegal immigration into the EU is the possibility of finding such work. A recent stocktaking by the European Employment Observatory network indicated that undeclared work is still on the rise in several Member States, while the growing demand for household and care services could contribute to extend it further. Illegally staying migrants work mostly in the low-skilled sector such as in construction, agriculture, catering or cleaning and housekeeping services. Often they are hired for the so-called ‘3D’-jobs (dirty, dangerous and demanding work), which are rejected by the domestic labour force, and their wages are frequently below the official minimum.

## 2. Gendered nature of domestic work.

The overwhelming majority of domestic workers are women and, uniquely, their employers are also women<sup>7</sup> – they provide a waged substitute for unwaged labour. Secondly, they are migrants from poorer to richer parts of the economy or world, so often supporting large families in place of origin. Thirdly, they work in a private home and live with their employer. ‘Ironically, it is precisely because domestic workers are employed within the “private sphere” that there is resistance to recognizing the domestic work relationship, and appropriately regulating it. The cumulative result is that these workers experience a degree of vulnerability that is unparalleled to that of most other workers’.

An IRENE/IUF<sup>8</sup> conference in 2006 (*Respect and Rights 2008*) suggested that domestic/household work is never free of a gender perspective.

- It is never free of a gender perspective
- It often holds a race or ethnic perspective
- Sometimes age is a key aspect, with regard to the employment of children
- it almost always concerns poverty and class

The view that there is a population of domestic workers made up of women, foreigners, arriving from difficult home situations, if not actually fleeing situations that verge on genuine desperation, has been challenged as not actually corresponding to the data that emerges from empirical research.<sup>9</sup> In Italy, domestic service is a sector in which it is possible to find both Italian and non-Italian workers, both women and men. The share of foreigners, a component in

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<sup>5</sup> Towards a fair deal for migrant workers in the global economy. International Labour Conference, 92nd Session, 2004; [www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf)

<sup>6</sup> Undeclared work is defined as “any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States”.

<sup>7</sup> Blackett, A (1998) ‘Making domestic work visible: The case for specific regulation’ *Labour Law and Labour Relations Programme Working Paper No. 2*. Geneva: ILO

<sup>8</sup> International Restructuring Education Network Europe and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations

<sup>9</sup> Asher D. Colombo, Department of Education Sciences, University of Bologna. *Journal of Modern Italian Studies*, Volume 12, Number 2 (2007), Page numbers 207-237



this sector that is hardly new, is growing. A number of these non-Italian workers later, it is suggested, return to their countries of origin, or they may also move into other occupations. The men are less numerous than the women, but they enjoy better working conditions and higher pay, and it is easier and quicker for the men to get out of the sector and attain less under-qualified occupations.

### **3. Domestic work and exploitation.**

An ILO report states<sup>10</sup> that migrant women domestic workers are among the world's most vulnerable workers: 'Most are women moving from poorer to richer countries for economic reasons, and most leave their children behind, often in the care of relatives or a hired local maid, creating global care chains. The availability of foreign maids, in turn, allows women with children in destination countries to work for wages, so that many of the world's women between the ages of 15 and 64 years are able to pursue paid employment outside the home.

In some European countries (France, Greece, Italy and Spain) domestic work or Housekeeping is the most common occupation open to female migrants. During the 1990s, numerous migrants with residence permits entered Italy, Greece and Spain as domestic workers through the quota system, and a large proportion of those regularized were domestic workers'.

The report is not just about the EU of course and it does state that the working conditions of domestic workers varies enormously. Some are treated as members of their employer's family, while others are exploited and subjected to conditions 'which in some cases amount to virtual slavery and forced labour'. 'Domestic workers often have to work long or even excessive hours of work (on average, 15-16 hours per day), with no rest days or compensation for overtime; they generally receive low wages, and have inadequate health insurance coverage. Domestic workers are also exposed to physical and sexual harassment and violence and abuse, and are in some cases trapped in situations in which they are physically or legally restrained from leaving the employer's home by means of threats or actual violence, or by withholding of pay or identity documents'.

'In many countries, labour, safety, and other laws do not cover domestic workers, so that there are no legal norms for their treatment or offices and inspectors to enforce them. Even if they are protected by legislation, it can be very difficult for domestic workers to learn about or benefit from available protections, the result being widespread violations of protective labour laws'.

According to John Connor MEP<sup>11</sup> it is possible to identify 3 categories of victims:

- (a) those recruited from their home country by an agency; such workers are often in debt having borrowed money to pay agency fees or borrowed from agency; typical of gulf or Middle East.
- (b) victims of traffickers who force them into this work; particularly an issue for child labour;
- (c) domestic employees who accompany their employer to a third country.

A study on the subject of why there is an increasing demand for private domestic services throughout the EU and why this demand is being met by migrant women<sup>12</sup> concluded that migrant labour is flexible and women who are removed from their own family demands can devote themselves to the employing family. In addition their race and citizenship status differentiates them from the female employer.

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<sup>10</sup> Towards a fair deal for migrant workers in the global economy. International Labour Conference, 92nd Session, 2004; [www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf)

<sup>11</sup> Council of Europe Parliamentary Assembly 17 May 2001 on domestic slavery [assembly.coe.int/Documents/WorkingDocs/Doc01/EDOC9102.htm](http://assembly.coe.int/Documents/WorkingDocs/Doc01/EDOC9102.htm)  
Contains a report by Mr John Connor MEP

<sup>12</sup> Anderson, Bridget (2001) 'Why Madam has so many bathrobes?: demand for migrant workers in the EU' *Tijdschrift voor Economische en Sociale Geografi* 92(1) 18-26



A further study explored a number of aspects of paid domestic work in contemporary Italy<sup>13</sup> including the way in which it is organised. It raised three issues which are, firstly, that the picture of a population of domestic workers made up of women and foreigners, arriving from difficult background circumstances or fleeing from those circumstances in desperate situations is not reflected in the data that emerges from empirical research. There have always been foreigners working in this sector but the proportion is increasing. Secondly, live in domestic work is more likely to be done by non-Italians and can take the form of caring for elderly or persons with a disability unable to care for themselves. Finally, the duties included in domestic service have expanded from the traditional housework duties to include care giving.

All exploitation matters are health and safety issues as exemplified in a US study<sup>14</sup>:

‘Domestic workers complained of sleeping arrangements ranging from sleeping in their employers’ basements in utility rooms next to gas furnaces to sleeping in an unheated basement under construction, to sleeping on the basement floor. In addition to such sleeping situations, domestic workers also described unsafe working conditions that endangered their health. In two cases, domestic workers described cleaning their employers’ homes with cleaning products that made them ill due to lack of proper protective measures..... In a few cases, such as the case of Ahmed, workers were also allegedly denied sufficient nourishment.

Another consequence of domestic workers’ ‘social and cultural isolation, low wages and long hours, lack of or insufficient health insurance, and restricted freedom of movement is their inability to access medical care, even for work-related injuries, without the permission and assistance of their employers’.

A further example is this Bales quotation from a young woman from Mali working in Paris<sup>15</sup>:

‘Every day I started work at 7 am and finished at about 11 pm...I never had a day off...One day I told my Mistress that I wanted to go to school. She relied that she had not brought me to France to go to school but to take care of her children...I slept on the floor in one of the children’s bedrooms; my food was their leftovers...She often beat me. She would slap me all the time. She beat me with a broom, with kitchen tools, or whipped me with electric cable. Sometimes I would bleed: I still have marks on my body...’

#### **4. OHS and employment protection.**

There is firstly an issue about the recognition that domestic work is ‘work’ and that the worker should have a contract of employment and the same rights as workers outside the domestic sphere. As it takes place in the domestic sphere there seems to be an assumption that it should be treated differently. An IRENE/IUF conference demanded ‘recognition that domestic work is ‘work’ and that those who do it are ‘workers’ with the rights that all workers have including the right to be heard’.<sup>16</sup>

This perhaps should include an appreciation of why people do domestic work:<sup>17</sup>

‘For me one of the most startling aspects is the complete non-comprehension by the employer that these women are workers first and foremost needing to earn a living wage. The fact that they live in on the job should not detract from that reality. Many of the employers in this survey

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<sup>13</sup> Colombo, Asher D. (2007) ‘They call me a housekeeper, but I do everything.’ Who are domestic workers today in Italy and what do they do? *Journal of Modern Italian Studies* Vol 12/ 2 207-237.

<sup>14</sup> ‘Hidden In the home: Abuse of Domestic Workers with Special Visas in the United States’ (2001) Human Rights watch vol 13(2) [www.hrw.org](http://www.hrw.org)

<sup>15</sup> Bales, K (1999) ‘Disposable People: New Slavery in the global economy’ University of California Press

<sup>16</sup> ‘Respect and Rights: Protection for domestic/household workers’ (2008) published by IRENE and IUF [www.domesticworkerrights.org/sites/default/files/report\\_en.pdf](http://www.domesticworkerrights.org/sites/default/files/report_en.pdf)

<sup>17</sup> Healey, Margaret (1994) ‘Exploring the slavery of domestic work in private households’ unpublished MA thesis University of Westminster cited in Anderson, Bridget (2000) *Doing the Dirty Work? The Global politics of Domestic Labour* Zed Books London and New York

are business people and professionals themselves who wouldn't dream of treating their business staff in this way'.

In 2005 the ETUC organised a conference called 'Out of the Shadows: organising and protecting domestic workers in Europe: the role of trade unions'. One outcome was a model contract of employment for domestic workers (see Appendix 1).<sup>18</sup>

The development of domestic work within the home was crucial for its exclusion from labour law and initially governed by family law. Fudge points out 'the ideologies of domesticity and privacy have historically combined to provide a justification for exempting these workers from some of the basic legal entitlements available to other workers'.<sup>19</sup> Fudge studied the laws in 60 different countries and found that 19 had enacted specific laws or regulations dealing with domestic work; a further 19 had devoted specific chapters or sections of labour codes or acts concerning contracts of employment; 17 countries had no specific employment legislation with respect to such workers; and 9 countries excluded domestic work from the labour code. Only a small number of the national laws analysed require the conclusion of a written contract of employment for domestic work, and only rarely do national laws on domestic work refer to standards and specifications to be dealt with in those contracts. In addition, some countries either exclude domestic work from the requirement of establishing a written contract, or allow such contracts to be of an oral nature. As a result, this legal situation tends to generate uncertainty and create problems in determining and enforcing the conditions of work agreed upon by the parties. To avoid such problems and curtail any possible abuses and uncertainty, some national laws provide a standard form contract to be used as a model. Domestic workers tended by law to work longer hours than workers in other categories. In some countries, they are excluded from general norms on the matter. In some others, the law merely fixes standards on minimum rest. Several national laws on domestic work contain specific provisions stipulating the number of working hours per day and additional regulating mechanisms to avoid, as far as possible, situations of being on-call 24 hours per day. However, according to Fudge, 'given the nature of the work and the lack of control by the authorities, employers have a tendency to disregard such standards when they exist'.

There have been calls for effective legislation to protect abused migrant domestic workers, e.g. fighting for new International Convention covering domestic workers is among the priorities of the new ITUC equality campaign.<sup>20</sup> A Human Rights Watch Report<sup>21</sup> also called for measures including the extension of equal protection of the labour laws to domestic workers, such as rights to a just wage, overtime pay, weekly rest days, benefits, and workers' compensation. Also enactment of specific regulations governing the minimum age of employment, hours of work, forms of labour likely to be harmful to children, corporal punishment, entitlement to rest and leisure, and compensation. It also called for the ratification of the Convention on the Protection of All Migrant Workers and Members of their Families and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

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<sup>18</sup> See also Anderson, Bridget (2000) *Doing the Dirty Work? The Global politics of Domestic Labour* Zed Books London and New York

<sup>19</sup> Fudge, J (1997) 'Little victories and big defeats: The rise and fall of collective bargaining rights for domestic workers in Ontario' in A.B. Bakan and D. Stasiulus (eds) *Not one of the family: Foreign domestic workers in Canada* University of Toronto Press 1997

<sup>20</sup> International Trade Union Confederation Publications - Spotlight interview with Barbro Budin (Equality Officer) March 7 2008 [www.ituc-csi.org/spip.php?article1895](http://www.ituc-csi.org/spip.php?article1895)

<sup>21</sup> 'Swept under the rug: abuses against domestic workers around the world' Human Rights Watch vol 18 no 7 July 2006 [www.hrw.org](http://www.hrw.org)

## 5. Decent work for domestic workers<sup>22</sup>.

This ILO publication is concerned with an agenda item for the 2010 conference on setting labour standards for domestic work. It states that domestic work is undervalued and regarded as traditional women's work. When it becomes paid work it is often undervalued and poorly regulated. In Europe and elsewhere the majority of domestic labourers are migrant women. Another phenomenon is the number of domestic workers who work for more than one employer or who do not live in. Nevertheless in recent decades demand for domestic work has led to mass migration of women from one hemisphere to another. A crucial element of the ILO focus on decent work is that domestic workers are workers. 'Domestic work requires specific effective laws and regulations. It means acknowledging the personal character of the work and context in which it takes place, while reaffirming its compatibility with the employment relationship. Domestic work must be treated both as work like any other, and as work like no other'.

The Report makes a number of specific recommendations to end force labour in migrant domestic work. These include:

- Forbidding possession of the passport by the employer
- Removing binding requirements or, at least, providing renewable bridge extensions to prevent immediate expulsion on termination of the employment contract
- Removing the requirement to reside in the home of the employer
- Banning the payment of agency fees by workers and restricting similar deductions from their pay
- Requiring agencies to be accredited

In most of the ILO member States surveyed for this Report, domestic workers are not covered by occupational safety and health legislation. It is mistakenly regarded as safe and non-threatening. There are a number of serious potential risks, which increase as a result of fatigue from working long hours.

'The work tends to involve a great deal of repetition, bending and reaching, lifting heavy objects, extremes of heat (cooking and ironing), sharp objects (knives), handling potentially toxic cleaning products and prolonged exposure to dust'.

Migrant domestic workers may be more vulnerable because of language issues and their lack of local knowledge. Whilst these risks maybe similar to those who work outside the home, migrant workers do not have the benefit of advice from co-workers as others may. There is also a lack of autonomy in being able to control how to perform tasks, what tools to use etc.

Possible improvements that are suggested include the possibility of inspection visits to ensure that the home is safe and to give advice; and also to ensure that domestic workers receive adequate training.

The proposed ILO instruments will seek to identify and address the special conditions in which domestic work is carried out and make it desirable to supplement the general standards by standards specific to domestic workers. It would 'seek to circumscribe the practice of payment in kind, offer particular guidance on identifying, limiting and appropriately calculating working time, and address food and accommodation for live-in domestic workers. A Convention would also take into account some particular vulnerabilities of domestic workers, including age and migration status, and identify standards specific to them'.

## 6. Research outcomes.

Domestic work is, of course, only one aspect of what can be called 'household services'. There is a Eurofound report titled 'Employment in Household Services'<sup>23</sup> which is concerned with this sector. Household services, in this context, means child care, eldercare, domestic cleaning,

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<sup>22</sup> ILO Conference 99<sup>th</sup> session 2010

<sup>23</sup> [www.eurofound.europa.eu/pubdocs/2001/02/en/1/ef0102en.pdf](http://www.eurofound.europa.eu/pubdocs/2001/02/en/1/ef0102en.pdf)

home maintenance and catering. The research addresses concerns about the quality of this employment and the working conditions, as well as highlighting the implications for equal opportunities and social inclusion. In terms of job satisfaction the report found that 'work in household services (especially in child care and eldercare) is satisfying and rewarding for the more motivated workers. The most valued aspects are the opportunity to develop meaningful relationships with people, to help those in need and to use one's creativity. Those who work in household services, however, are also exposed to the risk of physical and mental stress. Self-employed workers have greater difficulty handling such stress because they are more isolated; however, even those individuals who work in specialist facilities often receive inadequate support'. The other issues were, as one would expect, low pay, long working hours and reconciling work and family life. In particular, the report reveals a division between some relatively workers and those with little social protection. The first were mostly working in the government and third sectors, whilst the latter tended to be self-employed workers across the whole sector. The report also notes that 'workers who are forced to work long or atypical hours fill niches left uncovered by the market; and these are the workers most likely to experience a conflict between work and family commitments'.

In 'Making domestic work visible: The case for specific regulation'<sup>24</sup> the author states that there are three common elements found amongst domestic workers worldwide. These are:

- Domestic workers are usually employed in private households, and also live in with their employer's family;
- The overwhelming majority of domestic workers are women; the work has traditionally been regarded as 'women's work';
- Most domestic workers have to leave their own families behind, moving from economically poor areas to richer, usually urban, ones.

There needs to be specific regulation dealing with the needs of domestic workers; just to expect domestic workers to fit their work into the regulations concerning employment in general is inadequate.

The ILO Encyclopaedia on Health and Safety<sup>25</sup> states that the physical hazards arising from domestic work include: 'long working hours, insufficient rest time and sometimes insufficient food, exposures to hot and cold water, exposure to hot kitchen environments, musculoskeletal problems, especially back and spinal pain, from lifting children and furniture, and kneeling to clean floors. Precautions include limitations of working hours, adequate rest and food breaks, gloves for dishwashing and other water immersion, training in proper lifting techniques, mechanized carpet cleaners and floor polishers to minimize the time spent on the knees and provision of knee pads for occasional tasks.

Particular hazards include, firstly, chemical hazards by exposure to a wide variety of acids, alkalis, solvents and other chemicals in household cleaning products which can cause dermatitis. Domestic workers may not know enough about the materials they use or how to use these products safely. The entry states that

'There is inadequate training in chemical handling or hazard communication for materials that they use. For example, a severe poisoning case in a servant who was using cadmium carbonate silver-cleaning powder has been reported. The worker used the product for one-and-a-half days, and suffered abdominal cramps, tightness of the throat, vomiting and low pulse. Recovery took 24 days (Sovet 1958). Many products used or handled by domestic workers are known allergens. These include natural rubber protective gloves, house plants, waxes and polishes, detergents, hand creams, antiseptics and impurities in detergents and whiteners. Irritant dermatitis may be a precursor to allergic contact dermatitis in housekeepers, and often starts

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<sup>24</sup> Blakett. 1998. 29 pp. ISBN 92-2-111024-9. Employment of homeworkers: Examples of good practice. (Working paper, No. 5). Edited by Huws, U.; Podro, S. Geneva, 1995. 33 pp. ISBN 92-2-110005-7. Available from the ILO Conditions of Work Branch [www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/](http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/)

<sup>25</sup> [www.ilo.org/safework\\_bookshelf/english](http://www.ilo.org/safework_bookshelf/english)

with the development of erythema patches on the backs of hands (Foussereau et al. 1982). Inhalation of solvents, household pesticides, dusts, moulds and so on can cause respiratory problems.

Secondly, there are biological hazards arising from responsibility for the care of young children which can result in a greater risk of becoming infected with a variety of illnesses, especially from changing diapers, and from contaminated food and water.

Thirdly, there are psychological and stress hazards, including isolation from one's family and community; lack of paid vacation and sick or maternity leave; inadequate protection of wages; rape, physical and mental abuse; over-extended working hours; and general lack of benefits or contracts.

Live-in domestic workers face greater danger from hazards including violence, harassment, physical and mental abuse and rape (Anderson 1993). 'Prevention of abuses of domestic workers can be aided by establishment of laws that protect these comparatively defenceless workers'.

Professional cleaning<sup>26</sup> is a basic service occupation that is carried out worldwide in many different environments, both indoors and outdoors. Cleaning workers form an important proportion of the total working population; for instance 3% in the USA, 4% in Finland, and 10% of the female working population in Spain. Cleaners often have low occupational skills and belong to the less advantaged educational and socioeconomic groups. There are, according to this analysis, a number of important differences in the organisation of cleaning jobs between geographical areas and their prevailing cultures, which are related to differences in work conditions and hence occupational hazards. In many countries cleaning work is predominantly done by women, with a relatively high proportion of older women. Immigrants constitute another major group doing cleaning work. Many cleaners are employed in the informal economy, especially those employed in cleaning private homes. The authors state that:

'This is often characterised by precarious employment, often part-time. The related low social and legal protection results in payment on an hourly basis without proper contracts or insurance. Taking into account all these particular characteristics, cleaners are likely to escape from control such as regulations, health surveillance and risk prevention'.

This study deals with the multiple occupational risks related to professional cleaning activities. Those mentioned in the analysis include:

- unfavourable working hours
- exposure to chemical hazards from cleaning products
- musculoskeletal disorders
- occupational accidents; from wet floors; cleaning higher objects etc
- dermal effects; skin problems such as dermatitis
- muscular membrane conditions; leading to respiratory complaints
- psychosocial hazards; from working alone and atypical hours

Cleaning is usually regarded as a low status occupation. Cleaners have little opportunity to influence their work or advance their careers. Other factors include physical strain, fatigue, time pressures, insufficient training and monotonous work.

A study of the laws in 60 different countries found that 19 had enacted specific laws or regulations dealing with domestic work; a further 19 had devoted specific chapters or sections of labour codes or acts concerning contracts of employment; 17 countries had no specific employment legislation with respect to such workers; and 9 countries excluded domestic work from the labour code. Only a small number of the national laws analysed require the conclusion of a written contract of employment for domestic work, and only rarely do national laws on domestic work refer to standards and specifications to be dealt with in those contracts. In addition, some countries either exclude domestic work from the requirement of establishing a

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<sup>26</sup> Zock, J.P. (2005) 'World at Work: Cleaners' Respiratory and Environmental Health Research Unit, Municipal Institute of Medical Research (IMIM) Barcelona, Spain; 62: 581-584 [osha.europa.eu/data/links/osh\\_dbcontent.2005-10-28.9794205313/view](http://osha.europa.eu/data/links/osh_dbcontent.2005-10-28.9794205313/view)



written contract, or allow such contracts to be of an oral nature. As a result, this legal situation tends to generate uncertainty and create problems in determining and enforcing the conditions of work agreed upon by the parties.<sup>27</sup>

The ETUC, in 2005, organised a conference called ‘Out of the Shadows: organising and protecting domestic workers in Europe: the role of trade unions’. The record of this conference is on the ETUC website. The conference was intended to address the growing interdependence of the formal and informal economy and the challenges that this posed for trade unions. Its aims included:

- increasing the awareness among trade unions of the needs of millions of invisible workers
- highlighting the link between the needs of European households for domestic services and the feminisation of migration
- exchanging good practices and experiences of organising and of protecting/promoting the interests of domestic workers

In this document there is some analysis of how domestic work is regulated in various EU economies. There is also a section dealing with developments towards an international regulatory framework for domestic workers; another section dealing with suggestions for trade union action. Most interestingly there is a model employment contract for domestic work (Appendix 1). This relies upon Directive 91/533.EEC for its justification. Section 3 of this contract specifies the volume of work, working hours, irregular hours and rest breaks. It also includes sections on holidays, sickness, pregnancy and maternity.

## 6. Health and safety.

There is a considerable practical literature on hazards applicable to cleaners, in both the domestic and non-domestic sphere. The ones collected during this report are contained in Appendix 2.

There have been a number of studies and reports on particular health hazards associated with domestic work.

(a) Asthma symptoms – in one study<sup>28</sup> of 4521 women aged 30 to 65 years it was suggested that employment in domestic cleaning work may induce or aggravate asthma. This study suggests that domestic cleaning work has an important public health impact, probably involving not only professional cleaners but also people undertaking cleaning tasks at home. Domestic cleaning workers are exposed to a large variety of cleaning products containing both irritants and sensitisers, as well as to indoor allergens. Consequently, it was hypothesised that the onset or aggravation of asthma in domestic cleaners could be related to a use of these substances. Epidemiological studies have shown an association between cleaning work and asthma and the aim of this study was to assess the risk of asthma in women employed in domestic cleaning.

The report explains that Asthma is the most common occupational lung disease in industrialised countries. Occupational exposures are estimated to be responsible for 5–20% of all adult asthma cases and numerous occupations with increased risk and causative agents have been identified. Several community based studies have recently shown an increased risk for asthma in cleaners, an occupation not traditionally associated with this disease. However, the types of exposure

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<sup>27</sup> Fudge, J (1997) ‘Little victories and big defeats: The rise and fall of collective bargaining rights for domestic workers in Ontario’ in A.B. Bakan and D. Stasiulus (eds) *Not one of the family: Foreign domestic workers in Canada* University of Toronto Press 1997

<sup>28</sup> M Medina-Ramón, J P Zock, M Kogevinas, J Sunyer and J M Antó. (Respiratory and Environmental Health Research Unit, Municipal Institute of Medical, Research, Barcelona, Spain; Department of Experimental and Health Sciences, Pompeu Fabra University, Barcelona). July, 2003. The study was supported by the Spanish Ministry of Science and Technology. [ejournals.ebsco.com/Article.asp?ContributionID=5462226](http://ejournals.ebsco.com/Article.asp?ContributionID=5462226)



associated with asthma in cleaners have not been identified. Analyses within the Spanish Centres of the European Community Respiratory Health Survey (ECRHS) suggested that the excess risk for asthma in cleaners occurred mostly in domestic cleaners. In this survey some 593 women (13%) were currently employed in domestic cleaning work. Asthma was more prevalent in this group than in women who had never worked in cleaning. Consistent results were obtained for other respiratory symptoms. Twenty five per cent of the asthma cases in the study population were attributable to domestic cleaning work.

(b) OSHA e-facts; of relevance are:

*E-fact 37: Slips, trips, falls and cleaners (2008)*<sup>29</sup>

This explains the most common causes of slips, trips and falls. It examines why cleaners are especially at risk from these types of accidents and outlines the steps that can be taken to prevent them happening. Cleaners are best defined by task rather than as a sector or group. Common tasks are surface cleaning – mopping, dusting, vacuuming, polishing floors and work surfaces – and routine housekeeping. While cleaning work can include tasks such as window and street cleaning, the focus of this E-fact is on the prevention of harm to paid workers carrying out general cleaning. This E-Fact is intended to inform employers, supervisors, workers and their representatives, particularly those in small and medium enterprises (SMEs), about the dangers involved in cleaning and how harm to cleaners can be prevented.

Workers also have responsibilities: they have to perform their tasks in such a way that they do not put others at risk and they have to follow the safety rules and instructions and training of the employer. The framework directive is supplemented by individual directives, of which the following may be relevant for the protection of workers from slips, trips and falls: Directive 89/654/EEC – the Workplace Directive covers minimum health and safety requirements for the workplace.

*E-fact 38: Work equipment, tools and cleaners (2008)*<sup>30</sup>

This examines why and how cleaners are injured using their equipment. Musculoskeletal disorders are a significant problem, with studies showing that they are the biggest cause of time off work among cleaners. The E-Fact explains the steps of the risk assessment process, including identifying hazards and evaluating risks. It also includes two case studies on preventing harm and a checklist of the most common hazards associated with the use of cleaning equipment.

Musculoskeletal disorders (MSDs) are a big problem. Studies have shown that MSDs are the biggest cause of time off work among cleaners. Cleaning work is physically demanding and labour intensive. About 80% of cleaning is done manually using non-powered tools; for example, dusting, sweeping and mopping. Many of these tasks require reaching, repetitive motions, awkward postures, and create a high load on the lower limbs, all of which contribute to MSDs.

*E-fact 35: Risk assessment for care workers*<sup>31</sup>

Following a brief introduction concerning care workers and OSH in care worker activities, this includes sections on ‘How to do a Risk Assessment’ and ‘How to use a Checklist’. A general checklist is then presented to help determine ‘Does the hazard exist at the workplace?’. An extensive list of ‘Proposed solutions and examples of preventive measures’ are then considered, for the different questions posed in the general checklist. A case study is then presented, showing how appropriate education and training and the use of risk assessment tools and a resource guide can alter a home care worker’s perception of occupational safety and health issues and through this reduce the potential for injuries and claims.

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<sup>29</sup> [osha.europa.eu/en/publications/e-facts/e-fact37](https://osha.europa.eu/en/publications/e-facts/e-fact37)

<sup>30</sup> [osha.europa.eu/en/publications/e-facts/e-fact38](https://osha.europa.eu/en/publications/e-facts/e-fact38)

<sup>31</sup> [osha.europa.eu/en/publications/e-facts/e-fact35](https://osha.europa.eu/en/publications/e-facts/e-fact35)

Home care workers may perform different groups of activities for example assisting in the home environment and domestic duties, e.g. light housework (vacuuming, cleaning, washing and maintaining a tidy and safe environment), preparing meals, serving, help with eating and clearing away, and taking medications. The principal objective of home care is the provision of support to enable service users to be cared for in their own home for as long as possible, or to enable them to return to their own home from hospital or other accommodation. Home care workers assist people at home, allowing them to stay in their homes, rather than use residential, long-term, or nursing care institutions.

Domestic duties: Housekeeping activities can also put care workers at high risk of MSDs. Some of these activities include making beds, cleaning (dusting, vacuuming, mopping) doing laundry, and cooking and washing dishes. Risk factors during these activities include awkward posture, excessive bending at the waist, extended reach (while twisting), repetitive pinch and grip forces, static postures with force, contact stress, kneeling on hard surfaces (pressure on the knees) and lifting items.

Using cleaning products in the client's home can also put care workers at risk of exposure to chemicals. Some chemicals in household products can irritate or burn the eyes and skin, some can irritate the lungs and others are suspected of causing longer-term health effects.

#### *E-fact 39: Cleaners and musculoskeletal disorders*<sup>32</sup>

Cleaners work in all industry sectors and workplaces, from hotels to hospitals and factories to farms. They work inside and outdoors, including in public areas. Often working at night or in the early morning, sometimes alone, cleaners are found in every setting and the work they do is essential. Cleaners may either be employed directly, working in their employer's premises, or they may work in a location run by a third party. They may be employed by public services, private enterprises, or they may be self-employed. Cleaners may also be employed by a contractor, working at several locations over the course of a week. Contract, or industrial, cleaning is a multi-million Euro industry employing millions of workers across Europe. Most cleaners are women and work part time. A significant proportion of workers come from ethnic minorities. Staff turnover is generally high, caused by a high level of temporary work and short fixed-term contracts. Although these employment patterns can cause difficulties, harm to cleaning workers can and must be prevented.

#### *E-fact 41: Cleaners and dangerous substances (2008)*<sup>33</sup>

Cleaners are at risk from exposure to cleaning products through inhalation and skin contact, wet work activities, needle stick injuries and dirt. Skin problems are the most common problem for cleaners, who are also at increased risk of developing asthma, chronic bronchitis and other respiratory problems. Cleaners are best defined by task rather than as a sector or group. Common tasks are surface cleaning – mopping, dusting, vacuuming, polishing floors and work surfaces – and routine housekeeping. While cleaning work can include tasks such as window and street cleaning, the focus of this E-fact is on the prevention of harm to paid workers carrying out general cleaning. This E-Fact looks at how to recognise dangerous substances and explains how they can enter the body and cause harm. It also offers ways to prevent or minimise risk.

#### **National perspectives**

Denmark: the occurrence and course of skin symptoms on the hands among female cleaners<sup>34</sup>,<sup>34</sup> a study dating from 1989/91 of Danish cleaning personnel in a variety of locations. A positive correlation was found between hours per week spent with wet hands and skin symptoms. During

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<sup>32</sup> [osha.europa.eu/en/publications/e-facts/efact39](https://osha.europa.eu/en/publications/e-facts/efact39)

<sup>33</sup> [osha.europa.eu/en/publications/e-facts/efact41](https://osha.europa.eu/en/publications/e-facts/efact41)

<sup>34</sup> The occurrence and course of skin symptoms on the hands among female cleaners: Denmark Authors (personal): Nielsen J. Apr. 1996, Vol.34, No.4, p.284-291

the follow up period, the risk of developing skin symptoms was higher among the women who remained cleaners than among those who left their cleaning jobs.

*France:* in France<sup>35</sup>, domestic workers are covered by the Labour Code<sup>36</sup>, the basic law which fixes the minimum rules applicable to ‘employés de maison’, although many provisions of the Labour Code do not apply to them<sup>37</sup>. France also has a National Collective Agreement<sup>38</sup> (CCN) for this category of workers. The CCN, which came into force on 3 June 1980, was extended by order in-council on 26 May 1982 to apply to all employers of household workers irrespective of whether or not they were members of the employers' federation that originally signed the agreement. The term employés de maison is used to denote salaried workers employed by individuals to perform domestic labour. Article 1 of the CCN defines household workers as monthly or hourly workers, at full or part time, who perform all or part of the household tasks, be they of a family care nature or a household cleaning nature. These forms of employment are further classified into more specific occupational groupings. Gardeners and guards of private households are regulated under a separate CCN.<sup>39</sup>

The French CCN first, considers practical, concrete methods to provide or increase personal privacy and security e.g. Article 30 of the CCN stipulates that each domestic worker must have an individual room which can be locked from the inside and that closes with a key. It also specifies that, in particular, employees who care for children must have a space which is separate from the child's room. Second, it seeks to ensure that the lodgings are in appropriate condition. Thus, an employee's lodgings must be decent, sanitary, adequately lit and appropriately heated. The employer is responsible for cleaning any clothing or linen which he or she provides to the domestic worker. Sanitary facilities are to be available in domestic workers' lodgings; otherwise, the domestic worker must have access to the employer's facilities. If food is provided, that food must be healthy and sufficient in quantity. Third, in order to ensure that the lodgings are kept in a proper state, an inventory of the lodgings and the objects provided to the domestic worker and a survey of the state of the premises may be undertaken at the time of hiring and when the contract comes to an end. Finally, an attempt is made to regulate transition periods, such as when an employment contract is suspended, or when termination of employment has occurred. Hence, when a contract has been suspended but not broken or ended, and within the notice periods, the premises may not be taken back by the employer without the domestic worker's agreement. If the domestic worker is not using the premises, however, the employer may house a replacement worker. The employer would in such a circumstance be responsible for the personal affairs of the domestic worker and would be required to place them in a location in which they cannot deteriorate.

There are also detailed provisions on working hours, minimum wages, leave and social security. ‘Housekeeping assistance: A little-known occupation’;<sup>40</sup> this survey was conducted within the framework of a domestic helpers' association in the area around the French city of Brest. It also focused on persons benefitting from domestic help. From the results of the survey, some preventive approaches are proposed in order to avoid difficult situations arising from the

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<sup>35</sup> This section and references comes from: ‘Making domestic work visible: The case for specific regulation’ [www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/](http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/)

<sup>36</sup> Code du travail, L. no 73-4 du 2 janv. 1973

<sup>37</sup> Domestic workers are entitled to three basic forms of social protection independent of the existence of a CCN: paid leave, notice and the ability to bring disputes before the Conseil de Prud'hommes. Encyclopédie Dalloz, Travail, Tome II, “Employés de maison”, paras. 1 & 11.

<sup>38</sup> Convention collective nationale de travail du personnel employé de maison, Journal officiel, Fascicule N° 3180, 11e édition. Various departmental collective agreements came into being between the 1950s and the adoption of the current CCN.

<sup>39</sup> *Convention collective des jardiniers et gardiens de propriétés privées du 25 septembre 1975.*

<sup>40</sup> Serial title: Archives des maladies professionnelles et de médecine du travail (ISSN 1250-3274) Bibliographic information: Oct. 2000, Vol.61, No.6, p.379-388. Illus. 4 ref. Year of document: 2000

sometimes very close bonds between the women who work as domestic helpers and the persons in their care.

*Germany:* About 3.8 million households in Germany employ a cleaner or other domestic worker. These workers get some protection from the Collective Agreements that have been reached for workers in private households and employed by service agencies. The following is a comment by Birgit Pitsch, Head of Department for Women's Issues and Migration of the NGG-DGB food and allied industries union

'Many [domestic workers] come under the 'Mini-Jobs' scheme of low-income earners which started in April 2003, and this has not helped to improve their situation. "We have a Collective Agreement at national level that lays down standards such as a 38.5 hour working week, two days off per week and two free weekends per month, and holidays of 26-30 days a year. We also have a Remuneration Agreement concerning wages, Christmas bonuses, etc., which is reached at regional level. These agreements are negotiated with the German Housewives' Association (DHB). This is not a 'normal' employers' body. However, because the 1952 law on minimum working conditions did not apply

to domestic workers, a partner was sought for negotiations for a Collective Bargaining Agreement, and they were turned to. We reached our first agreement with them in 1955, and have continued since then, though it is a somewhat different body today, since opening up their association to men and service agencies. Although the Remuneration Agreement only covers the parties to the agreement, uniquely in Germany the wage levels it sets are used as a guideline and any wage paid less than this is illegal; any domestic worker, whether a union member or not, can go to court for the minimum wage. The same applies to pension rights. This does not only cover full-timers but also part-time workers, 'mini-jobbers' and trainees.

Training is available for domestic workers. There is a three-year diploma course, plus higher training, and a special course on the care of the elderly. Those who have these qualifications receive better wages. There are some provisions, however, which do not apply to domestic workers. Though they have the right to a period of notice, the same protections against dismissal do not apply, for example if they get pregnant. There are waivers which mean they can be asked to work on Sundays and holidays. Social insurance contributions are also reduced for domestic workers. The unions have criticised this because this means that they – largely women - are not able to build up their protection plans. The legislators thought that bringing in the 'mini-job' system – which refers to workers who get less than 400 Euros a month - would bring more people into employment and help to regularise undeclared work. However, even as levels of 'mini-jobs' have been rising, we still have high levels of unemployment. So we believe that in fact it is permanent jobs that are being reduced to 'mini-jobs'. By June 2004, there were 67,400 legally declared domestic workers in 'mini-jobs', which means of course that many more remained undeclared. And, since only 13.3% of those declared were migrants, there must be large numbers of migrant domestic workers who remain unregistered'.

A recent analysis<sup>41</sup> stated that there were estimated to be between 100,000 and 600,000 migrant domestic workers in Germany. The majority were women, but some men were also employed in this sector. There are legal limitations upon the opportunity to take up such work. Only citizens from the new member states are allowed to work as domestic workers for a period limited to three years due to an agreement, which was made between the German Federal Employment Office and the new EU member states in 2002. Eastern Europeans working under this agreement are only eligible to perform domestic work tasks; they are not allowed to engage in any caring activities. They work 38.5 hours per week and receive monthly wages between 1000 EUR – 1400 EUR before tax. Although this scheme has been successful, it cannot account for the numbers of migrant domestic workers in the country. The only legal way for third country nationals to perform domestic work is to apply for an Au-Pair visa. Au-Pairs can live and work

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<sup>41</sup> 'Migrant Domestic Workers in Germany: Scope, Political Reactions and Implications' 2009. [www.migrationeducation.org/22.1.html?&rid=141&cHash=fba66cbfe](http://www.migrationeducation.org/22.1.html?&rid=141&cHash=fba66cbfe)



in German households, performing child care as well as cleaning activities for up to one year. The most prevalent form of domestic work, in contrast to other countries, is for such workers to live out and work for a number of employers. As a result of their illegal status, there are very few regulations which protect these workers. The analysis reports on the political reaction regarding the increasing presence of migrant domestic workers which was caused by a TV documentary in 2002 that focused on this matter. The screening of the programme caused the federal employment office to control households in the Rhine-Main area. They discovered 200 women working illegally in private households, sent them back to their countries of origin and pressed charges against the household members<sup>7</sup>.

Little further legislative action appears to have been taken. The analysis states that:

‘migrant domestic workers become highly dependent on their employer due to their lack of legal and social rights. This as well as their lack of knowledge regarding those few rights they are eligible to claim causes migrant domestic workers to become easy prey for exploitation by employers, as well as dependence on the income from their positions. Working arrangements often do not remain as temporarily as initially intended caused by those financial dependencies. Due to qualitative research performed in this field, scientists assume that a significant number of female domestic workers suffer from financial exploitation by withholding their pay, direct dismissals in case of illness or pregnancy, force to work extra hours especially in ‘live-in’ work relationships or even domestic violence. A lack of health care as well as the permanent fear of removal also has an impact on the situation of migrant domestic workers’.

There is information about action being taken with regard to specific health issues. The German statutory accident insurance institutions<sup>42</sup> (Hauptverband der Berufsgenossenschaften HVBG) have developed product codes for chemical cleaning products. These product codes (GISCODE) enable employers and safety representatives in the cleaning sector to obtain information on chemical cleaning products about hazards and protection measures. They allow employers to compare the different risks posed by exposure to various chemical substances without having specialist knowledge. The product codes support employers to substitute dangerous cleaning products with less toxic alternatives. Also the German Accident Insurance Association for the Building Industry (Berufsgenossenschaften der Bauwirtschaft) developed a programme to prevent skin diseases. The programme involves an intensive individual consultation, technical and organisational measures, PPE and skin-friendly working methods. After some months the skin irritations of 90% of the concerned workers were reduced and in 23% cases had even disappeared. The number of occupational diseases was reduced by almost 80%.

*Ireland:* The Irish Confederation of Trade Unions states, in a publication<sup>43</sup> designed to inform domestic workers of their rights, that ‘domestic workers are among the most vulnerable workers in Ireland today, particularly migrant domestic workers. This situation is unacceptable and is caused by a combination of factors including; the exploitative practices of some recruitment agencies, a lack of awareness by employers of their responsibilities, bad employer practices, isolation and a lack of information’.

The document points out that migrant workers are entitled to the same employment protection rights as Irish workers, including legislation on contracts, hours of work, pay and holidays. Privacy is important and live in workers are entitled to their own rooms and bed. With regard to health and safety issues employers should ensure that the work load, including the psychological workload, is manageable and safe. The worker must have adequate rest and privacy. All domestic workers should be given information and training in the equipment and products that they are to use. Employers should also recognise that they need adequate insurance to cover the employment of domestic workers, especially in regard to accidents and injury.

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<sup>42</sup> Cleaners and dangerous substances, European Agency for Safety and Health at Work, Publishing Date: 17.10.2008, [osha.europa.eu/en/publications/e-facts/efact41](http://osha.europa.eu/en/publications/e-facts/efact41)

<sup>43</sup> ICTU Guidelines for the Employment of Domestic Workers [www.siptu.ie/domestic/ICTUGuidelines/](http://www.siptu.ie/domestic/ICTUGuidelines/)

*Italy*: there are some 600,000 people employed as domestic workers in Italy, although some estimates are that the figure is twice this. Most domestic workers are non-EU nationals. In February 2007, trade unions and employer organisations reached agreement on a new national collective agreement for domestic workers.<sup>44</sup> The agreement provides a new professional classification for workers, introduces new regulations concerning working hours, and provides for safeguards in the event of illness, whilst creating a supplementary pension fund.

'They call me a housekeeper, but I do everything.' Who are domestic workers today in Italy and what do they do?<sup>45</sup> This article is referred to elsewhere in this report. According to its abstract it explores a number of aspects of paid domestic work in contemporary Italy and recent changes in that sector. The first section presents the distinguishing characteristics of paid domestic workers, showing that the image of a non-Italian woman, originally from an underdeveloped country, actually distorts a more complex and differentiated reality. The subsequent section analyses the way that paid domestic work is organized, and in particular it explores the differences between live-in and live-out domestic service, demonstrating that live-in domestic service is a fundamental component of the new paid domestic service, but that its extension is relatively modest. Finally, the article provides a reconstruction of the emotional content of the services demanded from paid domestic workers.

Ageing and work: Health aspects in cleaners<sup>46</sup>; this study used cleaning as an activity to research the relationship between ageing and physically demanding jobs. According to the abstract workers in this profession generally have low social status and are poorly educated with low levels of income and social support. The issues were, mostly, musculoskeletal disorders – the elbow, wrist, hand and spine. These conditions were aggravated by poor work organisation and a lack of suitable ergonomic tools.

*Spain*: One estimate is that there are 393,500 homes with domestic workers in Spain, of whom about 60% are in the informal economy.<sup>47</sup> Approximately 35% are immigrant workers.

In Spain<sup>48</sup>, since 1985 domestic work has been recognised as one of the special employment relationships mentioned under Article 2(1)(b) of the Workers' Statute<sup>49</sup>. Royal Decree 1424/85 interprets the domestic service relationship as between the employer and the person who provides remunerated services in the household. The Royal Decree also defines the object of this relationship as being the services or activities provided in or for the home in which the work is done. The services or activities may take any of the forms of domestic tasks, such as running or taking care of all or part of the house and caring for or attending to the members of the family or to those living in the home. Specific occupations such as guardians, gardeners or chauffeurs are included in this definition<sup>50</sup>. The Decree also includes provisions with regard to holidays and termination of employment. Specific features of the special employment relationship are<sup>51</sup>:

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<sup>44</sup> Respect and rights for domestic workers; [en.domesticworkerrights.org/?q=node/47](http://en.domesticworkerrights.org/?q=node/47)

<sup>45</sup> 'They call me a housekeeper, but I do everything.' Who are domestic workers today in Italy and what do they do?, Asher D. Colombo, Department of Education Sciences, University of Bologna. *Journal of Modern Italian Studies*, Volume 12, Number 2 (2007), 207-237. [ejournals.ebsco.com/direct.asp?ArticleID=45A8B9EE7C5163A942C7](http://ejournals.ebsco.com/direct.asp?ArticleID=45A8B9EE7C5163A942C7)

<sup>46</sup> 'Ageing and work: Health aspects in cleaners', De Vito G., Molteni G., Camerino D., Bordini L., Molinari M, Capodaglio P. *Medicina del lavoro* July-Aug. 2000, Vol.91, No.4, p.387-402.

<sup>47</sup> 'Domestic work examined' [www.eurofound.europa.eu/eiro/2002/05/feature/es0205206f.htm](http://www.eurofound.europa.eu/eiro/2002/05/feature/es0205206f.htm)

<sup>48</sup> This paragraph and references comes from: 'Making domestic work visible: The case for specific regulation' [www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/](http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/)

<sup>49</sup> Real Decreto 1424/1985, de 1 de agosto, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar Boletín Oficial del Estado, 13 de agosto de 1985 (Núm. 193) 2017. See Rosa Quesada Segura, El contrato de servicio doméstico (Madrid: Distribuciones de La Ley, 1991) 11-45 for an overview of the antecedents to this law.

<sup>49</sup> Estatuto de los Trabajadores, Ley 8/ 1980 de 10 de mayo.

<sup>50</sup> *Real Decreto*, Article 1(2) and Article 1(4)

<sup>51</sup> 'Domestic work examined' [www.eurofound.europa.eu/eiro/2002/05/feature/es0205206f.htm](http://www.eurofound.europa.eu/eiro/2002/05/feature/es0205206f.htm)



the employment contract may be written or verbal, though it is most often verbal; persons under the age of 16 may not perform domestic work, and those aged 17 to 18 need their parents' permission; the compensation for dismissal is seven days' pay per year of service, with a limit of six months' pay, compared with 33 days' pay per year and a limit of 24 months' pay for ordinary workers; domestic workers are not entitled to unemployment benefit; special bonus payments (which form part of pay in Spain) are based on pay for 15 days' work rather than 30 days. Domestic workers also receive lower seniority pay increments than ordinary workers; social security contributions amount to 22% of pay, of which the worker pays 3 percentage points. However, domestic workers who work in more than one home must pay the whole amount, and their employers are exempt. In 1998, the average monthly social security contributions for domestic workers came to approximately EUR 108.37, compared with EUR 493.49 for normal workers; whereas for other workers sick pay is received after three days' sickness, in domestic work it is received after 28 days; the maximum state retirement pension for domestic workers is 70% of their declared monthly income. In practice, this means that their pensions are far lower than those under the normal system, in which the minimum pension is EUR 6,355.72 per year; and the maximum working week is 40 hours, but does not include agreed time for performing 'non-habitual tasks that require little effort, such as opening the door, answering the telephone, etc'. The working day is established by the employer, with a maximum of nine hours per day. 'External' staff not living on the premises must have 10 hours uninterrupted time off per day and 'internal' workers living on the premises must have eight hours. The regulation of the working time of domestic staff is thus very flexible. When domestic workers live in the workplace, abuses are reportedly more common.

The EIRO analysis concludes that:

‘The special system for domestic workers totally excludes unemployment benefit, provides a low pension, offers little compensation for dismissal, and the contracts are almost always verbal. Though the special social security system offers healthcare and cover for invalidity or death, the low level of income and the unstable employment of domestic staff who do not work full time (who may be as many as 90%, according to IOE) mean that they are reluctant to pay the monthly social security contributions. The special legislation for the sector therefore means that domestic workers are particularly unprotected. In short, the low level of regulation and the lack of social protection of domestic workers is one of the main reasons for their irregular situation. It provides little incentive for registration, offers few benefits and social rights, reduces the already low wages, and forces the workers (who are often not well-informed) to register for social security themselves’.

A specific health issue in a Spanish study is asthma. ‘Asthma symptoms in women employed in domestic cleaning: a community based study’: This study, referred to elsewhere in this report, found that employment in domestic cleaning was associated with asthma, chronic bronchitis, and other respiratory symptoms among Spanish women. These findings are supported by results from several surveillance studies and case reports. The high risk of asthma attributable to domestic cleaning suggests a substantial public health impact, which might be even greater if we take into consideration that housewives and others doing cleaning tasks at home are probably also at risk.

### ***Case studies***

*Germany*: the ‘Mini-Jobs’ scheme (Out of the Shadows – ETUC)

About 3.8 million households in Germany employ a cleaner or other domestic worker. These workers get some protection from the Collective Agreements that have been reached for workers in private households and employed by service agencies. However, as Birgit Pitsch, Head of Department for Women’s Issues and Migration of the NGG-DGB food and allied industries union explains, many come under the ‘Mini-Jobs’ scheme of low-income earners which started in April 2003, and this has not helped to improve their situation. “We have a Collective Agreement at national level that lays down standards such as a 38.5 hour working week, two days off per week and two free weekends per month, and holidays of 26-30 days a

year. We also have a Remuneration Agreement concerning wages, Christmas bonuses, etc., which is reached at regional level.

These agreements are negotiated with the German Housewives' Association (DHB). This is not a 'normal' employers' body. However, because the 1952 law on minimum working conditions did not apply to domestic workers, a partner was sought for negotiations for a Collective Bargaining Agreement, and they were turned to. We reached our first agreement with them in 1955, and have continued since then, though it is a somewhat different body today, since opening up their association to men and service agencies.

Although the Remuneration Agreement only covers the parties to the agreement, uniquely in Germany the wage levels it sets are used as a

guideline and any wage paid less than this is illegal; any domestic worker, whether a union member or not, can go to court for the minimum wage. The same applies to pension rights. This does not only cover full-timers but also part-time workers, 'mini-jobbers' and trainees. Training is available for domestic workers. There is a three-year diploma course, plus higher training, and a special course on the care of the elderly. Those who have these qualifications receive better wages. There are some provisions, however, which do not apply to domestic workers. Though they have the right to a period of notice, the same protections against dismissal do not apply, for example if they get pregnant. There are waivers which mean they can be asked to work on Sundays and holidays.

Social insurance contributions are also reduced for domestic workers. The unions have criticised this because this means that they – largely women - are not able to build up their protection plans. The legislators thought that bringing in the 'mini-job' system – which refers to workers who get less than 400 Euros a month - would bring more people into employment and help to regularise undeclared work. However, even as levels of 'mini-jobs' have been rising, we still have high levels of unemployment. So we believe that in fact it is permanent jobs that are being reduced to 'mini-jobs'. By June 2004, there were 67,400 legally declared domestic workers in 'mini-jobs', which means of course that many more remained undeclared. And, since only 13.3% of those declared were migrants, there must be large numbers of migrant domestic workers who remain unregistered.

*France: (Out of the Shadows – ETUC):*

Jean Marc Olivier, Federal Secretary of the Commerce and Services section of the CGT, France, describes new initiatives that his union is taking to reach out to unorganised domestic workers. "Officially, there are about 1.6 million paid domestic workers in France. But these are the official figures, and all observers estimate that at least of 50% of the work is undeclared. What is more, there are more employers in this sector than there are employees - we know, for example, of one domestic worker getting pay from 13 different employers each month. Furthermore, there are very few firms operating in the sector.

So trade union organisation and application of the labour code are very hard to achieve. There are two collective agreements for the sector: one for 'household workers' and a separate one for 'maternal assistants' who look after other people's children in their own homes, employed by the parents. But both these agreements need much improvement and this is one of our main goals. The CGT has taken the political decision to organise these precarious and isolated workers. We have recently started a newsletter ('Trait d'Union') which is distributed through our union structures and other organisations. We have been encouraging our branches and departments to hold local meetings to attract domestic workers, especially in the evenings when these workers are more likely to attend. The results are modest but encouraging. We have registered about 500 new members. This is not many out of a total membership of 1.5 million but it helps to build links into this sector. Fifteen special union structures have been set up in the regions, at branch, department or sector level. In several cases, there are new branches that did not exist before. Many domestic workers simply do not realise what rights they do have. Many are migrant workers from North Africa or the Philippines, and are working in conditions of 'slavery'. It is not easy to meet up with those that are clandestine, but we do intend to organise

them and help them get their papers. We have been successful in getting a certain number regularised and so helped them to come ‘out of the shadows’.

*Netherlands: (Out of the Shadows – ETUC):*

In 2005, the Netherlands Trade Union Confederation FNV engaged in a number of activities to promote the interests of domestic workers. For quite some time, the FNV has been urging the Dutch Parliament and the Government to improve the legal position of domestic workers by putting an end to the legal exclusions that apply to them.

Currently domestic workers employed by a family for fewer than three days a week have only limited protection. They are only entitled to the legal minimum wage, and the legal minimum paid holidays. They also fall outside the normal protections against dismissal, and they only have the right to a maximum of six weeks paid sick leave instead of the usual one year. Moreover, private employers do not have to pay taxes and social security premiums for them. In practice, these exemptions apply to the great majority of the domestic workers in the Netherlands. The FNV believes a win-win situation could be achieved, however, by offering tax reductions to those employers who offer domestic workers full legal protection and pay taxes and premiums for them, and by simplifying the administrative burden that often comes with this. This could also help to combat undeclared labour in this sector.

According to the FNV, the most important thing - as a first step - is to make domestic workers and their employers more aware of the legal rights and obligations that do already apply, since many people in the Netherlands think that domestic workers fall outside any social protection. This situation was confirmed by an internet survey in 2005 among domestic workers and their employers, an initiative which gained significant media coverage for the FNV.

To inform domestic workers about their rights, the FNV published a small brochure, also available on the FNV website. It includes a model employment contract, along with an explanation of each of its articles. However, the observation of basic legal obligations is the minimum to achieve. To make domestic work ‘decent work’, much more is needed. In the domestic service sector it is obviously difficult to achieve improvements through collective bargaining. However, the FNV is convinced that many private families/employers can be called upon to offer decent working conditions to their domestic workers. Therefore the model contract includes not only minimum legal obligations (which are few) but also additional conditions to be negotiated, for example travel expenses. As for wages, the FNV gives information on the rates set out in collective agreements for similar work in the homecare sector.

The following comes from the ILO Encyclopaedia of Health and Safety:

One study of mortality data of 1,382 female domestic workers in British Columbia (Canada) showed higher mortality than expected from cirrhosis of the liver, accidental death due to exposure, homicides and accidents of all types combined. Also, deaths due to pneumonia and rectal and eye cancer were higher than anticipated. The authors suggest that a major factor in the elevated deaths due to liver cirrhosis is because many domestic workers in British Columbia are from the Philippines, where hepatitis B is endemic (McDougal et al. 1992). Other studies point to alcoholism as a factor. In a review of a California (United States) mortality study, it was noted that the following occupations were associated with increased cirrhosis mortality rates in women: private housecleaner and servant; waitress; and nursing aide, orderly and attendant. The authors conclude that the study supports an association between occupation and cirrhosis mortality and, furthermore, that the greatest cirrhosis mortality is associated with low-status employment and jobs where alcohol is easily available.

In their 1989 study of occupational skin disease, the British Association of Dermatologists found that of 2,861 reported cases (of which 96% were contact dermatitis), the occupation of “cleaners and domestics” was the second-highest category of work listed for women (8.4%) (Cherry, Beck and Owen-Smith 1994). Similarly, in positive responses to dermatological patch tests performed on 6,818 patients, the most common professions of women studied were housekeeper, office worker, cleaner, needleworker and cosmetologist. Housework accounted for 943 of the positive responses to the patch tests.

Other research has pointed to respiratory allergy and disease. Organic chemical-induced occupational allergic lung diseases were reviewed, and the category of domestic workers was noted as one occupation particularly affected by respiratory allergens. A Swedish study on mortality due to asthma looked at women who reported employment in the 1960 National Census. Smoking-adjusted standardized mortality ratios were calculated for each occupation. Increased mortality due to asthma was seen in caretakers, maids, waitresses and housekeepers.

## 7. Telework.

Obtaining absolute data on the numbers of teleworkers is difficult because of the variety of work practices and hence variety of definitions.

The EU Survey of Working Conditions 2000 survey revealed that ‘teleworking was no longer an exceptional phenomenon. One self-employed person in ten and 4% of all employees telework for at least one quarter of their time. Teleworking on a full-time basis was carried out by just over 1% of the working population (1.5 million). Occasional teleworking is more widespread (5% of workers), particularly among northern European countries’. There were wide disparities between different countries, with the UK having the highest number of persons (10%) teleworking at least one quarter of the time. A later EU analysis<sup>52</sup> showed that only 2.07% of male and 2.1% of female respondents stated in 2005 that their main job involved working at home with a PC all or almost all of the time. A further 7.46% of men and 4.72% of women reported that their main job involved working at home with a PC for between one quarter and three quarters of the time.

Figures, such as those from ECATT<sup>53</sup>, tend to include those who are supplementary home teleworkers (i.e. those who work occasionally from home and/or telework from home beyond their regular hours. ECATT’s estimation (which it viewed as conservative) was that in 2006 some 6% of the EU workforce were teleworkers. This included the following estimates (Table 1):

**Table 1. Proportion of teleworkers in selected Member States (2005).**

Country	Estimate (%)
Denmark	19.4
Finland	29.4
France	4.8
Germany	12.6
Ireland	7.7
Italy	7.1
Netherlands	25.2
Spain	5.4
Sweden	24.3
United Kingdom	11.7
EU10	10.8

The Fourth European Working Conditions Survey<sup>54</sup> classified workers according to where they work (Table 2) and indicates the complexities of analysis.

<sup>52</sup> Fourth European Working Conditions Survey 2005 [www.eurofound.europa.eu/ewco/surveys/EWCS2005/](http://www.eurofound.europa.eu/ewco/surveys/EWCS2005/)

<sup>53</sup> Electronic Commerce and Telework Trends; [www.flexibility.co.uk/flexwork/location/ecatt.htm](http://www.flexibility.co.uk/flexwork/location/ecatt.htm)

<sup>54</sup> Published February 22 2007; [www.eurofound.europa.eu/publications/htmlfiles/ef0698.htm](http://www.eurofound.europa.eu/publications/htmlfiles/ef0698.htm)

**Table 2 Location of work**

Location	%age of EU workers
Work only in company premises	50
Work both at company premises and outside	12
Work only outside	10
Work outside and from home	2
Work only from home	2
Work at company and from home	6
Work a significant amount of time in all locations	5
Others	13

There is a wide variety of levels of working at home in different Member States. These ranged from over 10% of total employment in Denmark, France, Luxembourg and Austria to less than 3% in Bulgaria, Greece, Estonia, Cyprus, Lithuania, Hungary, Poland, Portugal and Romania (Italy was at 4%).

There is also, according to the report, a big difference between sectors of the EU economy. Education is the sector with a notably high number of people working from home (around one third works either mainly or significantly from home).

The report also shows that there is a correlation between location of work and attitudes to work-life balance. Those working from home were more satisfied with their work-life balance than any other group of workers, analysed by location. There is also a correlation between the place of work and the perception of health and safety risks. Those working from home faced the lowest risk levels and those working outside faced the highest.

The Fourth European Working Conditions Survey also provided some specific indicators of teleworking (defined as working from home with a pc). The overall proportion of people doing telework is not high. Some 8% of all EU workers do some telework, but only 2% regularly work from home with a pc. The report states<sup>55</sup>:

‘Although generally low everywhere, the proportion of people teleworking is highest in the Scandinavian countries and the Netherlands and lowest in Southern European countries; it is also high in Eastern European countries. Telework is much more often carried out by self employed persons than by employees, and men are slightly more likely to do telework than women. In terms of sectors, three stand out with considerably higher use of telework than all the rest; real estate, financial intermediation and education. Only professional, managerial and technical occupations have more than 10% of workers working sometimes or always from home with a pc. Educational level is also strongly related to telework: the higher the formal qualifications. The more likely workers are to telework’.

Further evidence of the occupational nature of teleworking was provided by the EU Survey of Working Conditions 2000 which stated that teleworking is more common in certain occupations and higher professional categories: 15% of managers, 12% of professionals and 8% of technicians engaged in teleworking at least one quarter of the time, compared to only 1% of craft workers and machine operators. Teleworking was also said to be common in the financial intermediation and real estate sectors.

Eurostat<sup>56</sup> also has an analysis of enterprises having some remote employed persons who connect to the enterprise’s IT systems from home. This showed a considerable variation between EU Member States and between the different sizes of enterprises (Table 3 – only selected countries are chosen here):

<sup>55</sup> Chapter 5 p43

<sup>56</sup> [www.eurostat.ec.europa.eu](http://www.eurostat.ec.europa.eu)



**Table 3. Proportion of employed persons who connect to the enterprise's IT systems from home.**

Location	Number of employees in enterprise		
	250+	50-249	10-49
	%	%	%
EU27	55	30	13
Belgium	71	50	21
Czech Republic	48	31	15
Denmark	95	81	46
Germany	65	39	15
Greece	52	25	14
Spain	40	17	5
Italy	23	7	2
Netherlands	85	56	29
Poland	15	8	3
Sweden	84	59	34
United Kingdom	79	49	26

The highest level in the EU was achieved by Denmark. At the lowest level in all three sizes was Italy.

***Framework agreement on telework***<sup>57</sup>.

The Social Partners started negotiations on telework following the Commission decision to launch formal consultation of management and labour. The Commission launched the first stage of this consultation on 27 June 2000 and the second stage on 16 March 2001. The consultation focused initially on three aspects. These were, firstly, the putting in place agreed rules and a framework for action designed to modernise and improve employment relations in accordance with the conclusions of the Lisbon European Council; secondly, telework and, thirdly, economically-dependent workers. The negotiations opened on 12 October 2001 and came to an end on 23 May 2002, the date the agreement was concluded.

This was the first European agreement to be implemented by the social partners themselves and was focused to give more security to employed teleworkers in the EU, whilst maintaining business flexibility. The agreement defines telework (see above) and created a general framework at European level for teleworkers' working conditions. Part 4 of the Agreement is concerned with working conditions and provides that teleworkers benefit from the same employment rights as comparable workers at the employer's premises. Part 8 is concerned with health and safety and provides that:

- (a) The employer is responsible for the protection of health and safety of the teleworker in accordance with Directive 89/391 and relevant daughter Directives;
- (b) The employer should provide information on its policies on occupational health and safety, especially with regard to visual display units. The teleworker is responsible for applying these policies correctly;
- (c) The employer, workers' representatives, and/or relevant authorities should have access to the telework workplace, subject to prior notification of the worker, if the premises are the worker's own home. The teleworker has the right to request an inspection visit.

<sup>57</sup> Directorate-General for Employment, Social Affairs and Equal Opportunities, 2002 [ec.europa.eu/employment\\_social/news/2002/oct/teleworking\\_agreement\\_en.pdf](http://ec.europa.eu/employment_social/news/2002/oct/teleworking_agreement_en.pdf)

Thus the issues identified here are, firstly, the employer has responsibility for health and safety; secondly, the employer must provide information; and, thirdly, the teleworker premises should be available for inspection.

The European Social partners adopted the first joint report<sup>58</sup>, on the implementation of the framework agreement on telework in Member States and EEA countries, in 2006. According to the report, almost all EU25 Member States<sup>59</sup> as well as Iceland and Norway, had implemented the telework agreement. This has been carried out in line with national industrial relations systems and traditions so provisions for telework have been put in place in different ways such as through national and sectoral collective agreements (FR, IT, LUX, GR, DK, SW), codes of conducts (UK and IRL) and legislation (CZ, HU). Further consideration of implementation in each State will be considered in the national reports below.

The Report stated that the national implementation measures, in most cases, followed the general rule on making health and safety rules applicable to teleworkers. There are some limitations to the application of these rules. The UK Guide states, for example, that the employer is responsible for the safety of the equipment they supply, but the teleworker's domestic electrical system is their own responsibility.

There have been three EU level sectoral agreements on teleworking in the form of guidelines. The first was in telecommunications<sup>60</sup>, the second was in commerce<sup>61</sup> and the third was in the electricity sector.<sup>62</sup> This last one merely requested affiliated members to adopt the inter-sectoral Framework Agreement. The telecommunications agreement adopted a number of principles, which included the principles that a relevant company's health and safety regulations should apply to home work places; that arrangements be made so that teleworkers do not undergo exclusion and isolation including the opportunity to meet with colleagues on a regular basis and have access to company information; and that teleworkers have the same collective rights as other workers. The Commerce Agreement state that employment conditions should be explained to the teleworker; the venue where telework is done should be recognized as equivalent to other working premises of the company, including the design of equipment; health and safety representatives should have the right to access and inspect the telework premises; and teleworkers should have the same rights as other workers to participate in trade union activities.

### **Research outcomes**

Here we concentrate on those issues that provide information about health and safety and telework/homework.

The ILO Encyclopaedia of Occupational Health and Safety<sup>63</sup> highlights the OHS hazards associated with teleworking. These are:

- indoor air quality; often no supply of fresh air
- fire hazards; electrical wiring is not designed to meet the needs of all the IT equipment
- ergonomic hazards; reliance on personal furnishings
- lighting; inadequate lighting may result in awkward body postures, eye strain and visual disturbances
- occupational stress; resulting from isolation
- injury and illness compensation; employer responsibility; sometimes linked to the shift to independent contractor

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<sup>58</sup> Implementation of the European Framework Agreement on Telework. Report by the European Social Partners, Directorate-General for Employment, Social Affairs and Equal Opportunities, 2002. [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>59</sup> Except Cyprus, Slovakia, Estonia, and Lithuania while the joint implementation process has not yet started in Bulgaria and Romania.

<sup>60</sup> [ec.europa.eu/employment\\_social/dsw/public/actRetrieveText.do?id=10233](http://ec.europa.eu/employment_social/dsw/public/actRetrieveText.do?id=10233)

<sup>61</sup> [ec.europa.eu/employment\\_social/dsw/public/actRetrieveText.do?id=8596](http://ec.europa.eu/employment_social/dsw/public/actRetrieveText.do?id=8596)

<sup>62</sup> [ec.europa.eu/employment\\_social/dsw/public/actRetrieveText.do?id=10308](http://ec.europa.eu/employment_social/dsw/public/actRetrieveText.do?id=10308)

<sup>63</sup> [www.ilo.org/safework\\_bookshelf/english](http://www.ilo.org/safework_bookshelf/english)

It states that the contract between the teleworker and the employer must address the overall work environment, safety and health standards, training and equipment. Employers should inspect the home workspace (at agreed-upon times) to ensure worker safety and to identify and correct risk factors that could contribute to illness or injury.

‘Place of work and working conditions: comparative study’<sup>64</sup> is an analysis that outlines a number of health and safety issues for those working away from the employer’s premises, including teleworkers. For teleworkers the risks include inadequately designed workstations, a lack of risk assessments and health and safety and ergonomic checks, and a higher propensity to work without taking adequate breaks. Evidence also suggests that employers and employees are not as aware of their rights and obligations regarding the health and safety of remote workers as they are in relation to office-based staff.

Despite this, working away from the employer’s premises would appear to have numerous benefits, e.g. the development of IT enables many employees to work from home who previously would have been obliged to be present in the office each day, thus allowing them to improve their work–life balance.

The specific issues are (as stated in the report):

- *Computer workstations and work environment*

Specific problems connected with workstations and equipment may arise for homeworkers and teleworkers, as they do not have access to the constant technical and ergonomic support that their office-based colleagues enjoy.

- *Risk prevention*

Health and safety policies and absence or sick leave policies are the main means by which companies try to minimise the risks associated with working away from the employer’s premises. These policies include elements such as ensuring regular breaks from screen work, the provision of regular eye tests and glasses with a protective coating and the offer of posture-improving exercise classes.

- *Work organisation*

Some countries maintain controls on the organisation of work in the case of teleworkers and homeworking. For example, according to the Report, in Belgium, national collective agreement 85 states that agreement on a range of issues must be reached between the teleworker and the employer before the teleworking begins. These include the frequency of telework, periods of work in the office, issues surrounding technical support, employer financial responsibility in the case of equipment repairs, and the conditions under which the teleworking may stop.

- *Autonomy and supervision*

Workers who carry out work away from the company premises have more autonomy than their office-based colleagues as they are subjected to less managerial supervision. This raises issues in areas such as how remote employees cope with autonomy and how employers manage and supervise these workers.

- *Social support*

People who work away from the employer’s premises all of the time may suffer from a lack of social contact with their colleagues. This appears to be an issue in many countries and is more apparent among lower-skilled workers than those with relatively higher skills, as the lower-skilled workers are less likely to participate in team briefing meetings.

- *Demands of the job and pace of work*

People who work at home rather than on their employer’s premises will generally have more freedom to choose their own pace of work than their office-based colleagues have. This is borne out by data from the EWCS 2005. When asked whether their pace of work was dependent on the work done by colleagues, 83.2% of those working at home, including teleworkers, responded that it was not. Similarly, 73.9% of those combining work at home and away from the company premises gave the same answer.

- *Blurring of boundaries*

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<sup>64</sup> [www.eurofound.europa.eu/docs/ewco/tm0701029s/tm0701029s.pdf](http://www.eurofound.europa.eu/docs/ewco/tm0701029s/tm0701029s.pdf)

One of the potential problems of working away from the company premises and working at home is that the work/non-work boundary can become blurred and people tend to carry on working in the evenings and at weekends, particularly if their office is in their home.

'Social Protection of homeworkers'<sup>65</sup> was published in 1991 and is a useful introduction to homeworking, although there is only a little concentration on teleworking. The issues that are highlighted include: low levels of remuneration; poor access to social security and welfare; health and safety; hours of work; and child labour. As concerns health and safety the report states that 'even clerical and service activities have the capacity to cause injury. Telework, for instance, may give rise to eye strain and aches and strains resulting from poor posture.' In summary the report states:

'The effect of excessive working hours, bad posture, inattention to ergonomic principles, exposure to high levels of heat, humidity, noise and vibration have all been recognised as particularly unsatisfactory features of the conditions in which homeworkers operate. The conclusion is that they are likely to be potential sources of occupational ill health and may well aggravate latent physiological conditions.'

The report highlights the gains for both employers and employees of increased levels of teleworking, but warns that 'there are dangers for employees...especially of underpayment in developing countries, of possible loss of social welfare benefits if employee status is not achieved, of isolation from fellow workers and of stress'.

'The high road to teleworking'<sup>66</sup> is a study that reports on previous research concerning stress, which lists stress inducing factors in teleworking. These include: poor communications; poor problem solving environment; low participation in decision making; career uncertainty and stagnation; poor status work; poor pay; job insecurity or redundancy; unclear role in organisation; role conflict; ill-defined work; high uncertainty; lack of variety; fragmented work; meaningless work; under utilisation of skills; work overload; high level of pacing; lack of control over pacing; time pressure and deadlines; inflexible work schedule; unpredictable hours; long or unsocial hours; social or physical isolation; lack of support from other staff; conflict with other staff; conflicting demands of work and home; low social or practical support from home; dual career problems; inadequate preparation for more difficult tasks; concern about technical knowledge and skill; lack of resources and staff shortages; poor work environment (lighting, noise, bad postures). The study from which this came took place in 1994. Di Martino emphasises the issues of overwork and social isolation and the importance of inserting the teleworker into the normal lines of communication and suitable job design.

'Employment of homeworkers: examples of good practice'<sup>67</sup> gave examples of good practice in relation to homeworking generally. They highlight the issue of minimising VDU health related problems and state that any health and safety policy designed to protect homeworkers or teleworkers should ensure that: the work processes and working conditions are as safe as the equivalent work carried out on the employer's premises; they are fully informed about safe working practices and potential hazards; they have the same right to elect health and safety representatives and to call in independent safety inspectors or trade union representatives as others; they have the same right to compensation as on site workers in the event of work related illness or injury. They then list examples of good practice.

'Telework – Work Environment and Well Being'<sup>68</sup> was a Swedish study of the effects of telework on the physical and psychosocial work environment at home and at the ordinary workplace as well as on health and well being of the employees. The studied office workers reported part-time telework at home as being conducive to attain a balance between work and

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<sup>65</sup> Social Protection of Homeworkers (1991) ILO Geneva

<sup>66</sup> Di Martino, V (2001) 'The high road to teleworking' ILO Geneva

<sup>67</sup> Huws, Ursula and Podro, Sarah (1995) 'Employment of homeworkers: examples of good practice' ILO Geneva

<sup>68</sup> 'Telework – Work Environment and Well being: A Longitudinal Study' (2006) European Agency for Health and Safety at Work.

leisure time, and to being more effective in work. The participants, however, worked more hours at home, often without breaks, than at the office. The workstation was seldom as good ergonomically at home as at the office. All the participants reported problems with their computer systems and equipment and experienced restricted opportunities to obtain help and support. The identified problems can result both in an increase of workload and in various work-related disorders, such as stress and musculoskeletal diseases. The study concluded that introducing telework can enhance work effectiveness, but it can also result in both an increase in workload and various work-related health risks.

‘Expert forecast on emerging psychosocial risks related to occupational health and safety’;<sup>69</sup> this report summarises the results of an expert forecast on emerging psychosocial risks related to occupational health and safety. The top 10 emerging psychosocial risks, according to the experts, are related to: new forms of employment contracts and job insecurity; the ageing workforce; work intensification; high emotional demands at work; and poor work/life balance. Chapter 4 highlights the use of more precarious employment contracts, together with a trend towards leaner production (less waste) and outsourcing, and how this can affect workers’ health and safety. Workers in precarious jobs tend to carry out the most hazardous work, have poorer conditions and receive less OHS training. The report cited the example of workers in outsourced firms and stated that the ‘consequences of these forms of employment may mean less training opportunities, de-skilling and a decrease in their job control. More generally, in the context of unstable labour markets, workers increasingly have a feeling of job insecurity, which augments the level of work-related stress and the negative impact on workers’ health. Also, the experts highlight the risk of marginalisation as a consequence of successive short-term contracts and of the resulting discontinuity in work careers. It was further mentioned that new forms of working patterns such as telework or temporary work, as well as the growing need for mobile workers, may result in workers’ isolation. According to the experts, one factor contributing to this phenomenon is the stronger

international competition in the context of the globalisation of labour markets, which pushes companies, for example, to move abroad, to reduce the number of workplaces and to adopt the contracting practices described above, so as to cut costs and remain competitive’.

The report also highlights the connection between job insecurity and mental and physical health. Most research stresses the effect of stress on the mental health of the individual and job insecurity. It states that ‘the phenomenon of stress has often been linked to mental and physical illness. For instance, correlations to coronary heart diseases, musculoskeletal diseases or depression were found’.

According to ‘Risk Assessment for Teleworkers’ (2008)<sup>70</sup>: ‘Teleworkers’ health and safety creates a specific challenge. Preventing occupational risks for teleworkers means considering work organisation and working conditions at home during the risk assessment phase as they are an integral part of any successful quality programme. Attention to health and safety risks related to material, equipment and the work environment should start at the planning and purchasing stage of such equipment, whether it is bought by the teleworkers themselves or provided by the employer’. Among the more positive aspects of teleworking are a better quality of life; greater flexibility for the company and easier access to work for disabled workers. In contrast there are potentially negative aspects for the individual. These include increased stress from feelings of isolation, reduced organisational support and problems with effective management supervision/control. Introducing telework can increase work effectiveness, but it can result in both an increase in work load and various work-related health risks. There is the risk of ‘erosion of working hours and blurred boundaries between work and family life. A potential risk of overwork does exist because home workers have no external references of other colleagues’.

The report contains a check list for risk assessment for teleworkers which is copied in Appendix 3. These relate to workplace environment and equipment; visual display units; software and

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<sup>69</sup> [osha.europa.eu/en/publications/reports/7807118](http://osha.europa.eu/en/publications/reports/7807118)

<sup>70</sup> [osha.europa.eu/en/publications/e-facts/efact33](http://osha.europa.eu/en/publications/e-facts/efact33)



hardware ergonomics; work organisation; psychosocial issues; health and safety management issues; information and training. The report also contains an interesting case study to highlight the issues connected with introducing teleworking:

*'Case study: Is teleworking a solution for everybody?'*

Rita's workplace is far from home and she often puts in overtime. She is in charge of graphic design at her company, and is very good at her job. When her employer proposes that she telework from home, Rita is enthusiastic. All the equipment will be provided by her company and she feels that at last she has the opportunity to organise her working time to suit herself.

But little by little, she notices that working conditions are not optimum. She does not have enough room and her working space is not ergonomically organised. She has trouble concentrating her attention on her work because of the activities of others in the home. Her neighbours are noisy. She has technical problems with mobile reception, which sometimes makes it hard to reach customers and work colleagues.

Her working equipment is dangerous for her children. One of them had a fall when his feet became entangled in electrical wires. There is no lock on the door of the room where Rita works. Eventually, Rita finds herself working at night because it's the only way she can get enough peace. She is starting to have second thoughts about teleworking from home'.

'The State of Occupational Safety and Health in the European Union – Pilot Study (2000)'<sup>71</sup> contains some useful data for 15 individual countries of the EU, although probably somewhat dated now. With regard to teleworking, occupational health and safety concerns reported were social isolation; excessive working hours, ergonomic design of the workplace and burden of proof and liability should an accident happen in the home. There was also a risk of repetitive strain injury.

'Research on changing world of work (2002)'<sup>72</sup> included research into this subject in seven Member States and included a chapter on telework and virtual companies and explain the development and rise of teleworking practices. The main concept is that workers can stay at home, and do their work from there. The growth of new technologies (internet, intranet, extranet) also makes teleworking more accessible for many companies, for example through the facility to consult, and process information from home, over the Internet and through dial-up facilities, etc. Telework is now a political issue. Governments are aware that teleworking can provide a solution to congestion problems and unemployment in former industrial regions. The liberalisation of the telecom markets means that more workers have access to (relatively) cheap communications means, such as cell phones and Internet connections. These preconditions have made it possible for telework to spread quickly in different countries. The rise in telework has also been a precondition for the development of virtual companies. These are companies, mainly in the ICT-sector, which use teleworking, telesales and tele-collaboration.

Also 'New forms of contractual relationships and the implications for occupational safety and health (2002)'<sup>73</sup> is a piece of research that reviews trends in contractual relations, their implications for workplace safety and health management and also implications for future research in this area. This covers not only employment contract types, but also the use of subcontracting. With regard to teleworking, it was introduced as a response to employees' wish to combine paid work and family life, also has a direct influence on employment contractual relationships.

Although not an EU piece of work, 'OH&S in the Home Office Telework Australia'<sup>74</sup> is useful in that it lists groups of factors that need to be taken into account to avoid OHS risks. These include:

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<sup>71</sup> [osha.europa.eu/en/publications/reports/402/view](http://osha.europa.eu/en/publications/reports/402/view)

<sup>72</sup> [osha.europa.eu/en/publications/reports/205](http://osha.europa.eu/en/publications/reports/205)

<sup>73</sup> [osha.europa.eu/en/publications/reports/206/](http://osha.europa.eu/en/publications/reports/206/)

<sup>74</sup> [www.teleworkaustralia.net.au/doclibrary/public/pdfs/OHS.pdf](http://www.teleworkaustralia.net.au/doclibrary/public/pdfs/OHS.pdf)

- Individual factors: things a person can change (sleep, fitness, smoking) and things they cannot (age, gender etc)
- Psychosocial factors: the way a person reacts to stresses and issues within their lives
- Work organisation: how it is arranged, delegated and carried out
- Workplace layout and awkward positions:
- Task variability: how much the task changes
- Load and forceful movements: the objects a person handles
- Environmental issues: where the work takes place and the conditions a person works in.

A holistic approach is required. The rest of the document discusses each of these factors and concludes with a checklist for identifying OHS hazards.

Further factors are found in 'Response to' Improving outcomes from health and safety'.<sup>75</sup> The UK National Group on Homeworking had their own list of homeworker vulnerabilities:

'Homes are not built with work in mind so do not have the kind of safety features (fire doors, ventilation etc) that are present in workplaces:

- The presence of children and pets can increase the risks
- Risks affect not only the homeworker but also children and any other family members
- Homeworkers are rarely unionized, even if there is a union-presence on site
- Homeworkers are frequently denied employment rights (48% received no employment rights whatsoever in a recent NGH study), suggesting a significant number of rogue employers are operating in this area
- Whilst HSE spot checks of workplaces are rare, HSE checks on homeworkers working in their own home are, in our experience, unheard of'.

One way of tackling stress levels is described in 'Health circles for teleworkers: selective results on stress, strain and coping styles'.<sup>76</sup> This reports on the use of health circles as a way of tackling the stress that comes from working remotely. Stress factors for teleworkers were technical problems with the home based computer, time management, communication with supervisors, colleagues and customers and feelings of isolation from the main company. Health circles are a form of employee/quality circle, although health circles require a higher level of trust amongst the participants. On the positive side, Telework can facilitate the coordination of work and family related tasks, foster autonomy in the scheduling of working hours, and provide additional free time as a result of the lack of commuting. On the negative side, Telework might produce additional strain for employees because it might consolidate discrimination against certain groups of disadvantaged employees, such as women and people with a disability; because work and free time are harder to separate during Telework; because Telework may restrict career opportunities; or because social isolation might foster tendencies of over ambition and self-exploitation. Health circles were tried in a limited way as an antidote to this.

There are a number of useful studies published as articles in various journals. Vasse, in 'Managing homeworking: health and safety responsibilities'<sup>77</sup> carried out a survey of 14 companies, including six companies from the business and telecommunications sector with teleworking homeworkers. In 5 of these 6 companies the homeworkers were regarded as employees, albeit fixed term ones in some cases, with contracts of employment. For homeworkers in the business services and telecommunications companies, the main health and safety hazard were the ergonomic ones associated with the set up of the work station and those posed by the suitability of the work environment. A further issue mentioned by some was that of isolation, as a result of being removed from office day to day activities. Except for the one company with the home based work force, all the other employees had previously worked on one of the company's sites with their peers. In order to counter this isolation there were monthly meetings at the office or regular visits from a homework administrator. A number of

<sup>75</sup> [www.ngh.org.uk/resource-files/Health-and-Safety-consultation-20071196339745.doc](http://www.ngh.org.uk/resource-files/Health-and-Safety-consultation-20071196339745.doc)

<sup>76</sup> Konradt, Udo. Schmook, Renate. Wilm, Andreas and Hertal, Guido (2000) BRE consultation November 2007 'Health Education Research 15/3 327-338

<sup>77</sup> Vassie, Luise (2000) *Employee Relations* 22/6 540-554

approaches to health and safety were found which will be part of the main report. There was concern about who is employed and who may not be genuinely self-employed.

A second is 'Teleworking: An assessment of socio-psychological factors'<sup>78</sup> is an article that assesses the social and psychological impact of telework in small to medium size businesses in Birmingham, UK between 1996 and 1998. The study found that teleworkers may lose the ability to exchange ideas, feel lack of companionship, isolation and a sense of belonging. It also found that the prevailing view of many managers is that people with high need for social interaction are simply not suitable for teleworking. This would mean that organisations could not utilise a significant number of their existing work force. The study suggests that the ideal approach would be to create a flexible mix of home-based and office-based. Social factors at work need to be retained in order to meet the basic human need for companionship otherwise social isolation might be experienced. Stress in the teleworker is more difficult to identify. While work related stress may be reduced by teleworking, domestic stress may worsen by interfering with family life and space. The findings also suggest the home environment is not a suitable place for work. The study identified advantages and disadvantages of teleworking. Advantages include increased productivity, effectiveness, retention as well as reduced stress, absenteeism and lower mileage. Disadvantages are isolation, loss of team feedback, difficulties with providing training, control and support.

'New employment issues in the information age'<sup>79</sup> is an article that discusses various issues relating to teleworking including the privacy of workers and its relationship to human rights. It reviews the contractual arrangements for teleworkers. As a general rule, the employer is responsible for providing, installing and maintaining the equipment necessary for regular telework unless the teleworker uses his/her own equipment. Health and safety provisions are the same as those for office-based employees and the teleworker is entitled to request inspection visits. Teleworkers have the same right to collective agreement as office-based workers.

There are conflicting views about the advantages of teleworking.<sup>80</sup> One broad view is that is that telework enables teleworkers to balance work and family needs effectively. The alternative is that teleworkers can experience an inability to cope with needs from the two different domains and cannot play an effective role in either domain, leading to strain. The study shows that overall the majority of teleworkers (74%) report positive work-life balance (WLB). However, 60% agreed strongly that they worked longer hours. The paper made a further contribution to existing studies by identifying key factors that affect WLB reported by the sampled teleworkers, including flexible use of working hours, being based in a home environment, and teleworkers' age. Among these factors, it identified the time flexibility as the most powerful predictor of positive WLB reported by teleworkers.

A further piece of research<sup>81</sup> presents part of a detailed study of teleworkers' experiences of work and health, and suggests that home-based computer work changes the experience and definition of fitness to work. Teleworkers appear not to recognize conventional criteria by which symptoms are defined as illness, and so continue working when previously they would have taken sickness leave. As employee/employer relations' change and labour markets become more uncertain, teleworkers also appear to mask illnesses. These responses result in them working longer into illness and returning sooner in convalescence. Furthermore, when illness is identified teleworkers work very long hours and take less time off work to compensate for low outputs of work.

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<sup>78</sup> Ward, Neil and Shabha, Ghasson 'Teleworking: An assessment of socio-psychological factors' *Facilities*, Vol 19, Issue 1 /2, 61-71

<sup>79</sup> Angel, John *Electronic Business Law* (2003) 5 EBL 1, 1

<sup>80</sup> Maruyama, Takao; Hopkinson, Peter G.; and James, Pete W. 'A multivariate analysis of work-life balance outcomes from a large scale telework programme' *New Technology, Work and Employment* 24:1

<sup>81</sup> Steward, B 'Fit to Telework - The Changing Meaning of Fitness in New Forms of Employment' *Advances in Physiotherapy* Vol 2, No3, 23 October 2000 , pp. 103-111(9)

‘The psychological impact of teleworking: stress, emotions and health’<sup>82</sup> was a paper that also examined the psychological impact of teleworking compared to office-based work. Results suggest a negative emotional impact of teleworking, particularly in terms of such emotions as loneliness, irritability, worry and guilt, and that teleworkers experience significantly more mental health symptoms of stress than office-workers and slightly more physical health symptoms.

### *National perspectives*

Belgium: according to the OSHA report on the state of occupational safety and health<sup>83</sup> the number of teleworkers could not be extracted from national data. The sectors with the biggest share of telework were salaried employees; self-employed; unpaid assistant members of family of the self-employed; and students who receive payment in money or kind.<sup>84</sup> General Rules for Safety at Work and the Welfare Code apply to teleworkers. The employer is required to evaluate the safety and health risks of employees, including the choice of work equipment and the workplace.

Teleworking at home requires specific provisions on safety and health in view of the atypical place of work. There are problems, according to the OSHA report, with the current laws with regard to social security and employee involvement.

Pilot projects of teleworkers doing administrative work identified a number of issues which included: avoiding social isolation (work in the office one day a week); no extra costs for the employer; payment for travel to the office;

special arrangements for industrial accidents (accidents at home are considered to be industrial accidents); and no control of the hours worked.

A law on homeworking (which included home-teleworking, although it is not specific to it) was passed in December 1996. This set out a minimum framework of obligations of employers; for example, it required a written contract between employer and employee and required the employer to provide the necessary work equipment. It applies to those arrangements where home-teleworking is a principal and full time activity but does not cover other common forms of teleworking, such as part-time and informal telework. A national collective agreement (CNT n°85) was adopted on 9 November 2005 in response to the Social Partners Telework Agreement<sup>85</sup>. It became compulsory through the Royal Decree of 13 June 2006. These provisions took effect from 1 July 2006 and were subsequently extended to civil servants in November 2006.

The CNT n°85 details how this new collective agreement relates to the existing rules on work conditions or employment contracts in Belgium. Compared to the EU framework agreement, it also specified in more detail the content of the written individual agreement between the teleworker and his/her employer, the consequences of the absence of such a written agreement, the method of calculation of the costs linked to the equipment and the consequences of equipment breakdowns.

Provisions for the training of teleworkers do not seem to be well developed, according to a 2008 report.<sup>86</sup> It stated that only 33% of teleworkers received training before starting working away from the employer’s premises, while 36% have taken part in training since they started

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<sup>82</sup> Mann, S. Holdsworth, L *New Technology, Work and Employment* Volume 18, Number 3, November 2003, pp. 196-211(16)

<sup>83</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>84</sup> Source: A survey on Home Teleworking in Flanders by the Research Institute for Labour and Employment in 1994: A survey on Home Teleworking in Flanders by the Research Institute for Labour and Employment in 1994

<sup>85</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>86</sup> ‘Telework in Belgium’. Perin, Emmanuelle, Institute for Labour Studies, Catholic University of Leuven, 14-01-2008, <https://eurofound.europa.eu/eiro/2007/11/articles/be0711019i.htm>

teleworking. The size of the company is an important criterion in relation to the offer of training possibilities for teleworkers.

There is a report, dated 2007, on the Eurofound site called 'Place of Work and working conditions – Belgium'<sup>87</sup> which discusses some of the health and safety issues for remote workers in Belgium. It states that construction workers and young temporary workers are those most at risk in terms of their health and safety. Both categories are ranking on top in statistics of accidents at work. Special mention is made of the health and safety of home care workers and particular risks were identified as:

- Everybody has already been confronted with 'difficult clients' and 38% have already been sexually harassed.
- The working environment is not always optimal. 21% work very often in non-comfortable houses, 14% in unhygienic houses and 10% in an unsafe working environment.
- Physical pressure is high, back complaints are a common feature of the health situation of these home care workers.

The Act concerning well-being at work (4 August 1996) applies to all employers and employees. Specific additional regulations exist for example for teleworkers and construction workers. In terms of homeworkers risks are not defined as higher for people working at home, e.g. the insurance companies do not ask for a higher premium to insure a teleworker for accidents at work. There are, however, no detailed statistics on the incidence of work-related accidents of teleworkers. Labour law specialists, according to this analysis, define a healthy and safe working environment for somebody who works at home as a shared responsibility. This responsibility is best stipulated by a number of arrangements concerning safety and welfare in the home worker's employment contract. The Labour Inspectorate monitors the observance of this Act. However, the Act of 16 November 1972 provides that these inspectors need the inhabitant's or a magistrate's written permission to inspect the teleworker's workplace. The companies' own safety personnel also need the written permission of the teleworker.

The analysis reports a 2005 web-based survey of attitudes toward telework which listed advantages and disadvantages:

*Advantages (% agree with the statement):*

- A solution to reduce the home-to-work commuting (97.8%)
- Opportunity to enhance the combination of one's private and professional life (90.1%)
- Greater autonomy of teleworkers in the execution of their daily work (89.6%)

*Disadvantages:*

- Loss of social contact with colleagues (69.4%)
- Division between private and professional life will fade (36.3%)
- Decreased involvement in corporate activities (35.8%)

Teleworkers are mostly more positive and less negative than non-teleworkers with one exception. The blurring between professional and private life is much more a concern for teleworkers than for non-teleworkers in this attitude survey.

The study further reports that the Belgian national collective agreement CCT n°85 of 9 November 2005, provides in its Article 6 that the individual agreement, to be concluded before starting to telework, must contain in writing the following information on how the work is to be organised:

- The frequency of telework and possibly the days at which telework is done and if needed the days and/or hours where the worker is present in the enterprise
- The periods of time during which the teleworker can be contacted and by which means
- When the teleworker can ask for technical support
- The way in which the employer covers the costs linked to the equipment and breakdowns

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<sup>87</sup> Van Gyes, Guy Place of work and working conditions – Belgium, HIVA, 31-05-2007, [www.eurofound.europa.eu/ewco/studies/tn0701029s/be0701029q.htm](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/be0701029q.htm)



- The conditions on which a teleworker can return to working at the employer's premises, the notice period and/or the duration of the telework and its renewal procedures.

It also stipulated that in case there is no written agreement on these points, the teleworker has the right to work at the employer's premises. Furthermore, the social partners decided that the employer should bear the entire responsibility of the provision, installation and maintenance of the equipment. In Belgium, the national collective agreement of November 2005 also regulated the respective responsibilities of the employer and the teleworker in the case of an equipment breakdown. In its article 13, it stipulates that in the case of such a breakdown, the teleworker must inform the employer immediately and that the teleworker is paid during that period. Specific arrangements can be provided for such as the replacement of equipment or a temporary relocation to the employer's premises.

*Denmark:* according to the OSHA report on the state of occupational safety and health<sup>88</sup> there were some 5,000 - 10,000 teleworkers, at a conservative estimate; 255,000 (9% of workforce) on the average are potential teleworkers; estimated that within the next 3 - 5 years the number of workplaces in homes will increase to 800,000.

The 'National Working Environment Authority' covers all workplaces whether the work is carried out on private premises or at a traditional workplace. In 1998 consideration was given to establishing a committee for the preparation of a new regulation for telework. The new regulation is expected, according to the OSHA report, to include VDU work and a minimum number of daily work hours.

Under the Working Environment Act inspectors from the National Working Environment Authority may at any time inspect any workplace including those in private homes. However, in practice, working environments in private homes are not inspected.

The Social Partners Telework Agreement<sup>89</sup>: In the state sector in Denmark the EU framework agreement was implemented during the general collective bargaining rounds for the state sector employees in 2005. The new collective

agreements build upon existing agreements or guidelines on telework agreed for the state sector. Also in the Danish local and regional public sector, a collective agreement had existed since 1997 which matched the requirements of the EU framework agreement. Concerning the central government sector in Sweden, a collective agreement was reached on 15 December 2005, which recognises a role of guidelines to the EU framework agreement. In the Danish private sector, the social partners for industrial activities amended a pre-existing collective agreement in the autumn 2005, to implement the EU framework agreement. Following on the EU agreement, the retail and wholesale trade sectors also concluded new sectoral collective agreements on telework.

In 1998 the Danish Government and the social partners entered into a framework agreement on teleworking. This Agreement, according to Section 1, applied to civil servants and the like. It also applied to 'personnel covered by collective agreements and organisation-specific agreements entered into on the one side by, or upon the authority of, the Ministry of Finance and on the other by the central organisations or organisations affiliated to them who become signatories'. Teachers were exempted.

As part of the implementation of the Framework Agreement, the Danish Government issued 'Guidelines for Teleworking'.<sup>90</sup> These Guidelines stated that the advantages of teleworking to the individual employee were:

- Improved relationship between family and work
- Greater flexibility and independence to organise workflow

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<sup>88</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>89</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>90</sup> 'Guidelines for Teleworking' Danish Ministry of Finance, 1999, [www.fm.dk/Publikationer/1999/Guidelines%20for%20teleworking.aspx?mode=full](http://www.fm.dk/Publikationer/1999/Guidelines%20for%20teleworking.aspx?mode=full)

- Greater independence in approach to getting the work done
- Better circumstances for working in more depth and with greater concentration
- Decreased commuting time

As far as the employing institution is concerned, the advantages included:

- Greater flexibility
- Increased productivity and efficiency
- Increased job satisfaction
- Retaining and attracting qualified workers

The pros and cons of teleworking were not always clear, but ‘a number of aspects indicate that one of the advantages is that the employee can to a great extent plan his/her own working day in order to fit in with the family. If teleworking is organised sensibly, it can help create a better relationship between family and work. However, there is a fine balance. Teleworking can also mean that the borders between family and work become less well defined, making it difficult to decide what is work and what is leisure’.

Local agreements on working hours etc are encouraged by the Framework Agreement and this Danish document outlines those elements that comprise such an agreement:

- Where and to whom the agreement will apply (institution/workplace etc., and the personnel group(s) it will cover).
- The parties to the agreement (employing authority/institution and organisation(s)).
- Timescale for teleworking. (As can be seen from § 3 of the framework agreement, teleworking can only occupy a proportion of the agreed working hours. Local agreements can contain more detailed guidelines on these points if required).
- If the rules on working hours are to be suspended, local agreements must give details.
- Commencement date of the agreement.
- Any special rules governing termination of the agreement, as per § 6, item 2 of the framework agreement.
- Any renegotiation entitlement, e.g. in the case of major technological changes, as per § 9, item 3 of the framework agreement.

The document also outlines the contents of individual agreements that must be based upon the local agreements. Individual agreements can be terminated by the employing authority and the employee with one month's notice to the end of a calendar month, unless otherwise agreed. In any event, individual agreements will expire concurrent with local agreements:

- Naming of the person the agreement concerns.
- Naming of the location of the teleworking.
- Definition of the hours the employee is to work.
- Definition of any times during which the employee can be contacted.
- Any guidelines for the use of equipment provided by the employer.
- Definition of any expense allowances and compensation for use of own equipment.
- Commencement date of the agreement.
- Any special rules governing termination of the agreement, as per § 7, item 2 of the framework agreement.

The Guidelines also analyse a number of issues. These include insurance and compensation rights in relation to teleworking, which are the same as for working at the ‘principal workplace’. There is acknowledgement that teleworking can give rise to types of injuries and limitations that are different to those that occur in traditional surroundings. The insurance situation is as follows:

‘The self-insurance scheme means that for all cases of damage to property, the state will be covered, even though insurance for a given type of damage may be unusual (but not impossible) to obtain for a private individual.

If items belonging to the employer within the teleworker's home are damaged or stolen, the teleworker or other persons can only be held liable in the event of gross misconduct or neglect.

If the employer's equipment causes personal injury (excluding industrial injury) or damage to the employee's property, the employer can only be held liable if he/she has acted negligently,

e.g. when setting up the equipment. If the injury was unforeseeable, the employer cannot be held liable. Whether the employee is able to claim on his/her own insurance policy in the event of personal injury will depend on whether he/she has an accident insurance and in the event of material damage, on whether the employee has an insurance of goods and chattels.

As far as the employer's liability under Danish Law 3-19-2 is concerned, the employer can be held liable for the employee's actions leading to injury or damage only if those actions were performed "in the course of the execution of his/her work".

The state also acts as self-insurer under the law on insurance against industrial injuries. The insurance covers the employee, but not his/her home. The law covers situations in which the behaviour of the injured party was governed by the terms or nature of his/her employment'.

The Work Environment Act can in principle apply to teleworking. According to the Act the employer must carry out an assessment of the workplace and this applies to the home of the teleworker. The rules on furnishing the office and on breaks and days off may need to be varied. Section 76 of the Act provides that the Danish Working Environment Service is entitled to access both private and public places of work. Generally, the employer has no rights of access without agreement.

*Finland:* according to the OSHA report on the state of occupational safety and health<sup>91</sup> some 75,000 employees (4.3% of workforce) in 1997 defined themselves as teleworkers<sup>92</sup>; some 165,000 (8.8% of workforce) from a wider definition including those at home using a computer as agreed by their employer; some 37,000 (1.7% of workforce) in 1990 were teleworkers out of 2,108,000 employees, indicating an increasing trend. A survey for the Ministry of Labour<sup>93</sup>, using a broader larger definition of teleworking, put the figure at around 12% of the workforce. This data showed a concentration of teleworking among teachers (45.5 per cent), managers (19 per cent) and technical/scientific workers (18.3 per cent). Women were teleworking nearly as often as men. Telework in Finland was mostly a part-time phenomenon.

According to Pekka Huutonen<sup>94</sup>, in an article written in 1996 some 10% of the Finnish population were teleworkers. Teleworkers were more likely to be professional and educated employees. This was expanded later by Jyrki Helin<sup>95</sup> who reported on an EU survey which showed that Finland had the highest number of teleworkers in the EU and that the typical teleworker was a male professional. Despite this the author states that this form of working has great appeal to women under the age of 35 years.

The three dimensions of teleworking, according to Huutonen, were time. Place and the application of IT: 'increased freedom to choose one's work site and working hours is the greatest attraction of telework from the point of view of the worker. The crucial role of information technology distinguishes telework from other paid employment at home'. Requirements for mental health and well-being are that the work corresponds to the abilities of the worker; provides opportunities to influence work-related matters; provides for social interaction and the support of co-workers and superiors.

The Social Partners Telework Agreement: on 23 May 2005, a social partner agreement was adopted together with guidelines to negotiators at local level in Finland by the representative organisations of both the public and the private sectors. The agreement recommended the adoption of the key principles of the EU agreement in

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<sup>91</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>92</sup> Finnish Quality of Worklife Survey 1997 (Finland Material)

<sup>93</sup> Data provided to the ILO by the Ministry of Labour and Statistic Finland

<sup>94</sup> Huutonen, Pekka 'Telework brings new dimensions to working life', Finnish Institute of Occupational Health. Työterveys 2/1996 Special Issue, p. 16-17. Translated by Mia Arpiainen [www.ttl.fi/Internet/English/Information/Electronic+journals/Tyoterveyset+journal/19962+Special+Issue/07.htm](http://www.ttl.fi/Internet/English/Information/Electronic+journals/Tyoterveyset+journal/19962+Special+Issue/07.htm)

<sup>95</sup> 'Finland leads teleworking in Europe' [netti.sak.fi/sak/englanti/articles/teleworking.htm](http://netti.sak.fi/sak/englanti/articles/teleworking.htm)

employment contracts as from 23 May 2005 and to take account of telework when conducting collective bargaining.<sup>96</sup>

*France*: according to the OSHA report on the state of occupational safety and health<sup>97</sup> there were estimated to be 16,000 teleworkers in France.

The Social Partners Telework Agreement<sup>98</sup>: on 19 July 2005 a cross-industry national collective agreement was reached. The provisions of the cross-industry national agreement can be completed and/or adapted through agreements at sectoral or company levels. In the absence of such decentralised agreements, the national agreement applies. The extension decree was published on 9 June 2006 in the Official Journal. The French agreement translates in the French context the provisions of the EU agreement, while detailing further aspects such as the scope of the notion of teleworker, the possibility for teleworkers to apply for vacant jobs at the employer premises, the aspects on which equal treatment between teleworkers and workers at the employer premises must be ensured.

*Germany*: according to the OSHA report on the state of occupational safety and health<sup>99</sup> there estimated to be some 500,000 workplaces where mobile telework existed; some 350,000 workplaces where alternating telework existed; and some 22,000 workplaces where telework was performed at home. The Government's view, according to the OSHA report, is that there is no need for a specific law for teleworking. Issues arising about telework in relation to labour law and occupational safety and health are resolved through collective bargaining agreements or works agreements. Occupational safety and health issues include: the right of access of the employer, of workers' representatives and representatives of public supervisory authorities, to the teleworker's home; the burden of proof on behalf of the teleworker in case of an accident at home; the ergonomic workplace design at home; and working time arrangements.

The Social Partners Telework Agreement<sup>100</sup>: the social partners provide, either jointly or separately, models of collective agreements for further use in bargaining at sector, company and/or establishment level. Regimes for telework at establishment or company level are usually enshrined in works agreements, group agreements or company agreements. They are usually more specific than the European framework agreement and go beyond its provisions. A wide range of agreements also exists across a variety of sectors ranging, from banks, the chemicals industry, the metal industry, the telecommunications sector, skilled crafts through to the public sector. Some of these agreements were concluded before the European framework agreement and are in line with it.

At Deutsche Telekom an "Agreement underpinning the trial on alternating home-teleworking" was concluded by Deutsche Telekom and the DPG union in October 1995 and was followed in 1998 by a collective agreement on teleworking at Deutsche Telekom AG/T-Mobil, running from 1st January 1999 to 31 December 2000. This agreement addresses in separate sections both alternate teleworking (ie a combination of home-teleworking and conventional office working) and mobile teleworking. It is the largest agreement in this area covering 210,000 employees. It is estimated that there will be approximately 3000 teleworkers under this agreement by the end of the year 2000 and it is expected that this number will grow to 70,000 in the years to come.

It is also worth noting that the German postal and telecoms union DPG itself signed a collective telework agreement for its own staff. This agreement, signed in June 2000, aims to improve

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<sup>96</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>97</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>98</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>99</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>100</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

service to union members, to enhance flexibility and to increase staff job satisfaction. The DPG agreement is believed to be the first example of a trade union formally introducing telework arrangements.

*Ireland:* according to the OSHA report on the state of occupational safety and health<sup>101</sup> there were estimated to be 15,000 teleworkers (1.4% of the workforce.)

The Social Partners Telework Agreement<sup>102</sup>: the social partners representing the private sector engaged in the revision of their pre-existing code of practice on e-working. Their new “code of practice on teleworking” which was finalised on 15 December 2004 takes account of the EU framework agreement and implements it. The code of practice highlights key elements to consider when introducing telework and advises employer to draw up a written policy which specifies how telework arrangements will operate in the company. In order to help create such a policy, concrete guidance with practical examples, a sample telework agreement and an overview of the minimum legal entitlements for Irish employees are set out in the code.

In 1999 the National Advisory Council on Teleworking produced a report titled: ‘New Ways of Living and Working: Teleworking in Ireland’. At the time it estimated that some 3.5% of the workforce were teleworkers. In 2003 the Quarterly National Household Survey<sup>103</sup> came up with similar figures, but also produced evidence that

- 26,100 teleworkers are male (67%)
- 12,600 are women (33%)
- 39.5% of teleworkers live in the Dublin region
- 46.5% of teleworkers usually work from home
- 53.5% of teleworkers can then be seen as occasional teleworkers (although the survey methodology has some problems here)
- 79% of teleworkers fall into the managerial, professional and technical occupational categories
- 72% of teleworkers have a tertiary level qualification (workforce average is 41%)
- Teleworkers worked average 43.5 hour week (workforce average is 37 hours)
- 40.3% of teleworkers are in the “Financial and Other Services” sector
- 40% of homeworkers in the Dublin region are teleworkers – much higher percentage than other regions (next highest 27% in the South-West).
- 83.2% of teleworkers are aged between 20 and 44.

*The Netherlands:* according to the OSHA report on the state of occupational safety and health<sup>104</sup> between 150,000 and 300,000 (4.5% of workforce) are teleworkers. The Working Conditions Act Regulations protects the working conditions of teleworkers.

The Social Partners Telework Agreement<sup>105</sup>: In September 2003, the framework agreement was implemented<sup>106</sup> by a recommendation of the Labour Foundation in the Netherlands. This recommendation, which is the instrument the national social partners use to promote dialogue and agreement on issues concerning working conditions in collective bargaining at company or sectoral level and/or with works councils and individual workers, is addressed to companies and sectoral social partners. The text of this recommendation includes a reference

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<sup>101</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>102</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>103</sup> [www.flexibility.co.uk/flexwork/location/Teleworking-Ireland.htm](http://www.flexibility.co.uk/flexwork/location/Teleworking-Ireland.htm)

<sup>104</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>105</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>106</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)



to the agreement of the European social partners, a description of the development of telework in the Netherlands in qualitative and quantitative terms and a description of the main elements to consider with respect to agreements on telework in collective bargaining and/or in dialogue with works councils and individual workers. The main elements highlighted are the definition of telework, its voluntary character, the principle of equality of teleworkers and other workers with respect to working conditions as well as training and career development opportunities.

*Spain*: the Social Partners Telework Agreement<sup>107</sup>: Spanish national agreements on collective bargaining have incorporated the framework agreement on telework into the Spanish labour relations system since 2003. These agreements serve as guidelines for collective agreement negotiators throughout the country, set priorities for negotiations at other levels and foresee a bipartite commission in charge of the follow-up. The first Spanish national agreement on collective bargaining which mentioned the EU framework agreement on telework was concluded in 2003, it was extended in 2004 and has been renewed since then. So far, ten different collective agreements on telework exist at sectoral, regional and company levels in Spain. Half of them were concluded after 2002 and they take account of the EU framework agreement either through similar negotiated provisions or by referring directly to the original text of the EU agreement. They concern the chemicals industry, the daily press sector, the region of Valencia, the companies Telefonica de España, Telefonica Moviles España and Ibermatica.

Occupational safety and health issues identified include: temporary employment with agencies; long work hours without control; problems with equipment; inappropriate workplace; and isolation/social relationships.<sup>108</sup>

*Sweden*: according to the OSHA report on the state of occupational safety and health<sup>109</sup> some 250,000 (6-7% of the workforce) are estimated to have telework facilities. The *Work Environment Act* covers telework. The employer must provide a working environment that satisfies the same requirements as for any other work.

The Social Partners Telework Agreement<sup>110</sup>: the Swedish social partners reached agreement on common guidelines regarding the implementation of the framework agreement on 28 May 2003. The document states that the EU text should serve as a guideline when telework agreements are reached in Sweden and that due consideration should be given to the key elements highlighted by the EU framework agreement. As a consequence, addenda have been made to collective agreements in certain branches of industry. In other cases, the matter has been discussed between social partners and employers have taken the responsibility of informing their members of the provisions of the EU framework agreement so that they serve as guidance when concluding an individual agreement on telework.

‘Telework - Work Environment and Well Being. A Longitudinal Study’<sup>111</sup>: the abstract for this paper states that this study aimed to analyse the effects of telework on the physical and psychosocial work environment at home and at the ordinary workplace as well as on health and well being of the employees. The studied office workers reported part-time telework at home as being conducive to attain a balance between work and leisure time, and to be more effective in

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<sup>107</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>108</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>109</sup> The state of occupational safety and health in the European Union - Pilot Study, [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>110</sup> [ec.europa.eu/employment\\_social/news/2006/oct/telework\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/oct/telework_implementation_report_en.pdf)

<sup>111</sup> European Agency for Health and Safety at Work, 2006. Uppsala University, Department of Information Technology, [www.it.uu.se/research/publications/reports/2002-031/2002-031-nc.pdf](http://www.it.uu.se/research/publications/reports/2002-031/2002-031-nc.pdf)

their work. The participants worked more hours at home, however, often without breaks, than at the office. The ergonomic standard at home was seldom acceptable. All the participants reported problems with computer systems and equipment and experienced restricted opportunities to obtain help and support. The identified problems can result both in an increase of workload and in various work-related disorders, as stress (burnout-syndrome) and musculoskeletal diseases. A further study on risk assessment for teleworkers<sup>112</sup> cited a Swedish study that highlighted health and safety risks as

- Teleworkers worked long hours without breaks, and worked late at night and on the weekends at home;
- The workstation was seldom as good ergonomically at home as at the office;
- All the respondents experienced problems with the computer equipment and computer system;
- Introducing telework can enhance work effectiveness; however, it can also result in both an increase in workload and various work-related health risks.

The Swedish Government Commission on Telework concluded, in 1998,<sup>113</sup> that

- telework is nearly always synonymous with work at home
- it nearly always involves flexible working hours
- very few employees telework full time
- it occurs most frequently in the fields of education and research
- it is most frequent among middle-aged employees with higher education
- it has not expanded at the rate predicted
- it has great potential

Gender would appear to be another important issue. Surveys including teachers and childminders show that home-based work is more frequent among women than among men; on the other hand, studies excluding teachers and child minders but comprising both wage-earners and self-employed persons show that the typical teleworker is male<sup>114</sup>.

Gender plays an important role not only in terms of job segregation but also in terms of choice as to the place of work. According to a 1998 report female teleworkers have less influence over where they work than male teleworkers. In a survey of 400,000 commuters (230,000 men, 170,000 female) about 55% of women said that they had 'no influence', compared with 45% of men. One woman in seven and one man in four felt that they had 'great influence' over the location of the workplace<sup>115</sup>.

### **Case studies**

#### **(a) *Sustel (2004)*<sup>116</sup>**

The Sustel project was financed by the European Commission Directorate General Information Society and concerned teleworking and sustainable development. It included partners from Denmark, Germany, the Netherlands, Italy and the UK. One part of its final report considered the social dimension of telework. The effect of teleworking on quality of life is shown in Table 4.

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<sup>112</sup> 'Risk assessment for Teleworkers' 23.09.2008. [osha.europa.eu/en/publications/e-facts/efact33](http://osha.europa.eu/en/publications/e-facts/efact33)

<sup>113</sup> The Swedish Government Commission on Telework - Summary, SOU 1998:115, Stockholm, 1998, p.4

<sup>114</sup> K. Ahlberg, Focus on bargaining in the regulation of telework in Sweden, EIROonline, 1998

<sup>115</sup> Statistics Sweden, Report on Telework among Commuters in the Local Labour Markets of the Three Largest Cities in Sweden, 1998, p.9

<sup>116</sup> [www.sustel.org/](http://www.sustel.org/)

**Table 4. Perceived effects of teleworking on respondent's quality of life.**

	Dk	Ger	It	Ne	UK*
Considerable Positive Effect	26.1%	60.3%	73.1%	60.9%	54.9
Slight Positive Effect	56.5	38.2	23.1	39.1	35.4
No Effect	13.0	1.5	3.8	-	3.0
Slightly Negative Effect	4.3	-	-	-	6.1
Considerable Negative Effect	-	-	-	-	0.6

The UK effect was judged here by the experience at one organisation, BT. One of the Italian participants was the regional authority of Emilia Romagna.

The survey questions provided some further understanding of this improved quality of life. Personal advantages included greater job satisfaction and reduced stress and flexibility in controlling personal time such as reduced commuting. However, 35-38% of survey respondents felt more isolated from work colleagues.

Many reported working increased hours (Table 5):

**Table 5. Changes in total amount of time spent working in the last two years.**

	Dk	Ger	It	Ne	UK
Increased	23.4	41.2	38.5	56.5	75.7
Stayed the same	76.6	54.4	42.3	30.4	18.3
Decreased	-	4.4	19.2	13.0	5.9

A large majority in each country reported that teleworking had a positive effect on health (Table 6). In fact the positive reporting came from the Italian respondents.

**Table 6. Effects of teleworking on health.**

	Dk	Ger	It	Ne	UK
Considerable Positive Effect	4.3%	16.4%	46.2%	8.7%	18.9
Slight Positive Effect	23.9	34.3	38.5	47.8	36.0

No Effect	60.9	47.8	11.5	43.5	34.8
Slightly Negative Effect	8.7	1.5	3.8	-	9.1
Considerable Negative Effect	2.2	-	-	-	1.2

The reasons for improved health included less work stress, less personal stress and increased domestic harmony (the Italian respondents scored the highest in all these categories). Other reasons were less driving, more exercise and better diet.

The project web site contains case studies from all of these countries. The Italian ones concern Regione Emilia Romagna (see below), Regione Lombardia, Telecom Italia, Comune di Napoli, CED Camera and Bordeur Imagetime.

(b) *Emilia Romagna*<sup>117</sup>

The following is a summary extracted from the full report:

The Emilia Romagna Region started a “Teleworking Experimentation Project” in February 1999 according to the National Agreement on Teleworking in Public Administration and within the Regional Agreement for Public Administration of the Emilia Romagna Region (1998-2001) (Contratto Collettivo Decentrato Integrativo - CCDI) (deliberation n° 282 - 2/22/2000 of the Regional Government for starting a teleworking experimentation project).

The objectives of the teleworking project are the same of those identified in the CCDI:

- to introduce new forms of flexible work for optimising human resources management
- to guarantee a good level of innovation in the organisational structure
- to offer new and alternative models of working to the employees

The teleworking project included two elements:

- micro-projects related to some specific working areas of the organisation
- unique teleworking situations.

The working areas involved in the teleworking experimentation were:

- Professional training (control on European Social Fund courses)
- Institute for artistic, cultural, natural heritage
- Environmental investigations
- Legal and institutional affairs (preliminary activities of the Region Committee of Controls)
- Information systems
- Aptial planning (elaboration of geological and cartography data)
- Agriculture (activities related to L.R. 28/98 on the development of the agro-alimentary system)
- Regional Council (activities of reporting).

Within each areas, the teleworked activities were:

- data entry
- research on the web
- analysis and control of administrative documentation
- editorial and research activities
- production of web pages
- investigation and reporting

In June 2002, the number of teleworkers was 35, other 3 teleworkers interrupted before the end of the experimentation. According to a survey for monitoring the teleworking experimentation

<sup>117</sup> A full report on this can be found at [www.sustel.org/documents/deliverables%20-%20WP2/Cases%20-%20Submitted/153708\\_IT01\\_Emilvia.pdf](http://www.sustel.org/documents/deliverables%20-%20WP2/Cases%20-%20Submitted/153708_IT01_Emilvia.pdf)

conducted on 36 teleworkers involved in the teleworking project (survey June 2002) the distribution per sex of the teleworkers is perfectly balanced: 50% female and 50% male. The age average is 47,5 years, the minimum age is 38 years and the maximum one is 57 years. The age in which were concentrated more cases is 51 years.

The motivations of the teleworking project were related to some organisational aspects according to some functionality needs of the offices and some needs of the quality of life of the employees. In particular, these needs were related to the fact that:

- in some situations and for some activities the work was yet developed in a mobile way
- some employees had particular situations such as long-term psychophysical disability, handicap, long distance from the office, need to assist parents.

The key features of the teleworking project were:

- voluntary nature of the participation of the involved workers
- reversibility of the teleworking experimentation
- preventive agreement with trade unions
- organisational flexibility of the micro-projects
- monitoring of the teleworking experimentation

In general, the teleworking project was monitored according to the following indicators:

- effectiveness of the teleworking activities related to the structure of the organisation
- economic cost/benefits for the Emilia Romagna Region
- satisfaction of the teleworkers
- quality of the teleworking activity (interviews to the units directors)
- quality of the life the teleworkers (interviews to the teleworkers)

At the end of the experimentation (June 2002), the working group evaluated positively the results of the project and encouraged the follow-up and a limited extension of the experimentation till 80-100 teleworkers in a period of 14-18 months. The number of 80-100 teleworkers represents a critical mass (3% of all employees of the Region) that could allow a more reliable assessment and the achievement of the balance between costs and benefits in 2004.

## **8. Economically dependent workers.**

Economically dependent workers were part of the first consultation by the Commission on the Framework Agreement on Teleworking. The problems associated with writing about this group is, firstly, the lack of clarity in terms of defining such an employment status and, secondly, the lack of specific quantitative data.

A scoping study on the health and safety of homeworkers, carried out in 2002<sup>118</sup> reported that 'There is considerable confusion regarding employment status. The lack of clarity in the distinction between employee and self-employed status makes it very difficult for both homeworkers to interpret the current HSE [Health and Safety Executive] guidance on homeworking.'

The National Group on Homeworking in the UK stated that the most common request which they had from employers was for information about their health and safety responsibilities to homeworkers.<sup>119</sup> They further stated that

'Many homeworkers have unclear employment status, and although they work for another person or company in a dependent relationship it is often unclear whether they would be considered employees, workers or self-employed under existing employment law'.

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<sup>118</sup> O'Hara, Dr Rachel (2002) 'Scoping exercise for research into the health and safety of homeworkers' Health and Safety Laboratory, UK

<sup>119</sup> Response to 'Improving outcomes from health and safety' BRE consultation November 2007 [www.ngh.org.uk/resource-files/Health-and-Safety-consultation-20071196339745.doc](http://www.ngh.org.uk/resource-files/Health-and-Safety-consultation-20071196339745.doc)



The 91<sup>st</sup> conference of the ILO<sup>120</sup> had, as part of its second item, the issue of the employment relationship. It summarised:

‘The situation of dependent workers who are not covered by legislation on the employment the employment relationship, on account of their disguised or ambiguous employment status, is a worldwide problem which lies at the heart of labour law, as the effectiveness of national and international labour legislation depends on it. This problem is prejudicial to the workers concerned, but it is also likely to prove damaging to enterprises, jeopardise social peace and place the health and safety of the population at risk’.

It was also the subject for discussion at a meeting of Experts on Workers in Situations Needing Protection in 2000.<sup>121</sup> The concern was that concealment and ambiguity in the employment relationship are likely to lead to a real lack of protection of workers, by totally or partially preventing the application of labour legislation. One of the strategies recommended was the application of basic rights to all workers.

The European Foundation carried out a comparative study in 2002<sup>122</sup> which had contributing material from 16 Member States. It stated that the issue is relevant from the industrial relations point of view since economically dependent workers do not generally benefit from the protection granted to employees both by law and collective bargaining, including provisions on health and safety etc.

Economically dependent workers are characterised by being formally self-employed and depending upon one employer for their income, or at least a large part of it. In some cases they share characteristics with employees by having no clear organisational separation from employees; by performing the same tasks as employees; and by the service that they sell to employers being outside what is rationally regarded as professional services.

The key issue for this analysis is that in all the countries covered the key element in defining a dependent 'employee' is subordination. 'Legal subordination' is the difference between different employment relationships, not economic dependence. Therefore, according to the study, the basic criterion of economic dependence which identifies the workers covered by this study may not be relevant as such for the definition of a subordinate employee. 'It is true that various aspects of economic dependence may be used by courts to assess the subordination of a worker, but it is clear that economic dependence may characterise even contractual relations which correspond unquestionably to self-employment (an example might be a lawyer with one main client). ....'economic dependence' has essentially a social relevance and the increasing attention it is receiving from governments and trade unions should be connected to the perceived growing importance of new forms of employment which pose a threat to the traditional distinction between dependent employment and self-employment and call for a different kind of regulation. In summary, it is exactly the fact that economic dependence does not overlap with the traditional concept of subordination that makes demands for the protection of economically dependent workers an issue’.

There does not appear to be an intermediate stage in the degree of subordination. An employment relationship is either subordinate or autonomous.

A further issue is that the assessment of what constitutes an employment relationship differs between Member States. Here is a table (Table 7) taken from the Report showing the different definitions of dependent employment.

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<sup>120</sup> International Labour Office Governing Body 280<sup>th</sup> session 2001

<sup>121</sup> ‘Experts on Workers in Situations Needing Protection’ (The employment relationship: scope) ILO Geneva 2000

<sup>122</sup> ‘Economically dependent workers, employment law and industrial relations’ (2002) European Industrial Relations Observatory, [www.eurofound.europa.eu/eiro/2002/05/study/index.htm](http://www.eurofound.europa.eu/eiro/2002/05/study/index.htm)

**Table 7. Definitions of 'dependent employment' in the EU and Norway.**

Country	Main legal criterion	Specifications
Austria	Subordination.	Work to be performed personally, within the context of the employer's establishment, under the employer's supervision and managerial and disciplinary authority.
Belgium	Subordination.	Employer's right to direct work and to control the worker's performance.
Denmark	Subordination.	Employer's right to direct and control the work.
Finland	Subordination.	Employer's right to control the work.
France	Subordination.	Employer's authority to direct work and control worker's performance.
Germany	Personal dependency.	Dependence in terms of place of work, time of work, content of work; incorporation in the employer's organisation; use of employer's equipment.
Greece	Personal subordination.	Employer's right to direct work, determine place of work and working hours and control worker's performance.
Ireland	No legal definition.	A code of practice on the issue has been recently drawn up by an <i>ad hoc</i> tripartite Employment Status Group (see main text).
Italy	Subordination.	Work which takes place within the firm run by the employer, under the authority and the direction of the employer.
Luxembourg	Subordination.	Employer's right to direct work.
Netherlands	Authoritative relationship.	Employer's right to direct work.
Norway	No legal definition.	The concept of employee refers to a person who performs work 'in the service of others'. Specific indicators have been developed by case law (personal obligation, ownership of the equipment, employer's power to direct and control work, responsibility for the results, type of income, right to paid holidays etc).
Portugal	Subordination.	Work which is performed under the authority and direction of the employer.
Spain	Subordination.	Subordinate work is: voluntary, dependent on the employer's authority, performed on the employer's account, salaried and personal.
Sweden	No legal definition.	Indicators developed by case law.
UK	No statutory definition.	Indicators developed by case law (control, integration in the business, economic reality, mutuality of obligation).

Source: EIRO.

As a result of this lack of a uniform definition it is difficult to find quantitative data on such workers. A Eurofound report in 2002<sup>123</sup> did identify those sectors and activities where economically dependent work may be more widespread (Table 8):

**Table 8. Activities and sectors where 'economically dependent work' may be more widespread.**

Country	Activities	Sectors
Austria	Journalists, scientific researchers, lorry drivers, ICT workers.	Media, road haulage, scientific research, ICT.
Belgium	Cooks, drivers, shop assistants, cleaners, attendants and security guards, secretarial staff.	Hotels and catering, cleaning and caretaking, secretarial services.
Denmark	R&D, administration and account-keeping, interpreting, journalistic jobs, education, sales, technical jobs (photography, sound editing), project and consultancy work, creative jobs (illustration, manuscript writing, film production etc) and ICT jobs.	Media, publishing, education, ICT.
Finland	Translators, psychologists, speech therapists, consultants, construction workers.	Construction, services, and metalworking.
France	Construction workers, lorry drivers, private service workers, real estate salespersons.	Construction and public works, road haulage, metalworking (car industry), private services (express couriers, security, cleaning, training and education, hotels and catering), estate agencies, retail and commerce, agriculture.
Germany	-	Retail, meat processing, transportation, and private services such as nursing and teaching.
Greece	Homeworkers.	Clothing and leatherwear, manufacturing of costume jewellery, rubber and plastic items and toys.
Italy	Workers in: door-to-door sales; training and education; administrative and accounting services; marketing, telemarketing and advertising; collaboration on newspapers, magazines etc; fashion, art, sport and show business; healthcare; and technical assistance.	Retail and commerce, private services, media, healthcare.
Netherlands	Artists, reporters, construction workers.	Media, construction, business services.
Norway	Lorry drivers, courier service workers and construction workers.	Road transport, courier services and building/construction.

<sup>123</sup> 'Economically dependent workers', employment law and industrial relations'

Portugal	ICT workers, construction workers, lorry drivers, artists, reporters and workers in: door-to-door sales; training and education; marketing, telemarketing and advertising; collaboration on newspapers, magazines etc; fashion, art, sport and entertainment; healthcare and technical assistance.	ICT, construction and public works, road haulage, private services (express couriers, security, cleaning, training and education, hotels and catering). estate agencies, retail and commerce.
Spain	-	Construction, hotels and catering, road transport, computer activities, and health and social services.
United Kingdom	-	Construction, transport and communications, finance, business services, distribution, hotels and catering. media and entertainment.

Source: EIRO.

The problem with looking at this subject from a health and safety perspective is that much of the comment has been confined to legal analysis and little has been done in terms of sociological or economic research.<sup>124</sup> They are sometimes referred to as the dependent self-employed. One source of such people is the outcome of outsourcing where the worker becomes economically dependent upon the employer and is in hierarchical subordination to it. The two types of dependency are, firstly, an economic one where the workers takes the entrepreneurial risk, and, secondly, dependence in terms of time, place and content of work.

Muehlberger and Pasqua<sup>125</sup> looked at workers with a contract of continuous collaboration (parasubordinati) in Italy who amount to between 1.8% and 5.3% of the Italian labour force. The differences in estimates arises from the lack of a standardised definition. Although the aim of these contracts is to have a more flexible contract to be of benefit to the employer and the worker, they have, according to these authors, been used as a low-cost alternative to fixed-term and permanent contracts. Since the 'Biagi law' the rules have become more fixed. There is also the alternative of employing workers on a contract for a project (co.co.pro.). They cite a number of pieces of research from other European countries about self-employment. Also in an IRES study 2005 analysing 640 collaborators, the authors here found, unlike the UK, that older as well as married workers were less likely to be collaborators than employed or self-employed. Also, unlike the UK, they found that highly educated workers are much more likely to work as collaborators.

The Fourth European Working Conditions Survey<sup>126</sup> examined the extent of self-employment across Europe, looking in detail at persons who are self-employed on their own (11%), and those who are self-employed with employees (5%). A higher proportion of men than women are self-employed: of those who are self-employed without employees, 63% are men while only 37% are women. The equivalent percentages of men and women who are self employed and have employees are 73% and 28% respectively. The percentage of the workforce that is self-employed is highest in the candidate countries (44% without employees, and 8% with employees) and in the southern European countries (20% and 3% respectively). It is lowest in

<sup>124</sup> Böheim, R and Muehlberger, U (2006) 'Dependent forms of self-employment in the UK: identifying workers on the border between employment and self-employment'. IZA Discussion Paper No 1963

<sup>125</sup> Muehlberger, U and Pasqua, S (2006) 'The "continuous collaborators" in Italy: hybrids between employment and self-employment?' Centre for Household, Income, Labour and Demographic economics, (CHILD), Italy

<sup>126</sup> Fourth European Working Conditions Survey, Eurofound 2007. [www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf](http://www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf)

the Scandinavian countries and the Netherlands (7% without employees, and 3% with employees). Across Europe, there is a great variation in the nature of self-employed work, encompassing entrepreneurs, economically dependent workers and farmers.

In the EU27, self-employment is most concentrated in agriculture (48% of workers in agriculture are self-employed without employees and 7% are self-employed with employees). It is also quite prevalent in construction, hotels

and restaurants, the wholesale and retail trade, real estate and other services (averaging in these sectors around 14% of self-employed without employees and between 5% and 10% of self-employed with employees). Of those who are self-employed without employees, 26% are agricultural and fishery workers. The typical self-employed person is an older, male worker who is less skilled

than the rest of the workforce; however, self-employed individuals working in the agriculture sector have quite different profiles from other self-employed individuals.

The Eurofound report cited above concludes that 'it is very difficult to find data on economically dependent workers, since there is no precise and accepted definition of such an employment condition, not to mention legal recognition'. As there is little legal recognition of this type of employment relationship, it is difficult to analyse any relevant legislative measures'.

The Study suggests that there are three possible approaches to dealing with this issue:

'1. an extension of (most of) the provisions and protections typical of dependent employment to new forms of employment, including self-employed workers who may be regarded as 'economically dependent'. This is the option generally favoured by the unions, which believe that this would be the best way to grant workers an appropriate endowment of rights and protection. However, since it may lead to a reduction in the differences between forms of employment, this approach might contrast with the European employment strategy's objectives of adaptability and support for entrepreneurial activity;

2. the definition of a third intermediate status which would stand mid-way between dependent and autonomous work and would benefit from an intermediate level of regulation and protection. In this case, the main problem seems to be connected with the identification of the features which would characterise this status. As mentioned above, there is such a variety of employment relations and job positions that it would be very difficult to find a clear-cut and satisfactory definition, even more so if this attempt were undertaken at European level; and

'the establishment of a common set of basic rights and protections that would apply to all workers, irrespective of their formal employment relationships (in addition to the existing regulatory framework for dependent employees). This is an option which is being discussed in Italy in the framework of a proposal to define a so-called 'work statute' and which is also implicitly supported in the UK by a suggestion to use the term 'worker' instead of 'employee' in legislation establishing labour rights and protection (it has been estimated that this might protect up to a further 5% of all those in employment). Here, the difficulty lies mainly in the definition of the set of rights which should be extended to all workers. In an extreme interpretation, in fact, this approach would simply overlap with the first option'.

In Spain the Statute of the Autonomous Work includes provisions related to self-employed workers. Included in this are self-employed workers who are economically dependent.<sup>127</sup> A definition is provided in Section 4.3.3.1:

- The self-employed workers economically dependent are those that carry out a economical or professional activity for profit making in a usual, personal, direct and predominant form for a physical or legal person, called client, of which they depend economically because they receive from him at least 75% of their income from work performance and of economical and professional activities.

- For the performance of the economical or professional activity as autonomous worker economically dependent, this one has to combine simultaneous the following conditions:

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<sup>127</sup> [www.mtas.es/en/Guia/texto/guia\\_1\\_4\\_3.htm](http://www.mtas.es/en/Guia/texto/guia_1_4_3.htm)



- Not to have in charge paid workers nor to contract or subcontract part of all his activities to thirds, as well with respect to the contracted activity with the client of which they depend economically, as with respect to the activities that he could contract with other clients.
  - To carry out their activity in a different way that the workers that give services under any modality of labour hiring on the client account.
  - To dispose of a productive infrastructure and of their own materials, necessary for the exercise of their activity and independent of those of their clients, when in the mentioned activity will be economically relevant.
  - To develop their activity with their own organizational criteria, without prejudice of the technical indications that they can receive from their client.
  - To receive a economical benefit according with the result of their activity, and according with what has been stipulated with the client. They have to take the risk of the activity.
- There is provision for annual breaks and time off including ‘the time of activity will try to be adapted to conciliate the personal life familiar and professional of the autonomous worker economically dependent’.

### ***Health and safety concerns***

According to the OECD ‘the working conditions of the self-employed differ from those of employees in a number of ways, even after allowing for a number of differences in the types of jobs they do. Self-employed people tend to report poorer working conditions, including longer hours of work, and (unless they are employers) less training, less use of computers, and feelings of lower job security’. There is no reason to assume that this is not also the situation with the dependent self-employed.

An OSHA survey of Member States<sup>128</sup> further commented that self-employed, temporary workers and those on short term contracts were frequently discussed and commented upon by the Member States as being more at risk because of their restricted resource in particular limited access to safety and health training and information.

There is concern amongst trade unions about the lack of protection for the dependent self-employed. Böheim and Muehlberger<sup>129</sup> report that the ETUC as stating in 2006 that ‘the figures indicate an upward trend in the number of bogus self-employed (almost 23 million), two thirds of whom may be classed as dependent workers, but who have no contractual cover and no social protection worthy of the name’. Similarly the UK construction industry trade union stated that ‘the bogus self-employed and cowboy contractors are also making building sites less safe because corners are cut and safety training is almost nonexistent’. The author’s research in the UK found that dependent self-employed were, on average, older than employees and younger than the self-employed. Working hours were an average of 41 for the self-employed, 37 for the dependent self-employed and 34 for employees. Dependent self-employment is associated with high market fluctuation, lower tenure of employment and the poorest qualifications; making them possibly the first to be laid off in times of restructuring.

A major issue for health and safety protection is the length of working hours. A Eurofound survey in 2002<sup>130</sup> found that the average working week of the self-employed was 48.2 hours, 10½ hours longer per week, on average, than that of the dependent employee. While only 12% of dependent employees worked more than 50 hours per week, almost 50% of the self-employed

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<sup>128</sup> The State of Occupational Safety and Health in the European Union – Pilot Study 2000 [osha.europa.eu/en/publications/reports/402](http://osha.europa.eu/en/publications/reports/402)

<sup>129</sup> Böheim, R and Muehlberger, U (2006) ‘Dependent forms of self-employment in the UK: identifying workers on the border between employment and self-employment’. IZA Discussion Paper No 1963 [ftp://repec.iza.org/RePEc/Discussionpaper/dp1963.pdf](http://repec.iza.org/RePEc/Discussionpaper/dp1963.pdf)

<sup>130</sup> Self-Employment: Choice or Necessity? [www.eurofound.europa.eu/pubdocs/2000/22/en/1/ef0022en.pdf](http://www.eurofound.europa.eu/pubdocs/2000/22/en/1/ef0022en.pdf)

did so. The survey data also showed that a significant proportion (16%) of the self-employed work part-time, against 21% in the case of dependent employees.

There was also evidence that many self-employed persons worked part-time on various jobs or contracts, which added up to longer working hours. Over one tenth (11%) of the self-employed indicated that they have more than one job in addition to their main job as entrepreneur: only 5% of dependent employees are in this situation. The report suggested that 'this multi-job tendency may be indicative of a flexibility that is just not possible within dependent employment; equally it may also point to a larger share of marginal employment among the self-employed and/or to the existence of 'quasi', or 'false' self-employment.

A report of research into different forms of atypical work is partly summarised in the following table (Table 9):

**Table 9. Working conditions in the EU by type of contract.**

Non-permanent contracts	Unfavourable conditions	Favourable conditions
	poor ergonomic conditions	good physical environment
	discrimination	conditions
	low job autonomy	low job demands
	low time control	social support
	low skills level	
Part-time Contracts	poor ergonomic conditions	good physical environment
	discrimination	conditions
	low time control	low job demands
	low skills levels	high job autonomy
	lack of training provision	fewer non-standard hours
Self-employed	poor ergonomic conditions	good physical environment
	non-standard hours	conditions
	no task flexibility	no discrimination
	poor social support	low job demands
	lack of training provision	high job autonomy
		no shift work
		High time control

If one takes this further and looks at specific ailments the findings are (Table 10):

**Table 10. Distribution of health indicators by type of employment.**

Type of employment	Absenteeism %	Stress %	Fatigue %	Backache %	Muscular pains %		
Permanent			14.8	29.2	19.9	31.0	30.3
full-time			15.4	30.2	20.6	31.6	31.1
part-time			13.1	26.3	17.8	29.2	28.0
Small employers			8.7	33.7	27.0	32.2	30.3

Self-employment	7.7	30.4	32.5	36.0	34.0
<i>full-time</i>	8.0	30.7	31.2	25.9	33.5
<i>part-time</i>	6.7	29.5	36.3	36.5	35.2
Non-permanent	12.3	23.8	21.2	30.6	30.5

*Source: Third European survey on working conditions, 2000.*

The self-employed have low levels of absenteeism and high rates of stress and the other physical ailments recorded.

## VULNERABILITY, STRESS, INSECURITY AND OUTSOURCING

### 1. Introduction.

Some aspects of all of these have already been dealt with in Parts 1 and 2. This part will consider further these specific issues in relation to the new forms of work considered.

### 2. Vulnerability.

We consider here specifically issues related to migrant workers, gender and children, but it is worth stating some basic information about precarious working.<sup>1</sup> There are a number of employment relationships which have been described as coming within the term 'precarious work'. Quinlan et al<sup>2</sup> categorised them into five groups. These were

1. Temporary workers; including short fixed-term contracts and casual workers;
2. Workers subject to organisational change; including re-structuring, downsizing and privatisation;
3. Outsourcing; including home working;
4. Part-time working;
5. Workers in small businesses; including self-employment.

A further study in the UK identified twelve different forms. These were self-employment, part-time work, temporary work, fixed-term contract work, zero hours contract employment, seasonal work, (annual hours, shift work, flexitime, overtime or compresses working weeks), home working, teleworking, term time only working, Sunday working and job sharing.<sup>3</sup>

In a total of 76 studies Quinlan et al<sup>4</sup> found an association between precarious employment and a negative indicator on occupational health and safety. They concluded: 'On the basis of this review, we find sufficient grounds to argue that the introduction, presence, or growth of precarious employment commonly leads to more pressured work processes and more disorganised work settings and in so doing creates challenges for which existing regulatory regimes are ill prepared'.

An analysis of OHS experts<sup>5</sup> asked in what way precarious work differed from standard work. They cited one study<sup>6</sup> which proposed four dimensions. These were

- the low level of certainty over the continuity of employment;

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<sup>1</sup> See Barrett, Brenda and Sargeant, Malcolm 'Health and safety issues and new forms of employment and work organisation' June 2008 *International Journal of Comparative Labour Law and Industrial Relations* vol 24/2 241-259

<sup>2</sup> Michael Quinlan, Claire Mayhew, and Philip Bohle (2001) *The Global expansion of precarious employment, work disorganization, and consequences for occupational health: a review of recent research* International Journal of Health Services, vol 31, part 2 pp 335-414

<sup>3</sup> Dex, S and McCulloch, A (1995) *Flexible employment in Britain: A Statistical Analysis* Equal Opportunities Commission Research Discussion Series, Manchester

<sup>4</sup> Supra

<sup>5</sup> Expert forecast on emerging psychosocial risks related to occupational safety and health, OSHA (European Agency for Safety and Health at Work), European Risk Observatory Report, 2007. [osha.europa.eu/en/publications/reports/7807118](http://osha.europa.eu/en/publications/reports/7807118)

<sup>6</sup> G. Rodgers and J. Rodgers, *Precarious jobs in labour market regulation: the growth of atypical employment in western Europe*, International Institute for Labour Studies, Free University of Brussels, Brussels, 1989

- low individual and collective control over work (working conditions, income, working hours);
- low level of protection (social protection, protection against unemployment, or against discrimination);
- insufficient income or economic vulnerability.

The analysis further states that:

‘Precarious work takes different forms on today’s job market. In the scientific literature it is often associated with non-standard forms of work such as temporary, part-time, on-call, day-hire or short-term positions and also with the increase in the prevalence of self-employment. Additionally, work at home and multiple jobs also contribute to the increasing significance of ‘non-standard’ forms when considering precarious work. Of course not all forms of ‘non-standard’ work can be characterised as ‘precarious’ but there is certainly a higher general risk of precariousness in those forms than in permanent employment’.

The issue of the position of part-time and, especially, temporary workers in relation to the occupational dialogue on health and safety measures is an important one. Some people enter one or more of these situations out of choice, or, at least, voluntarily. The pressures of caring and the need to earn extra income ensure that the majority of the precarious workforce is women in part-time work because women generally take on personal caring responsibilities as well as entering paid employment. The size and make up of this sector of the workforce is important because, as Sandra Fredman suggests in the UK it is ‘characterised by low pay, low status and little by way of job security, training or promotion prospects’.<sup>7</sup> Table 11 indicates how part-time work and fixed-term work have increased in the EU in recent years. It also illustrates how part-time work is a gender issue, in contrast to fixed-term work, where there is a much smaller difference between men and women in terms of the proportion working under this form of contract.

**Table 11. Growth of precarious employment in the EU<sup>8</sup> (%age of total employment).**

Type of work	1998	1999	2000	2001	2002	2003	2004	2005	2006	
<b>Male</b>										
Self-emp		20.2	20.0	19.9	19.8	19.9	20.1	20.1	19.7	19.7
Part-time		6.3	6.4	6.5	6.6	6.6	6.7	7.0	7.4	7.7
Fixed-term		11.1	11.3	11.7	11.7	11.6	12.0	12.7	13.5	13.9
<b>Female</b>										
Self-emp		14.5	14.3	14.0	13.8	13.4	13.2	13.0	12.8	12.7
Part-time		28.7	28.5	28.9	28.6	28.5	29.0	30.0	31.0	31.2
Fixed-term		12.2	12.5	13.0	13.3	13.2	13.3	13.8	14.4	14.9

Between 2000 and 2006 fixed term work increased by 18% and part-time work by 25%. In the same period the increase in female employment has been almost twice that for men.<sup>9</sup>

<sup>7</sup> See Sandra Fredman (2004) *Women at Work: The broken promise of flexibility* ILJ vol 33 no 4 December pp 299-319

<sup>8</sup> Employment in Europe 2007 European Commission



According to the ETUC, however, there is an issue with regard to the involuntary nature of many of these contractual arrangements, with an increase from 15% in 2002 to 20% in 2006, of part-time workers declaring that they were involuntary part-time workers. The figures, according to the ETUC, show that there is firstly, that flexible workers receive less training; secondly, that upward mobility is low; thirdly innovation is held back because of a lack of commitment from temporary workers; finally, it provides businesses with an easy way out to address competitive challenges – hire and fire rather than innovate'.<sup>10</sup>

### ***Migrant workers***

None of these definitions of precarious working include domestic work, although live in workers must be counted amongst the most vulnerable. Many live in domestic workers are women and, as is shown elsewhere in this report, are migrants from elsewhere than the location in which they work. They are often supporting families of their own in those places of origin. They are made more vulnerable because they live in the employer's private home and this area of work is not always included in the general laws relating to employment protection and health and safety.<sup>11</sup>

There are numbers of studies about migrants in the EU.<sup>12</sup> In 'Counting the cost: working conditions of migrants' (2008)<sup>13</sup> issues relating to detriment in employment are considered. Despite the contribution that they make to their host countries, migrants often face serious labour market disadvantages. In job-seeking, for instance, a French survey found that men with French or European-sounding names were five times more likely to be called for interview than applicants with equivalent qualifications and experience, but with North African names. Overall, according to this study, migrants face a greater likelihood of unemployment than nationals, certain groups being especially disadvantaged – non-EU nationals, younger people, and women.

In many countries, migrant workers are more likely to work on fixed-term contracts, and less likely to be retained in employment. Some countries have a policy of issuing short-term work permits: hence, workers can only take jobs of limited duration. Many migrants work in seasonal sectors, and in some countries temporary employment agencies are a key recruiter of migrant workers. While such non-standard jobs could potentially lead to stable employment, a Swedish study suggested that fixed-term contracts lead to stable jobs for migrant workers less often than for Swedish workers.

The study further comments that migrant workers tend to be segregated into low-skilled jobs in such sectors as services, construction and manufacturing, given the language and legal barriers that hinder them from accessing skilled occupations. Hence, as a group, they have less job security, run the risk of more accidents at work and are generally more likely to be employed in unhealthy occupations. Working in such sectors also means that they are likely to be paid less, e.g. in Italy, for example, non EU workers earn around half of the national average wage.

Having a higher level of education boosts an individual's opportunities for employment. However, OECD statistics, according to this study, for 2006 indicate that skilled migrants have lower rates of employment than skilled nationals. An example is given of the situation in Germany where German nationals with a third-level qualification had an employment rate of

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<sup>9</sup> Employment in Europe 2007 European Commission

<sup>10</sup> Annexes to the Resolution: The co-ordination of collective bargaining 2007

Annex 1 Precarious work in Europe; ETUC 2007 [www.etuc.org](http://www.etuc.org)

<sup>11</sup> Blackett, A (1998) 'Making domestic work visible: The case for specific regulation' Labour Law and Labour Relations Programme Working Paper No. 2. Geneva: ILO

<sup>12</sup> See, for example, Spencer, Sarah (2008) 'Equality and diversity in jobs and services: City policies for migrants in Europe' [www.eurofound.europa.eu/pubdocs/2008/71/en/3/EF0871EN.pdf](http://www.eurofound.europa.eu/pubdocs/2008/71/en/3/EF0871EN.pdf), [www.eurofound.europa.eu/pubdocs/2008/92/en/1/EF0892EN.pdf](http://www.eurofound.europa.eu/pubdocs/2008/92/en/1/EF0892EN.pdf)

<sup>13</sup> [www.eurofound.europa.eu/pubdocs/2008/893/en/1/EF08893EN.pdf](http://www.eurofound.europa.eu/pubdocs/2008/893/en/1/EF08893EN.pdf)

84.5%, as against 68.1% for non-nationals. For those with a lower level of education, the differences were not as marked and unskilled migrants may even have higher employment rates than their native counterparts. In the same year, lower-skilled German nationals had an employment rate of 40.2%, whereas for their non-national counterparts it was 45.1%. This indicates that migrants gain a lower return on their educational investment than do nationals, because they are more likely to find themselves in unskilled jobs.

The study does, however, give examples of measures being taken, although the real solution is citizenship. In France, an agreement on diversity at the workplace was signed in 2006, with the aim of guaranteeing equality in recruitment, wages, training and career advancement; and in Sweden there are initiatives which combine job induction schemes with language training. 'Despite the risk of over-qualification, migrants with better education have much better career prospects, their opportunities resembling more those of skilled nationals. In addition, the working conditions of migrants tend to improve the longer they stay in the host country: the working conditions of second-generation migrants tend to be substantially better than those of their parents'.

A study of migrant women in the EU labour force<sup>14</sup> divided the EU into four groupings. Firstly, the 'old' migrant receiving countries (Belgium, France, Netherlands, United Kingdom and Austria) the labour force participation rates of third country migrant women are substantially lower than those of native born women. Secondly, in the 'new' migrant receiving countries of Southern Europe (Greece, Spain, Portugal) the labour force participation rates of third country migrant women are higher than those of native born women. Thirdly, the 'Nordic' countries of Denmark and Sweden vary in how recent have been their migrant flows, but are more closely associated with the old migrant receiving countries. Finally, in the 2004 accession countries, there is a much more heterogeneous pattern of participation. Most migrant women in the new receiving countries are younger and this may explain the higher levels of participation. Two major determinants of migrant women's participation rates are the age of the youngest child and how recently the migrant arrived in the receiving country. Unemployment rates of third country migrant women are higher than those of third country migrant men.

The study also found that temporary contract employment is a further source of disadvantage for migrant women. The highest proportion of temporary-employment contracts amongst employed migrant women are found in the 'new' migrant receiving countries of Southern Europe (also in Cyprus and the Czech Republic). In both Spain and Cyprus more than half of employed migrant women have temporary employment contracts. In the 'old' migrant receiving countries only Sweden has a high proportion on such contracts. The analysis states that

'This results in a 'double disadvantage' conclusion for migrant women in the 'new' migrant-receiving countries: 'unemployment and underemployment' is more prevalent among migrant women than among native-born women, and is more prevalent still than among migrant men'.

The analysis found that migrant women are concentrated in a small number of sectors for employment purposes – 62% of them work in five sectors: sales and service elementary occupations; personal and protective services; office clerks, other associate professionals and models, salespersons and demonstrators. There is a concentration in the lowest skills sectors.

Some aspects of the ILO report titled 'Towards a fair deal for migrant workers in the global economy'<sup>15</sup> have already been considered. The Report further states that there are two aspects of health issues for migrant workers. The first is related to occupational health and safety (OHS) at the workplace; and the second concerns the general health condition of the migrant worker and her family. Health is an important issue because, as the Report states, migrant workers tend to be employed in high risk occupations; secondly that there are language and cultural barriers to

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<sup>14</sup> Rubin, Jennifer. Rendall, Michael S. Rabinovich, Lila. Tsang, Flavia. Janta, Barbara. Van Oranje-Nassau, Constantijn (2008) 'Migrant women in the EU labour force' Rand Europe [www.rand.org/pubs/technical\\_reports/2008/RAND\\_TR591.3.pdf](http://www.rand.org/pubs/technical_reports/2008/RAND_TR591.3.pdf)

<sup>15</sup> Towards a fair deal for migrant workers in the global economy. International Labour Conference, 92nd Session, 2004; [www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf)

OHS communication, in particular OHS training and instruction; and, thirdly, many of the migrant workers overwork and/or suffer from poor general health, and so are susceptible to occupational injuries and work-related diseases. The Report also states that ‘Occupational accident rates are about twice as high for migrant workers as for native workers in Europe, and there is no reason to believe that the situation is any different in other parts of the world’.

In terms of seeking assistance, temporary workers, and in particular migrants in an irregular status, are often not able to access social security benefits such as those relating to employment injuries and occupational illnesses. They often do not seek medical treatment because ‘of the cost, inability to take time off work, lack of childcare, and problems of transportation. Many are unfamiliar with the local health-care systems and may have linguistic or cultural difficulties in communicating their problems’.

Domestic workers are especially vulnerable to discrimination, exploitation and abuse, without this necessarily being trafficking or forced labour. There are a number of issues to be dealt with. Firstly, when many domestic workers lose their employment, they sometimes also lose resident status. Examples of tackling this given are Canada, where a ‘bridge extension’ has been introduced whereby a two month interim work permit may be issued during the period when the worker is looking for another job; and Israel where a worker may obtain a 30 day tourist visa to cover this period. Secondly, providing safe houses as temporary accommodation, accompanied by an efficient support network, is crucial. Some countries have done this in other States where their nationals are employed as domestic workers. Thirdly, work permits should not have a condition that requires the worker to live in the employer’s home. This can be an encouragement to forced labour. Fourthly abuse by some employment agencies need to be controlled.

The Report suggests that there are examples of best practice to improve working conditions for migrant workers. These include

- Having competent institutions to supervise recruitment and migration;
- Encouraging migrants to sign contracts that have been approved by competent national authorities;
- Including migrant workers in work-related health programmes;
- Use of bridging arrangements
- Establishing agencies to monitor and seek to reduce discrimination.

The Report, as considered elsewhere, applies this to migrant women domestic workers who, it claims, are amongst the world’s most vulnerable workers.

The particular issues that seem to have been raised in the various reports considered here, which relate to migrant domestic workers, suggest that the health and safety issues raised are:

- Unsuitable sleeping arrangements
- Long working hours
- Insufficient rest time
- Musculoskeletal problems
- Insufficient nourishment
- Dangerous cleaning products
- Social and cultural isolation
- Lack of, or insufficient, health insurance
- Restricted freedom of movement
- Inability to access medical care

The International Trade Union Confederation has called for a new international convention on domestic workers and this is likely to become a reality in 2010 when the ILO adopts a new Convention on labour standards with respect to domestic workers.<sup>16</sup> The ILO report, as elsewhere, states that change will not become a reality until domestic work is recognised as work.

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<sup>16</sup> See ‘Decent Work for domestic workers’ ILO 2009

### ***Child labour***

The OSHA has produced this information on young workers in the EU<sup>17</sup>:

‘In comparison to the workforce generally, workers aged 15–24 years are less often in full-time employment (72% vs 82%), more often on temporary contracts (39% vs 14%), and more often salaried workers (94% vs 83%). Most temporary workers in the EU-25 are under 25. About 37.5% of young workers in the EU-25 have a temporary contract. The percentage of young workers in temporary employment ranged from 6.8% in Ireland to 59.4% in Spain’.

According to data on temporary agency work, people employed on temporary contracts have less access to training and to participation in long-term competence development than workers with permanent contracts. Temporary workers also have less control over the order of tasks, pace of work and work methods, have lower job demands and are less informed about risks at work.

Age analysis shows an uneven distribution of working time over the lives of individuals. The highest number of part-timers are employees at the beginning or end of their working lives. In 2005, one in four young workers had a part-time job within the EU-25. Part-time work is also increasing.

Research on part-time work in Europe indicates that there are fewer opportunities for training and career progression. The level of salaries and social security benefits is often lower and jobs are typically monotonous. Employees with part-time contracts tend to have the following characteristics: working under more favourable ambient conditions; working fewer non-standard hours; having less control over working time; carrying out less skilful work; receiving less training; being more likely to work in the social sector and the hotel/restaurant trade than in construction; being in service/sales occupations rather than as managers.

In 2005, 3.7% of self-employed workers in the EU-25 were young workers.

The share of young workers in the number of accidents decreased over the years 1995–2003. Countries with the lowest share of young workers suffering an occupational accident in 2003 were Finland, Italy and Denmark. Austria, the Netherlands, Belgium and Spain saw young worker accident rates above the average of the EU-15. Young men especially appear to be a risk group for safety at work’.

The ILO Convention 138 requires that countries set a minimum age for admission to work of not less than 15 years. Hazardous work may not be permitted for anyone below 18 years. According to 138, a minimum age for light work can be set at 13 years (12 for developing countries). Conventions Nos. 138 and 182 do not aim to prevent children from assisting their parents by participating in family chores, making beds, setting the table, helping in the garden, and performing other tasks for the good of the family unit. However, the use of a child in hazardous types of work as determined in accordance with 138 and 182, even when occurring within a family setting, should be considered as the worst forms of child labour and prevented as such. All girls and boys under eighteen must be protected from these dangers either by an improvement in the health and safety standards and general working environment or by withdrawing them from the workplace altogether.

In 2001 an ILO report followed a survey of available data in the USA, Canada, the EU, Australia, New Zealand and Japan.<sup>18</sup> Its analysis is really quite striking when it states:

‘It is likely that, whatever the published figures, more than half of all teenagers below the age of 18 are in the labour force in every industrialized country. In countries for which there is more detailed evidence, children commonly begin work by the time they are 15, although the type of work they do changes as they grow older. Except in the United States, where there is no national system of registration, the overwhelming majority of young workers are working illegally, and

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<sup>17</sup> OSH in figures: Young workers - Facts and figures, Institute for Occupational Safety and Health, for the European Agency for Safety and Health at Work, 2006, [osha.europa.eu/en/publications/reports/7606507](http://osha.europa.eu/en/publications/reports/7606507)

<sup>18</sup> Dorman, Peter (2001) ‘Child labour in the developed economies’ ILO Geneva

even in the US illegality is widespread. This ubiquitous contravention of child labour law is one of the most significant aspects of children's labour.

Children tend to work primarily in trade and services, although there are significant numbers in agriculture, manufacturing, and construction in some regions. The countries of southern Europe — Portugal, Spain, Italy, and Greece — reveal employment patterns that resemble in some respects those of the developing world, with children still employed in large numbers in core activities, particularly footwear, apparel, and textiles in the manufacturing sector, and agriculture. Economic privation does not underlie most youthful labour market participation; in fact, the poorest children are less likely to work in the better-off countries'.

There appears to be a particular issue with regard to Roma children in some countries. The report suggests that Roma children start work early in the family business and, often, are in full-time work by the age of 12. It also states that there have been reports of Roma children being smuggled into Italy where they are coerced into working for criminal gangs. The Report, however, produces no evidence of this. It does, however, highlight Greece as a further country that has similar issues. Another group with distinctive child labour problems appears to be the ethnic Chinese population. This is because of the large number of family businesses that exist in which the children are expected to work. Related to this is the issue of bonded Chinese children, in payment for debts incurred in the migration process. According to the Report, in Italy such children are thought to work in the clothing industry. The risks highlighted in the report include:

- chemicals; use of and lack of training about;
- musculoskeletal problems; because a child's body is still growing child workers are a special risk;
- Care and supervision, isolation working long periods in isolation, with no human interaction, may have both short term and long term negative psychosocial consequences;
- noise
- electricity; exposure to shocks
- long hours of work, fatigue and sleep needs of adolescents; child workers should not be on call to work at any hours
- falls
- diseases; children need to be immunised
- information and instructions, contact numbers; what to do in emergencies
- sleeping in employers' homes; can be of great benefit, but also poses significant hazards, especially for girls.

In June 2002, Italy's Istat statistical institute presented a study on the subject.<sup>19</sup> It found that in Italy there were some 150,000 children aged between seven and 14 who worked, including around 32,000 who are subject to exploitation. Child labour is more common in the more economically developed regions of the country. According to a Eurofound report of an Italian study: 'child labour in Italy is a phenomenon that is relatively little studied and difficult to analyse, owing to the fact that it is associated with illegal employment and is part of the clandestine, underground economy'.<sup>20</sup>

Among the children who worked, a number were defined as exploited children who carried out activities which might be dangerous or strenuous. These children, according to the research, numbered about 31,500 (0.66% of the population aged between seven and 14): of these, 12,300 performed a job on a continuing basis while 19,200 carry out odd jobs. The rate is highest among children aged 14.

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<sup>19</sup> [www.eurofound.europa.eu/eiro/2002/06/feature/it0206107f.htm](http://www.eurofound.europa.eu/eiro/2002/06/feature/it0206107f.htm)

<sup>20</sup> 'Child labour in Italy analysed' [www.eurofound.europa.eu/eiro/2000/12/feature/it0012363f.htm](http://www.eurofound.europa.eu/eiro/2000/12/feature/it0012363f.htm)



**Table 12. Children involved in child labour considered as child exploitation.**

Type of work	No.	% of 7-14 age group	% of 7-10 age group	% of 11-13 age group	% of 14 year-olds
Continuing activity	12,300	0.26	0.09	0.28	0.87
Odd jobs	19,200	0.40	0.06	0.36	1.87
Total	31,500	0.66	0.15	0.64	2.74

The Research summarised the key factors in child labour as:

- child labour in its most serious forms seems linked to needy families;
- 'generic' working activities by children increase as job opportunities increase in the area where they live. This tendency does not apply to the most serious exploitation; and
- the sector where the father works is very influential in the incidence of both 'generic' child labour and child exploitation, with work in agriculture or hotels particularly likely to have an influence. Another important factor is if the householder of the child's home has a low educational level.

Finally the study identified three types of child worker. Firstly, those that helped with family activities (50%); secondly, those concerned with seasonal work (31.9%); and, thirdly, those involved in more tiring work (17.5%).

Another Member State which has the problems highlighted is Portugal. In 2002 an ILO study found that:

- approximately 49,000 children are engaged in child labour, with two-thirds of them working for three hours per day;
- the number of children aged between six and 15 engaged in all forms of work increased from 1998 to 2001;
- the study distinguished between child labour by children employed in companies and child labour outside companies. Portugal has seen a fall in child labour in companies since 1998, but it persists in the textiles and footwear sectors and represents 24.2% of all illegal employment in the country; and
- the percentage of children engaged in child labour who work from four to six hours a day fell from 22.7% in 1998 to 15.6% in 2001, whereas the proportion working over seven hours a day fell from 21% in 1998 to 16.2% in 2001.

The study considered young people to be employed in child labour if they work more than 15 hours per week or carry out tasks which put their safety in jeopardy. The Eurofound report from which this information was taken also commented that

‘Officially, child exploitation is declining in Portugal. However, one must not overlook the existence of a growing informal sector, which encompasses forms of child exploitation that are far harder to control than the traditional type, precisely because they are part of an informal and often shady sector of the economy. The issue of child labour is linked to early school-leaving, which adds to the problem of the low qualifications generally held by Portuguese worker, especially in the sectors that are most highly affected by child labour - textiles, footwear, agriculture and building’.

The issue of child labour was raised by a special ETUC youth seminar on the subject in 2000 in Lisbon (Eurofound). The report from the seminar states that “child labour in Europe is more prevalent than it appears” and that one of the biggest problems in tackling child labour issues stems from the fact that there are no precise statistics on how many children are being used for labour. The seminar also identified a lack of understanding and a lack of enforcement of the many legal instruments in this area at the European and international levels. These were summarised as:

- International Labour Organisation (ILO) Convention No. 138 (1973) on the minimum age for access to employment;
- ILO Convention No. 182 (1999) on the worst forms of child labour.
- the Council of Europe's 1961 European Social Charter, which was revised in 1996
- EU Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work

The relevant Article of the European Social Charter is Article 7:

***The right of children and young persons to protection***

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

As a result of the Seminar the ETUC adopted a resolution on child labour in Europe. The ETUC demanded:

- ratification and full implementation of ILO Convention No. 138 on the minimum age for access to employment;
- ratification and full implementation of ILO Convention No. 182 on the worst forms of child labour within the shortest possible time-frame. ETUC wants all countries across Europe to ratify this Convention and adopt measures at national level, including increased workplace inspections, harsh sentences for exploiters of child labour and access to education for children;
- full implementation and transposition of the 1994 EU Directive on the protection of young people at work; and
- full implementation of the Council of Europe's revised 1996 European Social Charter.

A third country which has received attention in this regard is Bulgaria. Research by the Confederation of Independent Trade Unions in Bulgaria<sup>21</sup> found that the main factors leading to an increased use of child labour were:

1. rising poverty in the economic transition period, in particular among families with children;
2. increasing unemployment;

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<sup>21</sup> [www.eurofound.europa.eu/ewco/2007/01/BG0701059I.htm](http://www.eurofound.europa.eu/ewco/2007/01/BG0701059I.htm)

3. low standard of living among a significant proportion of Bulgarian society, with an increased number of children dropping out of school education;
4. cultural traditions and family attitudes regarding work for children as being part of their education;
5. lack of a coherent national child and family policy, and insufficient control mechanisms to reduce child labour.

Most of the children worked in the undeclared economy where minimal labour standards are not observed. Therefore, children are exposed to various risks in the workplace, including the negative health impact of chemicals and other harmful substances. Data from the 2000 national survey on child labour reveals that 2,300 children, corresponding to 1.8% of the children, suffer from work-related health problems<sup>7</sup>.

There has been some work done on this in the UK. Here we mention the subject of farm work on which there have been a number of studies. 'Farm Child UK' was a report<sup>22</sup> concerned with the welfare of children on farms. These workplaces are unique in that it is an industry located in combination as a workplace and a home.<sup>7</sup> The garden may well be the farmyard where work activity takes place involving machinery and animals. The buildings, storage areas and the content of such areas may be hazardous to the environment, to workers and particularly to children to whom it is also home and playground<sup>7</sup>.

On average, approaching a third of farms had family children on the farm. It appears from the results of some research<sup>23</sup> that the presence of children on the family farm is more likely on larger farms than smaller farms. It further identified three specific groups of children involved in agriculture i.e. family farm children, child casual employees and children as visitors to farms was found to be useful in attempting to see if there were differences in terms of involvement and therefore risk between the groups of children. Each group in practice was faced with different hazards and associated risks.

Less than half said that there was an adult nearby who can see and hear the children. Therefore, one can assume that on over 50% of farms there was not an adult that was close by that could see and hear the children. Whilst this may not be too bad a thing for the upper limit of the age group for younger children 13-15 this could be problematical.

This strong evidence that young children are helping out on farms and as such are at risk of personal injury.

### ***Women workers***

Work done on women and OHS tends to identify a number of factors for the nature of hazards for women. Firstly, occupational segregation is important as women will face the hazards that are connected to the occupations in which they predominate<sup>24</sup>; secondly, many more women work part-time in paid employment but may work longer hours than men in total if one adds the unpaid work done in and for the family.

There are, of course, general issues related to the health of women workers, which also apply to the types of work considered here. Traditionally this has focused on the physical difference in reproductive systems. In practice, because work is still generally segregated on gender lines, the hazards which women encounter are related to the occupations in which they predominate, rather than because of their gender. In addition there is also the issue of women being regarded as the home keeper which accentuates problems relating to long hours of work:

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<sup>22</sup> Farm Child UK a report on the nature and incidence of accidents and zoo noses to children under sixteen years on farms and in the countryside.

Prepared by the Institute of Rural Health for the Health and Safety Executive 2003 [www.hse.gov.uk/research/rrpdf/rr110.pdf](http://www.hse.gov.uk/research/rrpdf/rr110.pdf)

<sup>23</sup> Knowles, David. J. 'The demographics of children living and/or working on farms in Great Britain' ADAS Health & Safety Manager [www.hse.gov.uk/research/rrpdf/rr420.pdf](http://www.hse.gov.uk/research/rrpdf/rr420.pdf)

<sup>24</sup> Gender issues in safety and health at work. A review [osha.europa.eu/en/publications/reports/209](http://osha.europa.eu/en/publications/reports/209)

‘Many women suffer from excessively long hours of work and they usually have to do the predominant share of the housework as well. Special health problems can arise from this situation including stress, chronic fatigue, premature ageing and other psycho-social and health effects’.<sup>25</sup>

This is borne out by the Fourth European Working Conditions Survey 2007, which found that the traditional division of domestic responsibilities between men and women continues. Results from the survey indicate that a much higher proportion of working women than working men spend time outside work on domestic responsibilities, such as caring for children, housework or cooking. If the estimated weekly hours spent on these forms of unpaid work are combined with hours spent in paid work, a significant reversal of the conventional picture of working hours emerges. On average, men work longer hours than women in their paid jobs. When paid and unpaid hours are added together, however, it is women who work the longest number of hours.

The OSHA report on gender issues in safety and health at work<sup>26</sup> summarises the differences in OHS between women and men:

‘Even when adjustments are made for the number of hours worked, men still suffer more accidents and injuries at work than women do, whereas women report more upper limb disorders and stress. Occupational cancer is more common among men than women, but there are some occupations, such as food service and certain manufacturing industries, where women have higher rates. Asthma and allergies appear to be more common among women than men. Sources of respiratory hazards in women’s work include cleaning agents, sterilising agents and protective gloves containing latex dust used in the healthcare sector and dusts in textile and clothing manufacture. In addition, women suffer more skin diseases, for example due to working with wet hands in jobs such as catering, or from skin contact with cleaning agents or hairdressing chemicals. Men suffer more from noise-induced hearing loss than women, from exposure to noisy machinery and tools, but women in textile and food production can also be exposed to high noise levels. Women are more exposed to infectious diseases particularly in care work but also in the education sector. Men carry out more heavy lifting, but, for example, women in cleaning, catering and care work suffer injuries from heavy lifting and carrying. Women report more upper limb disorders and high incidences are found in some highly repetitive work carried out by women such as ‘light’ assembly line work and data entry work, where they have little control over the way they work. Both women and men report high levels of work-related stress; it is certainly not just a ‘women’s problem’. However, there are certain stressors to which women are more likely to be exposed because of the jobs they typically do. These include emotionally demanding work and work in low-status jobs where they have little control over the work they do. Discrimination and sexual harassment are also sources of stress that women face more than men, as well as the double burden of paid work and unpaid work in the home. Women workers have more contact with members of the public and consequently are more exposed to work-related violence’.

It is not clear whether reproductive injuries are an issue in the types of employment considered in this report. Their susceptibility to stress-related factors is considered below. Recommendations about how to integrate the gender perspective in the field of occupational safety and health are contained in Appendix 5.

There is also research that is positive about the effect of paid work on women workers. When compared to full-time housewives, those in paid work can have more favourable health outcomes. One piece of such research<sup>27</sup> concluded that ‘interventions addressed to promote women’s health should take into account the overall poor health status of housewives compared

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<sup>25</sup> Forastieiri, Valentina (2000) ‘SafeWork: Information Note on Women Workers and Gender Issues on Occupational Safety and Health’; ILO Geneva

<sup>26</sup> [osha.europa.eu/en/publications/reports/209](http://osha.europa.eu/en/publications/reports/209)

<sup>27</sup> Lucía Artazcoz, Carme Borrell, Joan Benach, Imma Cortes, Izabella Rohlf (2004) ‘Women, family demands and health: the importance of employment status and socio-economic position’ *Social Science & Medicine* 59 263–274

with female workers and the almost null negative impact of family demands in health among workers of high educational level or full-time homemakers. Although policies that favour entrance of women into the labour market can have a positive impact on women's health, they should be accompanied by interventions addressed to reduce domestic work and to better combine job and family demands for female workers taking into account the higher needs of those of low educational level, as well as by cultural changes in order to increase men's participation in domestic tasks'.

Much has been stated here about the particular hazard faced by cleaning workers. The ILO web site on gender issues of OHS<sup>28</sup> includes a list of such hazards. They include chemicals (especially for pregnant workers); musculoskeletal disorders; lone working; stress and fatigue and needle stick injuries.

There is also a gender side to risks at work which is relevant to this report. In terms of physical work risks, men are more likely than women to suffer traditional physical risks such as noise and vibrations. There are exceptions to this and ergonomic risks associated with repetitive hand or arm movements tend to be gender neutral. Certain risk, however, are more associated with female workers, particularly exposure to infectious materials and jobs involving lifting or moving people. This occurs because, at least partly, according to the Fourth European Working Conditions Survey 2007, of the occupational segregation of women, notably in the health and social work sector.<sup>29</sup>

In terms of work/life balance the European Working Conditions survey reveals that men report more dissatisfaction with their work-life balance than women. The main factors contributing to this are the volume of weekly working hours and the different ways in which working hours are organised between men and women. In general, part-time workers are twice as likely as full-time workers to have a positive level of satisfaction. There is, of course, a high level of part-time work amongst women. Even between both sexes working full-time, a higher proportion of men (24% compared to 20% of women) have a negative perception of their work-life balance.

The OSHA report cited here was published in 2003 and, at the time it stated that, although there are a number of EU Directives on gender equality, the approach of EU directives to health and safety was generally gender neutral, meaning that gender issues were not taken into account. In contrast there was, it claimed, a better coverage of directives on risks that men were more commonly exposed to, such as noise, or male dominated work such as construction. This is in contrast to the attention given to those risks which women are more commonly exposed to, such as upper limb disorders and stress.

The report also states that one area of female dominated work, i.e. paid domestic work, is excluded from OSH directives altogether. In addition many occupational safety and health standards and exposure limits to hazardous

substances are based on male populations or laboratory tests and relate more to male work areas. Also listed occupational accidents and diseases for compensation purposes provide better coverage for work-related accidents and ill-health problems that are more common among men.

The recommendations were to

- apply gender impact assessments to OSH directives, legislation, limits and standards, benchmarking, priority setting, compensation arrangements, etc.
- develop new OSH policies in a gender sensitive way.
- set up advisory groups on mainstreaming gender into OSH.
- include gender in all OSH activities.
- include OSH in equalities policy activities.
- promote the involvement of women in OSH policy setting.
- include gender issues and risks to women workers in OSH research programmes.
- promote a holistic approach to OSH that covers the work-home interface.

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<sup>28</sup> [www.ilo.org/public/english/protection/safework/gender/index.htm](http://www.ilo.org/public/english/protection/safework/gender/index.htm)

<sup>29</sup> Fourth European Working Conditions Survey, Eurofound 2007; [www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf](http://www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf)



- promote interdisciplinary cooperation

#### 4. Stress.

‘Stress is a work related disease of multicausal origin. It can be defined as a physical or psychological stimulus which produces strain or disruption of the individual’s normal physiological equilibrium. The most frequent disorders range from chronic fatigue to depression by way of insomnia, anxiety, migraine, emotional upsets, stomach ulcers, allergies, skin disorders, lumbago and rheumatic attacks, tobacco and alcohol abuse, heart attacks and even suicide’.<sup>30</sup>

An alternative, but similar, definition is ‘a pattern of emotional, cognitive, behavioural and physiological reactions to adverse and noxious aspects of work content, work organisation and work environment ... Stress is caused by poor match between us and our work, by conflicts between our roles at work and outside it, and by not having a reasonable degree of control over our own work and our own life.’<sup>31</sup>

According to the National Institute for Occupational Safety and Health,<sup>32</sup> in the USA, there are a number of work factors that lead to stress:

- Improper design of tasks, which implies heavy workload, infrequent rest breaks, long working hours and shift work, hectic and routine tasks that have no inherent meaning, not utilizing workers’ skills and there being little sense of control.
- Management style that is not transparent precludes participation of workers in decision making and results in poor organization of work and lack of family-friendly policies in the company.
- Career-related anxieties that include, among other factors, job insecurity, lack of opportunity for advancement or promotion, little recognition, as well as rapid changes for which workers are unprepared.
- Strained interpersonal relations that are usually a sign of a poor social environment, lack of support, communication and help from supervisors and co-workers.
- Conflicting and uncertain work roles: too much responsibility, “too many hats to wear” – whereby individuals’ need for role clarity varies.
- Unpleasant or dangerous work environment such as overcrowding, excessive noise and air pollution, or ergonomically inferior designed work places resulting in health problems.

The same report highlights the health conditions likely to arise as a result of prolonged exposure to stress:

- Cardiovascular Disease: Many studies suggest that psychologically demanding jobs that allow employees little control over the work process, as well as prolonged job insecurity, increase the risk of cardiovascular disease, particularly hypertension.
- Musculo-skeletal Disorders: There is evidence that job stress increases the risk of back and upper-extremity musculoskeletal disorders.
- Psychological Disorders: Prevalence of mental health problems, such as depression and burnout, is associated with job stress levels. Economic and lifestyle differences between occupations and individuals may also contribute. There is, therefore, a need to identify those individuals prone for mental disorders within those individuals who are highly stressed.
- Work-related Injuries: There is growing concern that stressful working conditions interfere with safe work practices, thus contributing to the currently estimated global total of 250 million accidents at work each year, with around 300 000 fatalities.

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<sup>30</sup> Forastieiri, Valentina (2000) ‘SafeWork: Information Note on Women Workers and Gender Issues on Occupational Safety and Health’; ILO Geneva

<sup>31</sup> ‘Guidance on work-related stress “Spice of life – or kiss of death’ Employment and Social Affairs, Health and Safety at Work, European Commission, 1999.

<sup>32</sup> World Health Organisation [www.who.int/occupational\\_health/publications/en/oehwomenanthology.pdf](http://www.who.int/occupational_health/publications/en/oehwomenanthology.pdf)

- Suicide, Cancer and Ulcers: Some studies suggest an association between stressful working conditions and these health problems. However, more research is needed to draw firm conclusions.

As mentioned elsewhere in this report the ILO Encyclopaedia of Occupational Health and Safety<sup>33</sup> highlights the OHS hazards associated with teleworking. These include occupational stress resulting from isolation. The same publication also states, in relation to domestic work, that there are psychological and stress hazards, including isolation from one's family and community; lack of paid vacation and sick or maternity leave; inadequate protection of wages; rape, physical and mental abuse; over-extended working hours; and general lack of benefits or contracts.

A 2005 report on Work Related Stress<sup>34</sup> points out that stress occurs in many different circumstances, but is particularly strong when a person's ability to control the demands of work is threatened. The report states that 'insecurity about successful performance and fear of negative consequences resulting from performance failure may evoke powerful negative emotions of anxiety, anger and irritation. The stressful experience is intensified if no help is available from colleagues or supervisors at work. Therefore, social isolation and lack of cooperation increase the risk of prolonged stress at work'. This obviously is a matter of concern with regard to teleworkers or those working at home in isolation.

The Information 'Note on Women Workers and Gender Issues on Occupational Safety and Health' published by the ILO states that one of the major causes of stress is the fear of unknown situations and lack of control over the duties to be carried out and over the organisation of work. These factors are likely to be apparent in the work of live in domestic workers, especially migrant ones. This is re-enforced by the Note when it states that the type of work that many women perform is an extension of those tasks that they traditionally carry out at home, such as teaching, nursing, social work, food production and so on. The concentration of women in these types of work, their specific working conditions and their possibility of being subject to sexual harassment and discrimination and their continuing major responsibility for family care and household work might be a reason for the prevalence of stress-related disorders in women.

Significant factors, according to the Fourth Annual Working Conditions Survey, contributing to psychological ill-health and stress may include bullying or harassment, violence or the threat of violence, as well as discrimination.<sup>35</sup> The Health and social care sector has the highest rates of reported violence and bullying and women are more likely to be subjected to this than men. The Survey shows that the proportion of workers reporting symptoms of psychosocial disorders such as sleeping problems, anxiety and irritability is almost four times greater amongst those that have experienced violence, bullying and harassment when compared to those that have not.

The OSHA has produced a study of the psychosocial issues related to stress.<sup>36</sup> This study pointed out that work-related stress is the second most common work-related health problem, after back pain, affecting 28 % of workers in the European Union. According to the report, 'stress at work often reflects problems with the psychosocial work environment'. Its consequences, according to this analysis, can have a detrimental effect on the quality of life and work: 'it might influence overall well-being, social relations and family life, or cause absence from work, early retirement, lower productivity and lower quality in service or products. Furthermore, chronic stress can be indirectly related to mental and physical ill health and eventually to death. It is scientifically supported, that chronic stress can increase the risk of heart disease and depression and that stress can weaken the immune system and thus our

<sup>33</sup> [www.ilo.org/safework\\_bookshelf/english](http://www.ilo.org/safework_bookshelf/english)

<sup>34</sup> [www.eurofound.europa.eu/ewco/reports/TN0502TR01/TN0502TR01.pdf](http://www.eurofound.europa.eu/ewco/reports/TN0502TR01/TN0502TR01.pdf)

<sup>35</sup> Fourth European Working Conditions Survey, Eurofound 2007; [www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf](http://www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf)

<sup>36</sup> 'How to tackle psychosocial issues and reduce work-related stress' [osha.europa.eu/en/publications/reports/309](http://osha.europa.eu/en/publications/reports/309)

resilience to illness. The Report, of course, is general in its application and is not specific to the contractual relationships considered here.

A study of occupational safety and health in the EU<sup>37</sup> reported the following: in 1993 a study was done, commissioned by the Belgian Federal Minister of Employment and Labour, into stress as a cause of sick leave. The research showed that “pure” stress, without any other complaint being observed, is the fourth largest cause of sick leave at 10.3%. Other important causes of sick leave were problems with the locomotor apparatus (27.5%), accidents at work and at home (17%), and infectious diseases (11.6%). Stress also plays an important role in combination with other physical or psychiatric conditions. These are estimated as being 25% of the long-term sick leave. In total, stress plays a part in one third of the cases of long-term sick leave.

In 1997 research was done by a Belgian inter-company medical service, IDEWE, into the prevalence of back disorders, absenteeism, working conditions and the psycho-social burden among 360 employees in seven homes for the elderly in Flanders. The study showed that job satisfaction, feelings of burnout, psychological unease, sick leave and back complaints were strongly related to unfavourable working conditions. The job dissatisfaction of employees with a restricted power of decision, for example, was 10 times higher than with employees who had a greater say over their work. It seems that employees with the least control over their work had sick leave rate that was 54% higher than their colleagues with high control. The work pressure did not seem determinant, but rather the combination of a lack of control. Increasing control is mainly a question of organisational approach.

Other research<sup>38</sup> has shown that the view that stress at work is a white-collar phenomenon is not correct. Causes of stress can be found in purely physical working conditions such as noise, toxic vapours, radiation hazard, or difficult body postures, etc.. It has, according to the study, long been known that shift work is an important source of stress. Job insecurity also puts people under stress. In difficult economic climates or with impending rationalisation and imminent job losses people are stressed. There are an increasing number of temporary employees and agency staff who have such job insecurity embedded into their contracts of employment. Finally, the working atmosphere plays an important role in the development of stress: lack of trust, more communication and cooperation, unhealthy rivalry or open conflict make the job harder to contend with.

### ***The Framework Agreement on work-related stress***

This was signed by the Social Partners in October 2004 and was due to be implemented within three years. It defines stress as:

‘a state, which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them’.

The Agreement distinguishes between short-term exposure to pressure and prolonged exposure, which may lead to reduced effectiveness at work and may cause ill health. The Agreement does not provide a list of potential stress indicators, but does state that identifying whether there is a problem of work-related stress may involve an analysis of factors such as work organisation and processes (working time arrangements, degree of autonomy, match between workers’ skills and job requirements, workload etc.), working conditions and environment (exposure to abusive behaviour, noise, heat, dangerous substances, etc.), communication (uncertainty about what is expected at work, employment prospects, or forthcoming change, etc.) and subjective factors (emotional and social pressures, feeling unable to cope, perceived lack of support, etc.).

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<sup>37</sup> The state of occupational safety and health in the European Union - Pilot Study, 2000 [agency.osha.eu.int/publications/reports/401/en/StateofOSH\\_Pilot\\_study.pdf](http://agency.osha.eu.int/publications/reports/401/en/StateofOSH_Pilot_study.pdf)

<sup>38</sup> Source: Chased by work. Work and stress in changing companies. Flanders Technology Foundation 1997, contained in The state of occupational safety and health in the European Union *ibid*

Measures for reducing such problems include management and communication measures such as clarifying objectives and the role of individual workers, ensuring adequate management support; training managers and workers to raise awareness and understanding of stress; provision of information and consultation in accordance with EU and national legislation.

The ETUC interpretation guide to the Agreement<sup>39</sup> states that work-related stress should not be considered as being solely a health and safety problem, but should be looked at within the whole context of work content, working environment and work organisation. It also provides a list of EU Directives relevant to the subject (contained in Appendix 3 of this report). Annex 3 of the Guide also provides a list of potential stressors, including: work content, evaluation system of the work and worker, mental load, social environment relationships, time management system and work distribution system, climate of professional incertitude, respect of personal integrity, relations between professional and personal life, and general work environment.

The implementation report<sup>40</sup>, published in 2008, showed the diversity of implementation and approach. It further stated that

‘It is also clear that individuals react differently to similar situations and at different times of their life. Work-related stress can also be caused by different factors such as work content, work organisation, work environment, poor communication, etc. This highlights the highly subjective nature of this topic regarding the sector, the company, the management and the individual. In Italy, there were lengthy discussions for instance regarding to what extent work organisation can indeed be a stress factor or not. In France, current discussions centralise on the need to tackle work-related stress from a collective point of view rather than merely from an individual point of view’.

In a UK study<sup>41</sup> 9 stressors were identified for the purposes of its research. These were poorly designed/managed workloads; poorly designed/managed work scheduling; poorly designed/managed work design; poorly designed/managed physical environment; lack of skill discretion; lack of decision authority; lack of appropriate proactive support; lack of appropriate reactive support; poorly designed/managed procedures for eliminating damaging conflict at individual/team level (bullying/ harassment).

It is worth considering, briefly, here to state that stressors can be present in many forms of work, and not just those that are considered in this report. The IES report, for example, found that, in their survey, over 80 per cent felt themselves to have experienced high work pace and intensity; over 80 per cent reported a lack of variety in their work; over half felt that they lacked decision authority over their work environment and who they work with about one-third perceived themselves as being exposed to unpredictable, long, unsociable or inflexible work schedules; a quarter said they were exposed to physical hazards such as noise and harmful substances; less than a quarter felt they were exposed to a lack of social support at work; and seven per cent reported that they had experienced bullying.

There were certain job demands, which are relevant for our purposes which were said to have a negative effect on outcomes. These included low skill discretion; low job control; and low support levels. With regard to telework there have been a number of studies mentioned elsewhere in this report that state that stress is an issue for teleworkers: ‘Risk Assessment for Teleworkers (2008)’<sup>42</sup> cited some negative aspects of telework including increased stress from feelings of isolation, reduced organisational support and problems with effective management supervision/control; a Swedish study, ‘Telework – Work Environment and Well Being’ 2006<sup>43</sup>

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<sup>39</sup> [www.etuc.org/IMG/pdf/Brochure\\_stress\\_EN-3.pdf](http://www.etuc.org/IMG/pdf/Brochure_stress_EN-3.pdf)

<sup>40</sup> [www.etuc.org/IMG/pdf/Final\\_Implementation\\_report.pdf](http://www.etuc.org/IMG/pdf/Final_Implementation_report.pdf)

<sup>41</sup> Review of existing supporting scientific knowledge to underpin standards of good practice for key work-related stressors- Phase 1; Prepared by The Institute for Employment Studies for the Health and Safety Executive 2002

<sup>42</sup> [osha.europa.eu/en/publications/e-facts/efact33](http://osha.europa.eu/en/publications/e-facts/efact33)

<sup>43</sup> ‘Telework – Work Environment and Well being: A Longitudinal Study’ (2006) European Agency for Health and Safety at Work.

looked at problems with computer equipment and support and identified that these problems could result both in an increase of workload and in various work-related disorders, such as stress and musculoskeletal diseases; 'OH&S in the Home Office' by Telework Australia<sup>44</sup> lists groups of factors that need to be taken into account to avoid OHS risks, which included psychosocial factors: the way a person reacts to stresses and issues within their lives. Manna and Holdsworth suggested a negative emotional impact of teleworking particularly in terms of such emotions as loneliness, irritability, worry and guilt, and that teleworkers experience significantly more mental health symptoms of stress than office-workers and slightly more physical health symptoms.<sup>45</sup>

Seven factors are presented in the OSHA report<sup>46</sup> on 'How to tackle psychosocial issues and reduce work-related stress' as important focus points for successful stress prevention interventions at the workplace:

1. Adequate risk analysis

A baseline should be established through risk assessment. Surveys can be part of this process, but surveys should not be undertaken unless there is a clear intention of taking timely action on the results.

2. Thorough planning and a stepwise approach

Clear aims should be set and target groups identified, as well as identifying tasks, responsibilities and allocating resources.

3. Combination of work-directed and worker-directed measures

Priority must be given to collective and organisational interventions to tackle risks at source. Worker-directed measures can complement other actions.

4. Context- specific solutions

Employees' on-the-job experience is a vital resource in identifying problems and solutions. Outside expertise may sometimes be necessary too.

5. Experienced practitioners and evidence based interventions

Only competent outside expertise should be used.

6. Social dialogue, partnership and workers' involvement

Involvement and commitment from employees, middle and senior management is crucial for every stage of an intervention.

7. Sustained prevention and top management support

Sustainable improvement is not possible unless management is ready to make changes. Risk management should become a principle of the way business is done

## 5. Insecurity.

A relevant report published by the European Agency for Safety and Health at Work<sup>47</sup> suggests that the new forms of organisation that have emerged in the shift from an industrial mass production to a knowledge intensive/service based society are varied. There has been an increase in decentralisation in organisations with a low 'human factor orientation' such as in lean production. There has also been an increase in network based organisations. Companies have retreated to their core competencies and outsourced other functions and formed chains of suppliers and sub contractors. These changing contractual relationships result in an increase in self-employment (especially those without employees); increases in part-time employment and those that work long hours; increases in temporary employment.

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<sup>44</sup> [www.teleworkaustralia.net.au/doclibrary/public/pdfs/OHS.pdf](http://www.teleworkaustralia.net.au/doclibrary/public/pdfs/OHS.pdf)

<sup>45</sup> The psychological impact of teleworking: stress, emotions and health Mann S. Holdsworth L New Technology, Work and Employment, Volume 18, Number 3, November 2003 , pp. 196-211(16)

<sup>46</sup> [Agency.osha.eu.int/publications/reports/index\\_en.htm](http://Agency.osha.eu.int/publications/reports/index_en.htm)

<sup>47</sup> 'New forms of contractual relationships and the implications for occupational health and safety' Goudswaard, Anneke (2002) European Agency for Safety and Health at Work



The speed of change has resulted in an increase in the feeling of job insecurity. Some authors have made the link between increasing job insecurity and stress.

When looking at conditions of employment we can describe two scenarios:

– The transfer of risks in the (practical) conditions of work to non permanent employees and to subcontractors.

– Segmentation of the workforce based on differences in contractual conditions of employment (working hours, job insecurity and qualifications).

Benach et al<sup>48</sup> describe three impacts of new types of employment on health. Firstly, there is strong evidence that unemployment is associated with ‘mortality and morbidity, harmful lifestyles and reduced quality of life’. They suggest that new forms of work organisation and flexibility of employment will share some of these characteristics, in relation to insecure jobs.

‘First, there is overwhelming evidence that unemployment is strongly associated with mortality and morbidity, harmful lifestyles and reduced quality of life. Since new forms of work organisation and flexible employment are likely to share some of the unfavourable characteristics of unemployment, it seems plausible

that they could also produce adverse effects on health. Thus, the experience of job insecurity has been associated with psychological ill health, while insecure jobs tend to involve high exposure to work hazards of various kinds’.

They cite one study<sup>49</sup>, for example, which showed that perceived job security was the single most important indicator of a number of psychological symptoms such as mild depression. Downsizing also has shown to be a risk to some employees and their analysis shows that there is a ‘significant linear relation between the level of downsizing and long periods of sick leave, due to muscular-skeletal disorders and trauma’. Additionally they found evidence that losing a job had serious negative health effects, even after a replacement job had been found.

Secondly, the working conditions on non-permanent workers are worse than those of permanent workers, so those in flexible employment are exposed to more hazardous and dangerous work. Temporary workers, when compared to permanent ones, are also more likely to have poor working conditions such as vibration, loud noise, hazardous products or repetitive tasks: ‘Analysis by Letourneux (1998) shows that temporary employees work more often in painful or tiring positions when compared to permanent employees (57% and 42% respectively), are more exposed to intense noise (38% and 29% respectively) and perform repetitive tasks more frequently (46% and 36% respectively). In addition, non-permanent workers have greater demands, lower control over the work process and low rewards — all of which have been associated with adverse health outcomes (Bosma *et al*, 1998)’.

Thirdly, some studies have suggested that different types of flexible employment have worse health impacts than more standard types of employment: ‘For example, at EU level, in comparison to full-time permanent workers, employees with temporary contracts were two times more likely to report job dissatisfaction and other health indicators, even after adjusting for various individual and country-level variables (Benavides and Benach, 1999; Benavides *et al*, 2000). In addition, studies at national level have begun to analyse the effects of precarious work on some health outcomes, suggesting that new types of contracts may be linked to ill health. In Spain and France, for example, temporary workers showed much higher levels of occupational accidents as compared to permanent workers (Durán *et al*, 2001; François, 1993)’. The study selected a number of health indicators, which included stress, fatigue, back ache and muscular pain, and measured these against different types of employment. Small businesses and the self-employed showed high levels in all of these indicators. In terms of economic sectors: ‘The worst health was found among agriculture, hunting, forestry and fishing (25.5% for dissatisfaction, 39.8% for fatigue, 52.3% for backache and 45.5% for muscular pains) and

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<sup>48</sup> Benach, Joan; Gimeno, David; Benavides, Fernando G. (2002) ‘Types of employment and health in the European Union’, [www.eurofound.europa.eu/pubdocs/2002/21/en/1/ef0221en.pdf](http://www.eurofound.europa.eu/pubdocs/2002/21/en/1/ef0221en.pdf)

<sup>49</sup> Dooley, D., Fielding, J. and Levi, L., ‘Health and unemployment’ *Annual Review of Public Health*, Vol. 17, 1996, pp. 449-65.

construction (46.3% for backache and 45.3% for muscular pains). Transportation and communication showed the highest level for health-related absenteeism. In contrast, financial intermediation reported low levels in most health indicators, although this sector had one of the worst levels for stress’.

In terms of countries the study found:

‘However, absenteeism in Greece and Spain was low, but very high in Finland (23.9%). High percentages of health indicators were also found in other Southern European countries. For example, in the case of job dissatisfaction, results were as follows: Spain (22.2%), Italy (20.1%), France (19.6%) and Portugal (18.1%). Besides Finland, the highest percentage of absenteeism was found in the Netherlands (20.6%). The lowest percentages of health indicators were found in Ireland: stress (13.1%), backache (11.3%), muscular pains (10.5%), low job dissatisfaction (8.1%) and fatigue (8.9%). Austria showed low percentages of health indicators: dissatisfaction (9.4%), stress (19.6%), fatigue (4.8%) and muscular pains (20.4%), but absenteeism was quite high (16.0%). Denmark showed low levels of dissatisfaction (5.1%) and fatigue (10.6%)’.

According to the OECD ‘the working conditions of the self-employed differ from those of employees in a number of ways, even after allowing for a number of differences in the types of jobs they do. Self-employed people tend to report poorer working conditions, including longer hours of work, and (unless they are employers) less training, less use of computers, and feelings of lower job security’. There is no reason to assume that this is not also the situation with the dependent self-employed.

An OSHA survey of Member States<sup>50</sup> further commented that self-employed, temporary workers and those on short term contracts were frequently discussed and commented upon by the Member States as being more at risk because of their restricted resource in particular limited access to safety and health training and information.

A major issue for health and safety protection is the length of working hours. A Eurofound survey in 2002<sup>51</sup> found that the average working week of the self-employed was 48.2 hours, 10½ hours longer per week, on average, than that of the dependent employee. While only 12% of dependent employees worked more than 50 hours per week, almost 50% of the self-employed did so. The survey data also showed that a significant proportion (16%) of the self-employed work part-time, against 21% in the case of dependent employees. There was also evidence that many self-employed persons worked part-time on various jobs or contracts, which added up to longer working hours. Over one tenth (11%) of the self-employed indicated that they have more than one job in addition to their main job as entrepreneur: only 5% of dependent employees are in this situation. The report suggested that ‘this multi-job tendency may be indicative of a flexibility that is just not possible within dependent employment; equally it may also point to a larger share of marginal employment among the self-employed and/or to the existence of ‘quasi’, or ‘false’ self-employment.

One OSHA experts forecast<sup>52</sup> stated that the new forms of employment and contracting practices (such as temporary, on-call or part-time) and the trends towards lean production and outsourcing are important issues which affect the occupational health and safety of many workers. Workers with these types of contract are more vulnerable and they ‘usually carry out the most hazardous jobs, work in poorer conditions, and often receive less (OSH) training, which increases the risk of occupational accidents. The consequences of these forms of employment may mean less training opportunities, de-skilling and a decrease in their job

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<sup>50</sup> The State of Occupational Safety and Health in the European Union – Pilot Study 2000 [osha.europa.eu/en/publications/reports/402](http://osha.europa.eu/en/publications/reports/402)

<sup>51</sup> Self-Employment: Choice or Necessity? [www.eurofound.europa.eu/pubdocs/2000/22/en/1/ef0022en.pdf](http://www.eurofound.europa.eu/pubdocs/2000/22/en/1/ef0022en.pdf)

<sup>52</sup> Expert forecast on emerging psychosocial risks related to occupational safety and health, OSHA (European Agency for Safety and Health at Work), European Risk Observatory Report, 2007. [osha.europa.eu/en/publications/reports/7807118](http://osha.europa.eu/en/publications/reports/7807118)

control'. In the context of unstable job markets, workers increasingly have feelings of insecurity which increases the levels of work-related stress and has a negative impact on the worker's health.

This useful report also contains a literature review on a number of types of precarious working, one of which concerns job insecurity. It begins by stating that

'Owing to globalisation and rising competitiveness, organisations strive to increase their effectiveness, often by means of reorganisation, outsourcing, mergers and acquisitions. As a general rule, these changes involve redundancies. In the 1980s and 1990s most developed and undeveloped countries perceived a rise in job insecurity. Surveys showed that in 1996, 44% to 79% (depending on the country) of the respondents in the EU-15 did not perceive their job as secure'.

Thus concerns about job insecurity are increasing. The analysis cites the Fourth European Working Conditions Survey as showing that 13% of workers from the EU25 considered that they might lose their job in the following six months. There was an important difference between the EU 15 and the EU10 (2004 Member States). In the former some 11% thought that they might lose their jobs, whilst the figure for the latter group was 25%. The Survey found that most European workers who considered that they were likely to lose their job in the near future were employed in hotels and restaurants (20%), as plant and machine operators and assemblers, or in the elementary occupations (19%).

Job insecurity was a greater worry for those in the private, rather than the public, sector; there was also a correlation between the level of education and feelings of insecurity and mixed results in the literature on a connection between gender and feelings of insecurity. Much of the research has been focussed on the mental and psychological health effects of insecurity and there is a concentration on the issue of stress resulting from this insecurity. The study cites an analysis by Sverke et al.<sup>53</sup> This analysis included 37 surveys carried out between 1980 and 1999 among a total of 14,888 respondents. It showed a correlation between job insecurity and poorer mental health in that the higher the level of job insecurity, the poorer the mental health.

Sverke's analysis also showed a correlation between job insecurity and physical health. The higher the level of job insecurity, then the poorer the level of physical health. High insecurity is connected with worse self-reported health (headaches and spinal aches). A Swiss study from 2002 is cited<sup>54</sup> as showing that 37% of workers 'who feared losing their job suffered serious functional disorders such as headaches, back pains and sleeping disorders, compared with 17 % of those who did not fear losing their job'.

## **6. Outsourcing.**

### ***Domestic work***

A 2005 Eurofound report on Employment in Household Services<sup>55</sup> stated that the tendency to outsource household work in recent years has led to the creation of new jobs. 'It was mainly after World War II that welfare systems began to give support to some aspects of household work (in particular, childcare and eldercare), although differences between systems developed immediately – especially between the Nordic countries (where there was important public

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<sup>53</sup> Sverke, M., Hellgren, J. and K. Näswall, 'No security: a meta-analysis and review of job insecurity and its consequences', *Journal of Occupational Health Psychology*, No 7, 2002, pp. 242–264

<sup>54</sup> R. M. Steinman, Santé psychique — stress — Bases scientifiques pour une stratégie nationale en matière de prévention du stress et de promotion de la santé psychique en Suisse (condensed), Promotion Santé Suisse, Berne and Lausanne, 2006, [www.gesundheitsfoerderung.ch/f/leistungen/psychische\\_gesundheit/psychische\\_gesundheit\\_stress/default.asp](http://www.gesundheitsfoerderung.ch/f/leistungen/psychische_gesundheit/psychische_gesundheit_stress/default.asp)

<sup>55</sup> Cancedda, Alessandra 'Employment in Household Services', 20 December, 2005, [www.eurofound.europa.eu/pubdocs/2001/13/en/1/ef0113en.pdf](http://www.eurofound.europa.eu/pubdocs/2001/13/en/1/ef0113en.pdf)

spending on childcare and eldercare almost from the beginning) and the rest of Europe. In most of the rest of Europe, childcare services were first developed as a form of social service to address the problems of the poorest and most disadvantaged families, including teenage mothers and women 'forced' to get a job, whereas in 'normal' families women with small children would stay at home to take care of them. This expectation persisted until fairly recently in most European countries. In a few countries, new childcare services linked to the spread of new educational theories emphasising their importance for the socialisation of children developed in the 1960s; however, these services were rarely designed to provide support for working women (for example, in the hours they were open').

According to this study, more affluent families in many countries domestic cleaning was already performed by non-family members. More recently there has actually been a reduction in live in positions and domestic positions that entail a regular, daily presence for long hours, whilst the employment of household help for a limited number of hours per week has spread. The most recent development has been the more widespread use of household services by families for whom it has become a necessity, as all their adult members are occupied in gainful employment.

The report further states that 'public policies have influenced – and continue to influence – the development of household services in many different ways through welfare measures, regulation of the job market, the promotion of equal opportunity, family support and so on. A major way of taking action is through funding and organising childcare and eldercare services'. 'As far as eldercare is concerned, considerable national differences in the level of provision of public residential and home help services for the elderly were found, with the Nordic countries and the southern European countries at opposite ends of the spectrum. There was no obvious 'substitution' effect between residential and home-help services, but a distinction can be made between countries with low provision of residential or home-help services, e.g. Italy, Portugal and Spain; countries with average or above-average provision of residential services but little provision of home-help services, e.g. Austria, Germany and Ireland; countries with average levels of provision of both services, e.g. Belgium, France, Sweden and the United Kingdom, with the Netherlands being highest in residential care; and countries with high levels of provision of both types of services, e.g. Denmark, Finland and Norway'.

An international study of outsourcing and new forms of technology was carried out under the name of the FLEXCOT project. It aimed to determine to what extent the new generation of information and communication technologies could be used in order to develop new flexible work practices, which would be socially more sustainable than current ones.<sup>56</sup> It identified a number of relevant types of outsourcing:

- Firms contracting with temporary work businesses to supply them with workers on a temporary basis. These workers thus have a direct relationship with one firm, but carry out work for another. There has been an increase in levels of temporary agency work in several countries in Europe over the past few years and a more liberalised regulatory approach to the phenomenon has been adopted in most countries.
- There were indications of a nascent trend for firms to use freelance workers to undertake work which at one time would have been done in-house. This relates mainly with professional workers who contract directly with the firm or indirectly through a temporary work agency, but who are engaged for a particular time-limited project. This was most advanced in publishing where some journalists are now hired on an 'as and when required' basis.
- Contracting out of work to third party contractors, either on a project basis or on a long-term basis was becoming common across most of the industries studied, including an increasing tendency to contract out activities which until recently would be seen as 'core' to the organisations operation.
- Outsourcing work which can be done cheaper elsewhere, either at home or abroad.

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<sup>56</sup> [www.ftu-namur.org/flexcot/index.html](http://www.ftu-namur.org/flexcot/index.html), [www.ftu-namur.org/fichiers/FLEXCOT-rapfinal.pdf](http://www.ftu-namur.org/fichiers/FLEXCOT-rapfinal.pdf)



– A new development associated with the transfer of routine work to third party companies, is the simultaneous transfer of the firms' own staff. We found only one example of this phenomenon in our case study firms, but found other examples through national sectoral surveys. Here the third party firm typically takes over the workforce.

According to a further study<sup>57</sup>:

‘Outsourcing is the contracting out of specific tasks, such as maintenance or production, that were originally undertaken within an organisation. Outsourcing does not simply change the legal relationship between those undertaking the task and the principal organisation. It also often entails other changes, including the organisation and timing of work tasks, in employment security and the rewards system, in control and power relationships at the work place, in the regulatory context including OHS and collective determination of employment conditions, and even in work location’.

A number of authors have tried to analyse the relationship between different contractual relationships and occupational safety and health. Quinlan et al<sup>58</sup> concluded:

The vast majority of studies (74) found a relationship between precarious employment and a negative indicator of OSH;

With regard to outsourcing and organisational restructuring/downsizing, well over 90% of the studies found a negative association with OSH.

The issue in outsourcing is the extent to which there are negative effects on the health and safety of workers to whom work is outsourced, some of whom may previously been direct employees of the outsourcing organisation. To some extent the issues here must be similar to those affecting the dependent self-employed and the independent self-employed. These issues are discussed elsewhere in this report, but can include teleworkers. As mentioned elsewhere in this report the ILO Encyclopaedia of Occupational Health and Safety<sup>59</sup> highlights the OHS hazards associated with teleworking. These include occupational stress resulting from isolation.

- indoor air quality; often no supply of fresh air
- fire hazards; electrical wiring is not designed to meet the needs of all the IT equipment
- ergonomic hazards; reliance on personal furnishings
- lighting; inadequate lighting may result in awkward body postures, eye strain and visual disturbances
- occupational stress; resulting from isolation
- injury and illness compensation; employer responsibility; sometimes linked to the shift to independent contractor

The OSHA expert forecast<sup>60</sup> stated that:

‘A growing body of research indicates that changes to work organisation associated with outsourcing adversely affect occupational safety and health (OSH) for outsourced workers as well as for those who remain at a company’. Temporary workers are more often exposed to adverse conditions in their physical work environment, such as noise, painful and tiring positions, and repetitive movements. They have also less control over working times, often work in less skilled jobs and have less insight into their work environment, mainly resulting

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<sup>57</sup> Mayhew, C and Quinlan, M, (1999) ‘The effects of outsourcing on occupational health and safety: a comparative study of factory-based workers and outworkers in the Australian clothing industry’ *International Journal of Health Services* 29(1), 83-107

<sup>58</sup> Quinlan, Michael, Mayhew, Claire, Bohle, Philip, ‘Contingent work: health and safety perspectives or the global expansion of precarious employment, work disorganisation and occupational health: a review of recent research’, Paper presented to ‘just in time employed — organisational, psychological and medical perspectives’, European Union Research Workshop, Dublin 22-23 May 2000, organised by Gunnar Aronsson and Kerstin Isaksson, National Institute of Working Life, Stockholm.

<sup>59</sup> [www.ilo.org/safework\\_bookshelf/english](http://www.ilo.org/safework_bookshelf/english)

<sup>60</sup> Expert forecast on emerging psychosocial risks related to occupational safety and health, OSHA (European Agency for Safety and Health at Work), European Risk Observatory Report, 2007. [osha.europa.eu/en/publications/reports/7807118](http://osha.europa.eu/en/publications/reports/7807118)



from a lack of training. Fewer opportunities for training and lifelong learning are specifically characteristic of non-permanent or atypical employment’.

One useful piece of research was done in Australia by Mayhew and Quinlan.<sup>61</sup> This was a study comparing factory based workers and outsourced workers in the clothing industry. In it they outlined the issue:

‘Outsourcing has also been a significant factor in the resurgence of home based work and expansion of the overlapping category of telework...nit all telework is home-based and not all home based work involves outsourcing in the legal sense. However, it is clear that growth in home based work has partly resulted from subcontracting out. Further, the legal distinction between a self-employed homemaker and one who is an employee of a subcontractor masks an often ambiguous and shifting terrain where formal differentiation may have little meaning in practice’.

According to this study there is an important gender dimension to outsourcing, with ‘women making up a significant proportion of outsourced labour’. The analysis found three sets of risk factors associated with outsourcing. These were:

(a) the economic and reward systems associated with outsourcing; this concerned competition between subcontractors and payments by results systems – both of which led to ‘corner-cutting’ in safety matters. Outsourcing often meant a shifting of work to smaller enterprises with fewer resources to devote to OHS.

(b) the presence of subcontractors often created a more complex work process and management structure which leads to disorganisation.

(c) regulations and compliance programmes usually focussed on permanent employees in larger workplaces.

The following is a table taken from this Article:

**Table 13. Risk factors associated with subcontracting/outsourcing.**

**Economic and reward factors**

Competition/underbidding of tenders  
Task work/payment by results  
Long hours  
Lack of resources (as in small business)  
Off-loading high risk activities

**Disorganisation**

Ambiguity in rules, work practices, and procedures  
Intergroup/interworker communication  
More complicated lines of management control  
Splintering of OHS management system  
Inability of outsourced workers to organise/protect themselves

***Increased likelihood of regulatory failure non capisco se va bene***

OHS laws focus on employees in large enterprises  
OHS agencies fail to develop support material  
OHS agencies fail to pursue appropriate compliance strategies  
Self-employed not covered by minimum labour standards laws  
Self-employed not covered by workers’ compensation

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<sup>61</sup> Mayhew, C and Quinlan, M, (1999) supra

With regard to OSH, the increasing number of temporarily employed workers is associated with a fragmentation of legal responsibilities, and they are under-represented in health and safety committees. Some sources indicate that personal protective equipment is made available less often to temporary workers than to permanent workers. As a consequence, fewer and fewer workers are reached by health and safety measures or receive health and safety training.

The expert forecast quotes from an Italian sample of 800 workers showing that atypical workers tended to under estimate work related risks.<sup>62</sup> This survey showed that 57.8% of atypical workers, compared to 41.4% of standard workers, thought that they were never exposed to psycho social risks. This study suggested that permanent workers have access to more training, have greater control over their work process and find more reward in their jobs; whilst non-permanent workers faced higher job insecurity, worse job conditions, higher job demands and more occupational accidents. Further evidence of the lessening of protection in certain occupational situations can be found in one authoritative study<sup>63</sup> which considered the health and safety implications of a trend towards the fragmentation of previously integrated systems of production and service delivery. This has resulted in, firstly, a reduction of employment (in the UK) in large companies and an increased growth of small and medium size enterprises; and, secondly, in 'a significant rise in the use of certain categories of contingent or non-permanent labour, notably in the form of self-employment and the utilisation of temporary employment agency staff'.

The study suggests four reasons why this de-integration process might have adverse consequences.

(a) Much of the externalisation of work activities appears to have gone to small and medium sized enterprises, which 'possess less adequate and sophisticated systems of risk management'

(b) Problems of co-ordination can arise when sub contractors and temporary staff work in close proximity to in-house staff

(c) Inter-organisational contracting can have a detrimental impact on 'channels of collective voice'

(d) Associated commercial contracts may limit organisations concerned with the supply of labour to invest in preventive health and safety measures.

The study refers to evidence from Eurostat and various British studies that found the instance of fatal and major injury accidents appeared to be significantly higher in small workplaces. Reasons for this include a lack of resources to invest in health and safety measures, the low frequency in which small businesses are inspected and limited access of staff to trade union or other forms of independent representation.

Also the co-ordination of risk management can be problematic in situations of sub-contracting and outsourcing. Studies have shown that those working for sub contractors receive less supervision and training than directly employed personnel. This study quotes as an example the investigation of a September 2001 explosion at the AZF chemical factory in Toulouse, France, in which 30 people were killed. This included 21 workers, of whom 13 had worked for sub-contractors. The investigation concluded that safety management was a critical factor in the incident and a ban was recommended of multi-tiered sub contracting on such sites.

Research evidence also shows a similar picture with regard to the management of health and safety risks of temporary workers. A British study is quoted as showing that around half the recruitment agencies surveyed did not have measures in place to show that they were fulfilling their legal obligations and that there was a lack of awareness amongst agencies and host employers that responsibility for health and safety was a shared one.

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<sup>62</sup> The reference given in the report is to Battaglini E. (ed.), *Percezione dei rischi nell'Impresa post-fordista*, IRES Istituto di Ricerche Economiche e Sociali, Rome (forthcoming – at the time).

F. Haigh and O. Mekel, 'Policy health impact assessment'

<sup>63</sup> James, Phil; Johnstone, Richard; Quinlan, Michael; and Walters, David (2007) 'Regulating Supply Chains to improve Health and Safety' *Industrial Law Journal* vol 36/2 163-187

## HEALTH AND SAFETY AND THE LAW IN THE UNITED KINGDOM

### 1. Introduction.

To understand the protection that is, or is not, offered to these categories of employees/workers in the United Kingdom, it is important to understand how statute and the common law interact in the field of occupational health and safety (OHS) protection.

#### *The Common Law System*

The United Kingdom, as its name indicates, embraces a number of jurisdictions; namely England, Scotland, Northern Ireland, and with delegation of substantial law making powers to the regions in recent years, Wales is emerging as a fourth jurisdiction. In spite of regional differences, however, the whole of the UK is regarded as having a legal system based in the common law rather than the civil law which prevails in mainland Europe and legislation on occupational health and safety which is enacted by the Parliament at Westminster applies to the whole of the UK<sup>1</sup>. The different approaches of the civil law and the common law to law making and law enforcement are significant in relation to occupational health and safety and make it somewhat difficult for the UK to implement EC directives and indeed for the EU to understand the UK's approach to compliance with EU requirements<sup>2</sup>.

The UK system of addressing occupational health and safety has a long history. It can be traced back to the beginning of the nineteenth century and clear distinctions have always been made between systems requiring organisations to operate safe systems of work in order to reduce work-related personal injury and systems for the compensation of the injured. By the 1970s both systems had become somewhat 'dated' in their approach and two major governmental enquiries were undertaken to survey the then existing law and consider whether it needed to be changed for the future<sup>3</sup>. While these reviews of the law were commissioned on the eve of the UK joining the European Communities in January 1973, both reports endorsed the common law approach. Safe systems of work are laid down in Acts of Parliament, or regulations made under the principal legislation<sup>4</sup> for the purpose of preventing work related injuries. These laws are enforced by the state. They are policed by inspectors and enforced in the criminal law courts, with fines or periods of imprisonment imposed on those found guilty of failing to comply with the law<sup>5</sup>.

It should also be noted that there is a statutory system of employment protection, much of which is set out in the Employment Rights Act 1996, which is the nearest that the UK comes to having a code of labour law. Individuals may bring claims, normally in an Employment Tribunal, if

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<sup>1</sup> However principal statutes may not apply to Northern Ireland; the laws concerned are likely to be enacted for Northern Ireland by Orders in Council.

<sup>2</sup> E.g. *The Commission of the European Communities v UK* [2007] Case C-127/05 concerning compliance with Framework Directive 89/391/EC on the Introduction of Measures to Encourage Improvements in the Health and Safety of Workers in the Workplace

<sup>3</sup> The Robens Committee published its report on *Safety and Health at Work* in 1972 (Cmnd 5034) and the *Royal Commission on Civil Liability for Personal Injury* (commonly known as the 'Pearson Commission' reported in 1978 (Cmnd. 7054-1)

<sup>4</sup> Generally the subordinate legislation takes the form of Statutory Instruments

<sup>5</sup> More often enforcement is by service of an improvement or prohibition notice requiring the recipient to either improve a situation or cease to work in a dangerous manner: no criminal offence is committed if the notice is complied with in a timely manner. In 2007/8 7715 enforcement notices are issued by HSE while 1137 offences were prosecuted *Health and Safety statistics 2007/8*( HSE)

their employer has failed to honour this legislation. Significantly employees who have sufficient continuity of service<sup>6</sup> may claim the statutory compensation if they are actually or ‘constructively’<sup>7</sup> dismissed. A worker who does not enjoy the protection of the rights in this and certain other legislation is in a relatively weak position if encountering exploitation and thus is more likely to suffer work related injury or illness as a result of factors such as overwork, poverty or stress.

A person who suffers personal injury through the wrongdoing of another may seek damages by way of compensation through the civil law and most trials take place in local circuit courts. The claimant may plead that his/her injury has been caused by the negligence of the defendant or by breach of a statutory duty. Most of the duties imposed by occupational health and safety legislation can be the subject of civil litigation and some accident prevention law, such as the regulations on working time and manual handling, are more frequently interpreted in compensation cases than in the criminal courts.

The right to sue for compensation for personal injury is in addition to income maintenance benefits which may be available to those who are not in employment due to sickness, including work-related injury; though benefits paid by the state may be deducted from awards made in compensation litigation. It needs also to be noted that those who lack a secure employment status are unlikely to have the statutory right to claim for unfair treatment which may if unchecked endanger their health and safety.

### ***Health and Safety Law***

The outcome of the report in 1972 of the Committee appointed: ‘To review the provision made for the safety and health of persons in the course of their employment ...’<sup>8</sup> was The Health and Safety at Work etc Act 1974, an enabling statute providing a new framework under which by subordinate legislation old laws could be repealed and new more appropriate ones brought into effect<sup>9</sup>. This Act remains the principal legislation governing occupational health and safety in Britain and relevant EC directives are incorporated into the national law by means of the regulation making power contained in the Act. Much of the Act was concerned with setting up a new administrative and enforcement system. It established a Health and Safety Commission ‘to do such things and make such arrangements as it considers appropriate for the general purposes’<sup>10</sup> of the occupational health and safety regime set up by the Act and a Health and Safety Executive whose role was to appoint inspectors and enforce the law. The Commission was abolished in 2008<sup>11</sup> and its work taken on board by the Executive (HSE).

It should be mentioned that a large part of the work of HSE is to provide advice and guidance to employers and workers. It publishes many books and leaflets giving specialised advice and much of this is available on its web site<sup>12</sup>. In particular it produces Codes of Practice, which if ‘approved’ by Parliament set out systems which are expected to be followed as a matter of good

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<sup>6</sup> I.e. normally at least one year with the same employer; Employment Rights Act s.108

<sup>7</sup> Constructive dismissal occurs if the employer breaks a term of the contract, notably fails to treat the employee with ‘trust and confidence’ the employee is entitled to claim the employer’s conduct constitutes a dismissal.

<sup>8</sup> Cmnd 5034 paragraph 1

<sup>9</sup> The review of UK law coincided with similar reviews in many other countries, including the USA, Australia, Norway, and a number of European States. The present writer authored a position paper ‘Occupational Health and Safety in Great Britain’, funded and published in 1980 by the EEC’s Foundation for the Improvement of Living and Working Conditions as part of a survey of contemporary developments in each of the member states..

<sup>10</sup> Section 10 of the 1974 Act

<sup>11</sup> The Legislative Reform (Health and Safety Executive) Order 2008 SI No. 2008/960

<sup>12</sup> [www.hse.gov.uk/](http://www.hse.gov.uk/)

practice<sup>13</sup>. It also produces ‘guidance’ to assist organisations to operate safely; these do not have legal standing but they do indicate the expectations of the inspectorate. It is controversial that HSE has published nothing more authoritative than guidance on work-related stress because this is one of the most common causes of work-related illness suffered by employees<sup>14</sup>.

The only substantive law contained in the Act is broad general duties whose intention was to place more responsibility on organisations to identify the safe systems needed to ensure the health and safety of persons at work and of other persons who might be put at risk by the activities of persons at work<sup>15</sup>. The first and foremost of the general duties is that imposed on employers for the protection of their employees. Section 2(1) states:

It shall be the duty of every employer to ensure so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

Section 2(2) provides examples of particular matters to which this duty extends:

(a) The provision and maintenance of plant and systems of work that are, so far as is reasonably practicable safe and without risks to health;

(b) Arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances; The provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(c) So far as is reasonably practicable as regards any place of work under the employer’s control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(d) The provision and maintenance of a working environment for his employers that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work

This section imposes on the employer a duty which is near to an absolute one to operate systems of work that will protect its employees from suffering work-related personal injury. If an employee suffers such an injury then the prosecution has to do little more to make out its case than establish that the injury was caused by working for the employer; the employer will be guilty unless it can escape liability by invoking s.40 which provides:

... it shall be for the accused to prove ... that it was ... not reasonably practicable to do more than was in fact done to satisfy the duty or requirement

The recent leading case of *R v Chargot Limited (t/a Contracts Services) and Others* [2008] UKHL demonstrates that if the employer has failed to carry out a risk assessment as required by Regulation 3 of the Management of Health and Safety at Work Regulations 1999<sup>16</sup>, it will be unlikely to be able to escape liability.<sup>17</sup>

The focus in section 2 on the relationship between employer and employee reflects the national tradition of regarding the normal employment relationship as a contractual one between an employer and an employee (described in earlier law as ‘master and servant’). The interpretation section of the Act states merely that:

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<sup>13</sup> S.17 of the Act provided that Approved Codes of Practice may be used as evidence in criminal prosecutions though it is not actually a criminal offence to fail to observe them: a defendant is entitled to bring evidence of using a different but safe system.

<sup>14</sup> See [www.hse.gov.uk/stress/standards/index.htm](http://www.hse.gov.uk/stress/standards/index.htm) for HSE’s *Management Standards for Work-Related Stress*. HSE statistics state that more working days are lost each year because of stress-related illnesses than for any other single cause. In 2007/8 13,539,000 days were lost which amounted to 0-.56 days per workers.

<sup>15</sup> Health and Safety at Work Act s.1(1)

<sup>16</sup> SI 1999/3242; Regulations made to implement the Health and Safety Framework Directive 89/391/EEC

<sup>17</sup> The case arose from the fatal accident suffered by a construction worker when in some unidentified circumstances the dumper truck he was driving turned over



‘employee’ means an individual who works under a contract of employment ... (s.53)<sup>18</sup>

The task of identifying whether a particular relationship is one between an employer and an employee has fallen to the judiciary who in the past have frequently had to address this issue when presiding over compensation litigation. In more recent times the issue has tended to arise in the context of entitlement to statutory employment protection.

Even when the Health and Safety at Work Act was passed in 1974 it was clear that much work was undertaken by persons who were not employees, but that was not considered a problem because section 3(1) of the Act imposed an, at that time novel, general duty on employers for the protection of sub-contractors and, as it happened, the general public. Section 3(1) provides: It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

Over the years many of the leading cases have been brought under this section and it has resulted in the conviction of many organisations following injuries suffered by contractors visiting their premises. Most of these cases have, however, resulted from the failure of the contracting employer to ensure that the employees of the sub-contractor have been informed as to the systems to be used to ensure safety in working while on the contractor’s site<sup>19</sup>. The most relevant one for present purposes is *R v Mara* [1987] IRLR 154 which involved the electrocution of a worker through using a defective cleaning machine. In this particular case the defective equipment belonged to the sub-contracted cleaning firm and the victim was an employee of the contractors, so it was the sub-contractors who were successfully prosecuted, but the outcome would have been the same if the victim had been a visiting cleaner injured by equipment belonging to the occupier of the premises where the accident occurred. Co-operation and co-ordination of activities where two organisations share a workplace is now specifically required by Regulation 11 of The Management of Health and Safety at Work Regulations 1999. Regulation 11(1) provides:

Where two or more employers share a workplace (whether on a temporary or a permanent basis) each such employer shall:

(a) co-operate with the other employers concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions ...

(b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions ...

(c) take all reasonable steps to inform the other employers concerned of the risks to their employees’ health and safety arising out of or in connection with the conduct by him of his undertaking.<sup>20</sup>

Case law (and the above regulation) indicate that the thrust of s.3(1) of the Act is safe systems where two or more employers are working together, normally at a shared workplace, However s.3(1) would be equally applicable where the sub-contractor is a self-employed person. Moreover s.3(2) of the Act makes it clear that the self-employed person also has a duty to himself and to others. It provides:

It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

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<sup>18</sup> This same definition is given in s.230(1) of the Employment Rights Act 1996; s.230(2) defines ‘contract of employment’ as a ‘contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing’

<sup>19</sup> E.g. *R v Swan Hunter Shipbuilders Ltd* [1981] ICR 8321; *R v Associated Octel Ltd* [1996] 1WLR 1543

<sup>20</sup> The expression ‘relevant statutory provisions’ is used by the 1974 Act to refer to regulations made under that Act.

This imposes a somewhat higher duty on the self-employed than on the employee whose duty under s7(a) is only

To take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work

Thus while the self-employed person's duty is pitched near to absolute, just as is the duty of the employer the employee's duty is much more similar to that of a duty holder in civil compensation law. In practice however the law is rarely enforced against either.

Section 4 imposes a duty 'on each person who has, to any extent, 'control of premises' made available to persons other than employees

as a place of work, or a place of work where they may use plant or substances provided for their use there.

However it is expressly stated that this duty does not apply to 'domestic premises'. S.53 provides:

'domestic premises' means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling)' This makes it clear that s.4 will not apply to homeworkers or those whom they may engage to assist them.

Finally, while rehearsing the general duties under the 1974 Act mention must be made of ss.6 and 9. Section 6 imposes on manufacturers (and others) of articles and substances for use at work to ensure that they are as safe as is reasonably practicable. In practice if the persons on whom the s.6 duty (and related regulations<sup>21</sup>) is imposed comply with their duties then s.6 relates to the duty imposed on the employer in ss.2 and 3 to ensure that such articles and substances are used safely in accordance with instructions which accompany them.

Section 9 requires that:

No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

This section may raise questions of whether an employer is by law required to 'do' or 'provide' anything to workers who are not actually its employees, but it does indicate that if it does so it may be lawfully entitled to impose a charge for use of such facilities or equipment, or at least s.9 will not make imposing such a charge unlawful.

Particularly relevant in relation to s.9 would seem to be the Personal Protective Equipment at Work Regulations 1992<sup>22</sup> which impose a duty on employers to provide suitable personal protective equipment to their employees<sup>23</sup> whereas:

Every self-employed person shall ensure that he is provided with suitable personal protective equipment where he may be exposed to a risk to his health or safety while at work ...<sup>24</sup>

Interestingly the parallel regulations on Provision and Use of Work Equipment<sup>25</sup> impose duties on employers:

to ensure that work equipment is so construed or adapted as to be suitable for the purpose for which it is used or provided<sup>26</sup>

without restricting the duty to situations in which the equipment is used by or provided to employees and Regulation 8(1) requires:

Every employer shall ensure that all persons who use work equipment have available to them adequate health and safety information and, where appropriate, written instructions pertaining to the use of the work equipment.

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<sup>21</sup> Notably Chemicals (Information and Packaging) Regulations and Supply of Machinery (Safety) Regulations as updated from time to time.

<sup>22</sup> SI 1992/2966

<sup>23</sup> Regulation 4(1)

<sup>24</sup> Regulation 4(2)

<sup>25</sup> SI 1998/2306

<sup>26</sup> Regulation 4

However, while these Regulations do not restrict the employer's duty as to the safety of the equipment to situations where it is provided for employees the initial limitation noted in section 9 of the principal Act would seem to suggest that an employer could charge for both personal protective equipment and other work equipment provided to workers who are not of the status of employees. Although, as has been noted, s.4 of the Act would not apply to equipment supplied to homeworkers both because the supplier would not be a controller of the premises where the equipment was used and because s.4 does not apply to domestic premises this would not necessarily relieve the employer of the duties in the regulations.

It is noteworthy that a major thrust of the 1974 Act was to involve employees in securing the safety of their workplaces. The intention was that employees should be empowered to appoint safety representatives who would have authority to monitor the workplace on their behalf and dialogue with the employer on health and safety issues. Initially the Safety Representatives and Safety Committees Regulations 1977<sup>27</sup> applied to enable trade unions to appoint safety representatives at workplaces where they were recognised for purposes of collective bargaining. The Health and Safety (Consultation with Employees) Regulations 1996<sup>28</sup> gave rather more limited rights to those who did not have recognised trade unions at their workplaces: the employer in such a situation had either to allow the employees to elect representatives or else speak to them individually on safety issues. With the decline in the power of trade unions, due in some part to the changed nature of work, the safety representatives system has proved less effective than the legislation intended. In any case the safety representatives system is unlikely to assist homeworkers.

### ***Relevance of the Act to this research***

Very important for this research is that s.51 of the Act provides that in respect of those parts of the Act which are relevant for our purposes the Act shall not:

... apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

While s.51 removes all those who are in domestic service in a private household, it would not exclude those employed in such care in residential homes, or those employed in homework other than domestic service.

The extent to which these other categories of homeworkers are effectively covered by the Act will depend on whether they are employees, and, even if they are employees, whether the Act and its subordinate regulations can in practice be enforced where the workplace is the employee's home.

The relationship of the homeworker to the person who provides the task to be undertaken can range from employee, through worker, to self-employed.

Whatever the employment relationship between homeworker and organisation requiring the work to be undertaken it would appear that Regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies. This Regulation requires:

- (1) Every employer shall make a suitable and sufficient assessment of
  - (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and
  - (b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking.

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions ...

However what Regulation 3 will require an employer to do in response to the assessment is likely to vary according to whether or not the person who is to undertake the task is an employee.

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<sup>27</sup> SI 1977/500

<sup>28</sup> SI 1996/1513

## 2. Homeworkers who are employees.

There are many situations in which an employee divides his/her working hours between home and workplace and it is either expressly or impliedly stated in the contract of employment that this is the case. It may be the case that the contract of employment states the number of hours/days to be worked per week and stipulates that a stated proportion of the working week will be spent working at the employee's home. In this situation the 1974 Act and the regulatory system stemming from that Act should in theory apply to the employee when at home. It is considered good practice for the employer to inspect the facilities at the employee's home before agreeing this contractual arrangement. This inspection will be for the purposes of carrying out the risk assessment which the employer has a general duty to perform under Regulation 3 of the Management of Health and Safety at Work Regulations 1999 in respect of any work undertaken on its behalf by its employees.

In a large proportion of the situations in which the employer expressly agrees, whether by formal contract or by expressly, or even implicitly, allowing its employees to work at home, the work undertaken will be performed on a computer, either by linking to the employer's server, or by merely using the employee's own computer, on line or otherwise, to research, and/or produce documents relevant to work. Therefore in these cases the principal purpose of the risk assessment should be to reassure the employer that the employee has a work station which complies with the Health and Safety (Display Screen Equipment) Regulations 1992<sup>29</sup>.

Regulation 2 of these Regulations requires:

(a) Every employer shall perform a suitable and sufficient analysis of those workstations which (regardless of who has provided them) are used for the purposes of his undertaking by users; or have been provided by him and are used for the purposes of his undertaking by operators, for the purpose of assessing the health and safety risks to which those persons are exposed in consequence of that use....

(1) The employer shall reduce the risks identified in consequence of an assessment to the lowest extent reasonably practicable.

For the purposes of the Regulations 'user' is an employee who habitually uses display screen equipment as a significant part of his normal work<sup>30</sup>.

Regulation 3 imposes on the employer a duty to ensure that the workstation complies with the requirements set out in the Schedule to the Regulations. It has to be said that the Schedule clearly has in mind the traditional desktop computer such as is still provided in most office workplaces for it covers matters which include work desk, chair, space, lighting, reflections, glare, noise, heat and interface between computer and operator. The illustrations provided in the Schedule indicate this is the expectation for a work station. In practice, however, many 'users' will work at a lap top whose principal feature is that it can be easily moved from place to place and may not normally be used at a conventional office desk with a traditional typist's chair. Indeed many employers will provide their employees with lap tops so that they can work away from the employer's premises in the expectation that these machines will be used in trains, cafés, on park benches and may be at the employee's home! Most school teachers, for example, are provided with personal lap tops.

Nevertheless paragraph 26 of the Guidance which accompanies the Regulations indicates that employers are expected to do a risk assessment in respect of the work stations of homeworkers though it does not require the employer to visit the employee's home:

If a display screen user (ie an employee) is required by his or her employer to work at home, whether or not the workstation is provided in whole or part by the employer, the risks must be assessed. An ergonomic checklist which the homeworker completes and submits to the employer for assessment is the most practicable means. The assessment will need to cover any

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<sup>29</sup> SI 1992/2792 introduced to comply with EEC directive 90/269/EEC

<sup>30</sup> Regulation 1(2)(d)

need for extra or special training and information provision for homeworkers to compensate for the absence of direct day to day employer oversight and control of their working methods.

Regulation 4 is one which the employer will be unable to ensure in the case of a homeworker:

Every employer shall so plan the activities of users at work in his undertaking that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as reduce their workload at that equipment.

The guidance suggests in paragraph 45(c):

Short, frequent breaks are more satisfactory than occasional, longer breaks: e.g. a 5-10 minute break after 5-60 minutes continuous screen and/or keyboard work is likely to be better than a 15 minute break every 2 hours;

Regulation 6 requires the employer to provide the user with adequate health and safety training in the use of any workstation upon which he may be required to work.

It is in the nature of these Regulations that in practice much must depend on the user, even when work is being conducted on the employer's premises to ensure that the workstation and the use of the computer at that workstation comply with the requirements of the Regulations. Indeed paragraph 47 of the guidance envisages some 'flexibility' while reiterating the employer's overall responsibility. It reads:

It is generally best for users to be given some discretion over where to take breaks. In such cases the employer's duty to plan activities may be satisfied by allowing an adequate degree of flexibility for the user to organise their own work. However, users given total discretion may forego breaks in favour of a shorter working day, and thus may suffer fatigue. Employers should ensure that users are given adequate information and training on the need for breaks ... Where users forego breaks despite this, it may be necessary for employers to lay down minimum requirements for the frequency of breaks while still allowing users some flexibility.

These Regulations and the accompanying guidance were introduced early in the era of computerisation of work. In the intervening years employees working on the employer's premises have in been increasingly subject to stress related illness; usually attributed to work overload. While a considerable amount of research has been done, largely commissioned by HSE, and much compensation litigation has occurred, there does not appear to be any research which expressly relates work-related stress to the use of the computer. It is however undoubtedly the case that the computer has revolutionised the nature of office work and it may be speculated that the ever changing demands of new computer programmes and new systems of recording work are a big contributor to work-related stress. Moreover computer operation is frequently carried out in the context of multi-tasking, such as conducting a telephone conversation, or switching from one software programme to another.

If these 21<sup>st</sup> century demands create stress on the employer's premises, in many cases the employee may be subjected to much higher levels of multi-tasking when working from home. Typically many homeworkers will have a young family and will be endeavouring to work on their computers while carrying out household tasks such as cooking or otherwise caring for their children.

The extent to which homeworking occurs in respect of other tasks than computer operation and domestic service and personal care is not easy to ascertain, though it was suggested that the majority of homeworkers are employed in more traditional occupations than 'teleworking'<sup>31</sup>. However the growth of computer related homeworking in the last decade may mean this is no longer the case.

The Workplace (Health, Safety and Welfare) Regulations 1992<sup>32</sup> provide guidance to the meaning of domestic premises:

'Domestic Premises' means a private dwelling. These Regulations do not apply to domestic premises, and do not therefore cover homeworkers. They do, however, apply to hotels, nursing

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<sup>31</sup> Stanworth J and Stanworth C. (1989) Hometruths about Teleworking, *Personnel Management*, November

<sup>32</sup> SI 1989/3004 to implement 89/654/EEC



homes and the like, and to parts of workplaces where ‘domestic staff’ are employed such as the kitchens of hostels or sheltered accommodation.

This situation leaves unclear whether ‘outworkers’ or other homeworkers who are not working at home as an express part of a contract of employment will qualify as employees. Case law is not consistent. The following are given as examples. The issue is often whether the claimant is entitled to compensation for unfair dismissal; an entitlement enjoyed only by employees under what is now the Employment Rights Act 1996.

*Airfix Footwear v Cope Ltd v Cope* [1978] ICR 1210

Mrs Cope was a worker to whom the company supplied parts of shoes, glue and other materials to make up at home as well as instruction and training. She was engaged to assemble the shoe parts by gluing the various materials together. Although there was no specific agreement as to where the work was to be done, in practice she worked at home and the patterns and materials were brought to her house at about 4 o’clock each afternoon. Mrs Cope worked each day, five days a week generally, until 12 o’clock and if she had not finished she completed the work the next morning.

She had been doing this work for seven years, generally five days a week, with occasional breaks when demand was low. The work had previously been done in the factory itself, but by agreement or arrangement had been sent to outworkers for this purpose. Payment was on a weekly basis. Mrs Cope was given what were called “wages” and, at the end of the year, a statement referring to the wages she had earned doing outwork.

The company told her not only how to do the work, but also that the glues were highly inflammable; and that she must ensure that there was adequate ventilation. She had no entitlement to holiday pay or sick benefit and there were no provisions as to notice of termination of employment.

The Tribunal found that Mrs Cope worked under a continuing contract of service because of the continuing relationship that had built up over the years. The EAT, in dismissing the company’s appeal, decided that the Tribunal was entitled to come to that conclusion.

*Nethermere (St Neots) Ltd v Taverna & Gardiner* [1984] ICR 612

The employers, who manufactured boys’ trousers, employed a full-time staff in their factory and a number of home workers. The claimants, who were part-time home workers, sewed trouser flaps and pockets using machines provided by the employers. There were no fixed hours for working; they were paid according to the amount they did and they were not obliged to accept any particular quantity of work. The arrangement came to an end following a dispute over holiday pay, and the applicants complained to a tribunal that they had been unfairly dismissed. On the basis that the workers were not in business of their own account the tribunal held that they were employees and the appeal tribunal upheld this decision.

***Relevance of 1974 Act to other dependent workers***

Whilst s.2 of the Health and Safety at Work Act 1974 and relevant statutory provisions in regulations made under that Act entitle employees to be provided with a safe system of work and are trained, supervised and disciplined to ensure these systems are observed, s.3 requires the employer only to ensure that its operations do not put those who are not employees at risk, and this will not normally require the employer to provide instruction and training to independent contractors, unless they could by their work put employees at risk, or there is some particular risk at the employer’s workplace which the contractor’s trade skills would not enable him/her to appreciate<sup>33</sup>. On the other hand s.3(2) imposes a duty on the self-employed person to look after him/herself and have regard for the safety of others. Regulations made under the Act are likely to place similar duties on the self-employed, though every set of regulations will need to be looked at

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<sup>33</sup> See *R v Swan Hunter Shipbuilders Ltd and Telemeter Installations Ltd* [1981] IRLR 403 (welding in confined space) and *R v Associated Octel Ltd* [1996] 1WLR 1543 (working on premises classified as a hazardous installation where a permit to work system was intended to be enforced)

individually. For example the Display Screen Regulations distinguish between employees and the self-employed stating:

‘operator’ means a self-employed person who habitually uses display screen equipment as a significant part of his normal work;<sup>34</sup>

The guidance gives further explanation of the categories of persons who will be operators by providing:

Operators i.e. self-employed contractors who would be classified as users if they were employees (eg self-employed agency ‘temps’, self-employed journalists).

The employer is required to make an analysis of workstations to assess and reduce risks (regulations 2) and it is required to ensure that the workstation meets the requirements the Schedule to the regulations for both its own employees and ‘operators’ for whom it has provided display screen equipment (regulation 3). However the employer does not have to plan the daily work routine (regulation 4) or provide training (regulation 5) for ‘operators’.

In practice the extent to which the protection granted to employees will be given to homeworkers will be limited since inspectors will not be likely to enter their homes<sup>35</sup>. In the case of other dependent workers who have a direct contractual relationship with their employer the extent to which the employer’s duties under the 1974 Act are enforced will depend largely on whether they are working with employees at premises which the inspector visits, either routinely or following an accident. It is possible that in self-employed work where there are safety representatives the representatives may take steps to ensure that these workers conduct their work safely.

### ***Statutory Protection of Workers***

Since the end of the 20<sup>th</sup> century new regulatory protection of the work force has frequently been enacted to cover a category described as ‘workers’. The impetus for this has been recognition that many who are employed to carry out work do not fall into the traditional concept of ‘employee’. The tendency of European directives to cover a wider category of labourers than in the UK are classed as employees has encouraged the introduction of this new terminology. Much of this legislation sits uneasily between the criminal and the civil law, providing for enforcement in the criminal courts, as well as allowing the worker to claim in employment tribunals for compensation. The legislation which is relevant here is that protecting wages and that relating to working time and holidays.

### ***Wages***

Protection of wages is covered in Part II (ss.13-27) of the Employment Rights Act 1996. For the purposes of this Act ‘worker’ is described in s.230(3) as:

... an individual who has entered into or works under (or where the employment has ceased, worked under)

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

This definition of ‘worker’ is adopted in other legislation which covers workers.

Under the 1996 Act a worker has the right not to suffer unauthorised deduction from wages; not to have to make payments to the employer except in the circumstances specified in s.15<sup>36</sup> and there are limits placed on the employer’s right to claim from workers in the retail sector in respect of

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<sup>34</sup> Regulation 1(2)(b)

<sup>35</sup> Apart from the express prohibition on applying the Act in the case of domestic workers there appears to be no prohibition on inspectors entering domestic premises; s.20 of the Act empowers them to ‘enter any premises’ where they ‘have reason to believe’ it is necessary to enter to enforce the Act or relevant statutory provisions.

<sup>36</sup> Principally where the payment is required by virtue of a statutory provision or the worker’s contract

stock deficiencies. There is no provision for any inspection or criminal penalties on an employer who fails to honour this legislation. Enforcement depends on the worker who has the right to claim in a n employment tribunal in respect of underpayments. In practice this right to claim is not likely to be utilised by more vulnerable workers, such as illegal immigrants if, for example their employer makes extortionate deductions in respect of accommodation.

### ***The Working Time Regulations 1998***<sup>37</sup>

These regulations were introduced with considerable reluctance in the UK to implement Council Directive 93/104/EC – the Working Time Directive. They were introduced belatedly only after the UK had lost its challenge to the European Court of Justice on the legitimacy of adopting this directive as a health and safety measure under what was at the time Article 118a of the Treaty of Rome<sup>38</sup>. Since the Directive was confirmed to be concerned with occupational health and safety the UK regulations were eventually introduced as relevant statutory provisions under the Health and Safety at Work Act 1974 with enforcement powers given to HSE. The coverage of the regulations includes:

- Maximum working week
- Length of night work
- Daily and weekly rest periods and rest breaks within the working day
- Entitlement to annual leave

There are, however, many exceptions. Notably by regulation 19 many of the provisions (particularly those relating to the maximum working week) do not apply to a worker employed as a domestic servant in a private household.

While HSE is empowered to prosecute an employer who fails to comply with the regulations<sup>39</sup> the HSE's enforcement guidelines make it clear that prosecution is not regarded as the normal way of ensuring employer compliance though they state that where the regime operated by the employer creates health and safety risks enforcement of the regulations may be coupled with prosecution under other health and safety provisions.

Inspectors may seek to avoid prosecution by serving on the employer an improvement or prohibition order, as allowed by the 1974 Act requiring the employer either to improve its systems in order to comply with the law or to prohibit it from operating in the way which is contrary to law,

The force of the Regulations is much diluted by the UK having utilised the derogation permitted by the directive and provided that a worker may opt out of the maximum working hours provision<sup>40</sup>. Regulation 4(1) reads:

Unless his employer has first obtained the worker's agreement in writing to perform such work a worker's working time, including overtime, in any reference period<sup>41</sup> which is applicable in his case shall not exceed an average of 48 hours for each seven days.

In practice an opt-out provision is often inserted in a standard form contract that the employer is required to sign at the outset of employment. Moreover the maximum working hours do not apply where, regulation 20, the worker is deemed to have 'unmeasured working time' that is to say... in relation to a worker where, on account of the specific characteristics of the activity in

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<sup>37</sup> SI 1998/1833

<sup>38</sup> *UK v EU Commission (Working Time): C-84/94*

<sup>39</sup> Regulation 29

<sup>40</sup> At the time of writing the EU is seeking to remove the power to opt out of the maximum hours but on 28<sup>th</sup> April 2009 the Department for Business, Enterprise and Regulatory Reform released a press notice 'UK protects working time opt out' announcing: 'Talks on the EU Working time Directive have broken down without agreement being reached. The collapse sees the end of the European Parliament's proposal to phase out the opt-out in three years. The UK and other countries have consistently held firm against this proposal.'

<sup>41</sup> The reference period is normally 17 weeks.

which he is engaged the duration of his working time is not measured or pre-determined or can be determined by the worker himself, as may be the case for

- (a) managing executives or other persons with autonomous decision-taking powers;
- (b) family workers; ...

A worker who has not been accorded his/her entitlements under these Regulations may complain to an employment tribunal and reported cases show that issues which have arisen in the UK have been problematic in other member states, such as whether 'on call' time should be taken as working hours when the worker (such as a junior doctor working at a hospital) is 'resting' but on call at the employer's premises, or e.g. a nurse sitting by the telephone in her own home. Calculation of the hours of care workers residing in their client's home has also proved difficult. Notably many of the cases have the appearance of being 'test cases'. There is no evidence of their being brought by the vulnerable workers who form the focus of this research.

A recent official report<sup>42</sup> provides valuable statistics concerning low paid workers. For present purposes it is noteworthy that those categories of workers surveyed included homeworkers and agency workers. Amongst the largest categories of underpaid were cleaners and those engaged in social care. The largest category by far was hairdressers. In some cases these may be engaged as self-employed merely operating from retail premises. The situation is summarised at paragraph 7 of the Report:

We have again found that minimum wage jobs are more likely to be held by women, young workers, those of retirement age, ethnic minorities, those with a disability, and those with no qualifications. They are also more likely than better-paid jobs to be part-time and temporary. Higher incidences of minimum wage jobs are found in small firms, in the private sector, in particular areas of the UK, and in certain industries and occupations.

### ***Agency workers***

The failure to give employee status to contract workers has some significance in the context of the Manual Handling Operations Regulations 1992<sup>43</sup>. These regulations place a duty on employers for the protection of employees and provide that the self-employed have a parallel duty to look after themselves.

The relevant Regulations 4 provides:

- (1) Each employer shall –
  - (a) so far as is reasonably practicable, avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured;
  - (b) where it is not reasonably practicable to avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured –
    - (i) make a suitable and sufficient assessment of all such manual handling operations to be undertaken by them ...
    - (ii) take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable.
    - (iii) take appropriate steps to provide any of those employees who are undertaking any such manual handling operations with general indications and, where it is reasonably practicable to do so, precise information on –
      - (aa) the weight of each load, and
      - (bb) the heaviest side of any load whose centre of gravity is not positioned centrally.

In spite of these regulations musculo-skeletal injuries remain one of the principal causes of loss of working days, and lifting weights is a major cause of such injuries. The relevance of referring to the regulations in the present context is that many of these injuries are caused to persons working in the caring professions by lifting patients and clients, often in unforeseen

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<sup>42</sup> National minimum wage: Low Pay Commission report 2009 [Cm 7611] URN: 09/497

<sup>43</sup> SI 1992/2793 made to implement directive 90/269/EEC

emergencies. There is little record of prosecutions being brought against employers for breach of their duties to employees under the regulations but there are a number of examples of compensation cases brought by employees against employers, where the allegation is that the injury occurred because the employer was in breach of statutory duty. Such an action would fail if the injured person were not an employee.

The implementation of the EC's Agency Workers Directive may change this status of the agency worker. In the meanwhile employment agencies are regulated by the Conduct of Employment Agencies and Employment Business Regulations 2003<sup>44</sup>. These Regulations purport to provide some protection to the work-seeker; for example the agency is required to find out whether the prospective hirer about any known occupational health and safety risks and the steps taken to control them. However they fail to clarify the contractual status of the job seeker.

### ***Statutory restrictions on recruitment***

Since 1<sup>st</sup> May 2004 UK employers must require every potential recruit to produce certain documents and check that the applicant is the rightful holder of the documents presented. If the employer has done this it will have a statutory defence against conviction for employing an illegal worker.

The potential recruit has to provide either one of the original documents included in List 1 or two of the original documents in List 2. The principal document in List 1 is a relevant passport. The principal document in List 2 is a document evidencing the applicant's National Insurance Number and name: this must be offered in conjunction with evidence of UK nationality. The Home Office now has a special UK Border Agency to control migration into the UK, under which employers have to apply for a licence to employ migrant workers; the system will give priority to EU applicants and requires employers to demonstrate a need to recruit from further afield<sup>45</sup>. Local enforcement teams have the power to publish the names of employers breaking the immigration rules. Nevertheless migrant workers still contrive to avoid the Border Agency and they and their employers have an interest in concealing their operations. The result is that such workers may be exposed to unlawful risks and have no power to secure better terms of employment. Following the death of 24 cockle workers in 2004, as a result of being caught by an incoming tide, a Gangmasters Licensing Authority was established<sup>46</sup> but this Act is primarily directed against seasonal work particularly in agriculture.

### ***Compensation Law***

In the UK civil actions for damages for compensation may be brought in the branch of law known as tort by persons who have suffered personal injury due to the conduct of another person. The operation of this law, which had been described as a 'Forensic Lottery'<sup>47</sup> was the subject of a Royal Commission Report<sup>48</sup> in the 1970s but concluded that there should be no change in the basis of liability in tort for work injury<sup>49</sup>.

This system of compensation enables an injured claimant to bring a claim alleging the defendant has caused the injury by negligent conduct and/or breach of statutory duty. For more than 100 years the law has recognised that an employer has a duty to take reasonable care not to cause injury to its employees<sup>50</sup>, and following the leading case of *Donoghue v Stevenson* [1932] AC

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<sup>44</sup> SI 2003/3319

<sup>45</sup> [www.bia.homeoffice.gov.uk/](http://www.bia.homeoffice.gov.uk/)

<sup>46</sup> Gangmasters Licensing Act 2004 – a gangmaster is a person who supplies work

<sup>47</sup> Ison, T. *The Forensic Lottery: A critique on tort liability as a system of personal injury compensation* (1967) Staples Press

<sup>48</sup> Cmnd 7054

<sup>49</sup> Recommendation 95 (paragraph 922 of the Report).

<sup>50</sup> E.g. *Smith v Baker* [1891] AC 325



562<sup>51</sup> the defendant's duty of care was extended so that it is now owed to anyone who may be deemed the defendant's 'neighbour'. In the original case Lord Atkin (one of the Law Lords described a neighbour as:

Persons who are so closely and directly affected by my act that I ought to reasonably have them in contemplation as being so affected when I am directing my mind to the acts of omissions which are called in question.

The development of case law in the intervening years has produced the situation where an employer owes a duty of care to all those who work for it, whether employees, workers, or self-employed, but the factual content of the duty is likely to be less where the worker is not an employee. In this branch of the law, as under the Health and Safety at Work Act 1974 (whose general duties are often compared with this branch of the civil law) the self-employed person will be expected to need less instruction and training to enable him to look after himself. Breach of any of the regulations made under the Health and Safety at Work Act 1974 may be used to found an action for compensation to a person injured by the breach.<sup>52</sup> However courts interpret the statutory duties very tightly, that the claimant has to show that he is a person to whom the duty was owed, the defendant owed that duty, the defendant broke the duty and the breach caused the alleged injury. As has been noted the majority of the regulations are for the protection of employees and workers who are not of that status will therefore not be able to rely on them.

### ***Insurance***

Employers are required to carry insurance cover for their liability for injuries to employees<sup>53</sup> but there is no such obligation to carry insurance for workers who are not employees. Responsible employers will carry 'public liability' insurance that will meet their responsibilities to both other workers and the general public. Irresponsible workers may not carry any insurance and enforcement of the legal requirement for employers' liability insurance depends on the alertness of the HSE inspector in detecting the failure to insure. For employees the insurance company may settle a claim out of court. For less fortunate workers litigation is a lengthy and expensive operation. Those who are trade union members may be supported in litigation by their union. Nowadays there are legal practitioners who may fight a claim on a 'no win no fee' basis, but this kind of litigation clearly involves risks for both sides. At the end of a successful court hearing the claimant who wins his case will be likely to be awarded 'costs', but these will be calculated by the court and may not cover the expenditure actually incurred. Conversely if the claimant loses the case there is the risk that the defendant may be awarded its costs. An award will cover both loss of income and a sum for pain and suffering and loss of facility. However the award which the claimant receives will be reduced as the Administration of Justice Act 1982 section 5 states:

Any saving to the injured person which is attributable to his maintenance wholly or partly at public expense in a hospital, nursing home or other institution shall be set off against any income lost by him as a result of his injuries. Similarly the Social Security Administration Act 1992 s.82 requires the 'compensator' to deduct from the compensation payment and pay to the State a sum equivalent to the social security benefits which the claimant has received, or is likely to receive, as a result of the injury. The path to the courts to recover damages for work related injury is not one which many dependent workers will be likely to tread.

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<sup>51</sup> Actually a product liability case concerning a manufacturer's liability to the ultimate consumer

<sup>52</sup> S.47 of the Act provides that the general duties may not be used to found an action.

<sup>53</sup> Employers' Liability (Compulsory Insurance) Act 1969

### *Domestic workers*

There is an issue with definition and statistics relating to migrant domestic workers and abuse. Parliament's Joint Committee on Human Rights reported<sup>54</sup> that

'Labour exploitation takes place across a range of sectors, specifically agriculture, construction, contract cleaning, domestic work and the care sector. The Chinese cockle-pickers who died at Morecambe Bay provide a vivid and tragic illustration of this phenomenon. The quality of information regarding trafficking of persons into the UK for labour exploitation is even less adequate than that relating to trafficking for sexual purposes'.

Bridget Anderson<sup>55</sup> reports a case study of United Workers Association (UWA), a migrant domestic workers' group based in London. It illustrates how reproductive labour is increasingly globalised. Unlike other community groups in the UK this group is organised around employment and immigration status rather than nationalities. However, Filipino workers make the majority of the membership. Their plight as migrant domestic workers in the UK came first came to light in 1984 when there was noticeable pattern of recurrent problems from Filipino migrant workers who sought advice from the Commission for Filipino Migrant Workers (CFMW). The problems included no passport, unpaid wages, no belongings and disturbing reports of brutal conditions. They had entered the UK under special immigration concession that allowed wealthy employers to bring their domestic workers with them to the UK.

Some useful information is provided by Kalayaan, which is a UK NGO established in 1987 to provide advice, advocacy and support services in the UK for migrant domestic workers. The migrant domestic workers that they assist are people who have entered the UK legally with an employer on a domestic worker visa to work in a private household.

According to its website<sup>56</sup>, Kalayaan is the only organisation in the UK providing support services to migrant domestic workers. It works with all migrant domestic workers regardless of nationality, gender, physical ability, religion or age. Kalayaan registers approximately 350 new migrant domestic workers each year. It further states that 'the isolated, dependant and unregulated nature of working in private household, combined with gender-based and racial discrimination means that domestic workers are vulnerable to exploitative practices. They can face physical, psychological and sexual abuse, discrimination, low pay and long hours. Employers often use passport retention as a means of control. Migrant domestic workers are often unfamiliar with the UK system and unsure of their rights in this country. Often they speak little or no English and made vulnerable by their dependence on one employer for information about their status in the UK, their job, their housing and their immigration status'.

The services that it provides are:

- Advice on immigration and employment.
- Support in retrieving passports from employers.
- Training in accessing healthcare and mainstream services.
- English for speakers of other languages (ESOL) courses.
- Support with reading and writing letters or forms.
- Practical emergency assistance to clients who have recently left abusive employers.
- Social space where clients can come and meet friends, have tea or coffee and pick up mail.
- Referral or signpost to a relevant service

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<sup>54</sup> House of Lords and House of Commons Joint Committee on Human Rights 'Human trafficking' Twenty-sixth Report of Session 2005–06 Volume I HL Paper 245–I HC 1127–I Published on 13 October 2006

<sup>55</sup> Bridget Anderson "Different roots in common ground: transnationalism and migrant domestic workers in London" *Journal of Ethnic and Migration Studies*, vol. 27, No. 4: 673–683 October 2001

<sup>56</sup> [www.kalayaan.org.uk](http://www.kalayaan.org.uk)

In 2008 it produced a report, with Oxfam, called ‘The New Bonded Labour’.<sup>57</sup> The theme of the report is that the UK Government’s proposed changes to the visa system would have a detrimental effect on migrant domestic workers. The report is outlined here in some detail because of its importance to this document.

### 1. Background

Every year some 17,000 visas are granted to domestic workers from non-EU countries to accompany their employers to the UK. Prior to 1998 such workers were given leave to enter as a visitor or a family member, or given a stamp in their passport ‘to work with...’ Thus they were not formally recognised as workers and consequently more vulnerable to exploitation. In 1998 the uK Government introduced new policies to protect this category of worker and the ‘domestic work visa’. This gave them the protection of UK employment law and allowed them to change employer.

The visa can be obtained, according to this report, provided that the domestic worker has spent at least one year in the employment of the person(s) with whom they are entering the UK, and they must be between 18 and 65 years of age. The employer must provide a written statement of the terms of employment of the domestic worker, and a written undertaking that the employee will be able to maintain and accommodate herself without recourse to public funds. This visa can be renewed every year, as long as they remain in continuous full-time employment in a private household for the duration of their stay in the UK. After five years in the UK, and having demonstrated knowledge of life in the UK and Citizenship, the migrant domestic workers are allowed to apply for Indefinite Leave to Remain, and can settle in the country. Most importantly, they are allowed to change employer in the case of abuse or exploitation without forfeiting their leave to remain.

The report states that ‘the majority of domestic workers are women. Working within the private sphere of the household, they remain a vulnerable migrant group. Instances of psychological and physical abuse are commonplace’.

The Government was proposing to change this system and eliminating the domestic work visa. Kalayaan believed that this would return such workers to the level of abuse that existed before 1998.

As shown in Table UK3, over 85,000 domestic worker visas have been issued in the past five years; some of these applications might be from the same individuals re-entering the country several times. Initially domestic worker visas are usually given for a period of six months or a year. In order to remain in the UK, people on the domestic worker visa must therefore renew their visa before it expires; and thereafter every year, until they have been in the UK for five years.

**Table UK 1. Domestic worker visas issued for entry into the UK from 2002-2006.**

Period	Domestic worker (diplomatic)	Domestic worker (other)	Domestic worker (visitor)	Domestic worker	Total
2002	Estimate based on average for following 4 years				17,361
2003	228	989	15,977		17,194
2004	223	1,080	15,598		16,901

<sup>57</sup> Vanina Wittenburg, with contributions from Nivedita Niyogi and Kate Roberts (2008) ‘The New Bonded Labour? The impact of proposed changes to the UK immigration system on migrant domestic workers’ Oxfam and Kalayaan

2005	235	1,389	15,519	17,143
2006	324	1,615	16,267	18,206
2002 to 2006				86,805

Domestic workers do a variety of different tasks, sometimes simultaneously. Their roles include housekeeper, nanny, caregiver, driver, gardener, dog-walker, and cook. One of the major tasks is care work within the household, both for children and elderly people. This, according to the report, is a large component of the jobs of such workers in the UK.

There were a number of nationalities of migrant domestic workers identified by Kalayaan, but four predominate. In 2006, out of the 312 migrant domestic workers registered by Kalayaan who gave information on their nationality, 38 per cent were Indian; 30 per cent, Filipino; 14 per cent, Sri Lankan; and a further seven per cent were Indonesian. The majority of employers came from the Middle East, making up 59% of the total. The next dominant group came from India with 21%.

The report contained a case study which represented some of the problems with which such workers have to deal:

#### *Case study 1*

‘Ramani is 40 and comes from India. She has been a domestic worker for almost ten years, and worked in Singapore and India before arriving in the UK in 2005. Ramani was psychologically abused by her first employer in the UK, who told her ‘we have the money, we have the power; you have no rights’. This exemplifies the kind of power employers have over domestic workers. Ramani had no idea what her rights were when she first arrived in the UK. So she believed her employer and her threats. She was told, for example, that if she left the house she would be kidnapped and raped. She suffered serious racial abuse. She was frequently threatened with physical violence, and was never paid the £270 a week she was promised. After less than four months with this employer, Ramani ran away, only to find a second employer who also abused her psychologically and shouted at her constantly. The employer’s husband sexually molested her at night, coming into her bedroom which did not have a lock. She was promised £300 a week. But she was not paid regularly and is still owed a large sum of money. Ramani tolerated it for five months, so she could obtain a recommendation letter and renew her visa. Her third employer treated her better, but she was still overworked and underpaid as she often had 24 hour shift being a carer for a woman with Alzheimer’s disease. Ramani must continue to work. ‘Employers are bad, but too many mouths [are] dependent on me’, she says.’ There are examples of exploitation given elsewhere in this report, but Kalayaan gives the following disturbing statistics of abuse from the people that it has helped (Table UK4):

**Table UK2. Conditions of work for MDWs registered by Kalayaan in 2006\***

<b>Conditions of work 2006</b>	<b>%</b>
Physical abuse	26
Psychological abuse	72
Sexual abuse	10
No own room	61
No own bed	43
No regular meals	41
No meal breaks	70
No time off	70
Not allowed out of the house	62

The report then examines these conditions more closely:

*Physical abuse* - the level of physical abuse reported by migrant domestic workers coming to Kalayaan is, according to their report, shocking – ‘Sometimes this would happen regularly. Or else they would be beaten as a punishment for a small mistake such as burning food, or washing clothes in a way their employer would deem inappropriate. Kalayaan also receives reports of physical abuse in response to the worker asking for entitlements such as their salary owed to them. Another commonly reported type of physical abuse is that of employers burning workers’ hands on the stove, or with cooking oil, as punishment for mistakes in cooking’.

*Psychological abuse* - psychological abuse, including shouting, insults, in particular of a racist nature, and threats to the worker or the worker’s family are, according to Kalayaan, highly prevalent among migrant domestic workers. A number of workers interviewed stated that they were constantly shouted at for not working properly, even when they were doing so, for example:

...she’s shouting ...]someday when she come home she ask ‘you do this?’ and I say ‘Yes I did’ ‘Don’t look like you did it’

Racist insults and name-calling are also a widespread problem recalled by the interviewees when workers and the employers are of different nationalities:

‘Like they call you stupid or they calling you, you know like animals, like they told you: ‘No brain’. [the employer was] Screaming like ‘Indian stupid, poor people’, like this, bad bad talking.’ Such treatment is, of course, illegal under UK labour law, but is unlikely to be reported.

*Sexual abuse* - workers living in their employers’ homes are often unable to avoid sexual abuse because they do not have their own room, or if they do, they cannot lock the door. ‘Sexual abuse then becomes another tool of control over the domestic worker. Some male employers may indeed expect their domestic worker to be sexually available to them. Migrant domestic workers may not be able to prevent sexual harassment, as they are tied to their employer in every aspect of their lives and would risk losing their job if they reacted’.

*Living and working conditions* – food is an issue with over 40% of workers interviewed by Kalayaan stating that they were not given enough. Similarly some 40% stated that they had no bed of their own. ‘Working hours are particularly long, with daily breaks, days off, and holidays being an unusual occurrence. Workers registered by Kalayaan in 2006 stated that the average duration of their workday was 16.5 hours, with over 41 per cent of MDWs working between 16 and 20 hours a day. Moreover, 70 per cent of workers registered did not have any time off during the week. Paid holidays were also a rarity, a very low number of workers interviewed having had a paid holiday since being in the UK.

*Passport retention* - in 2006, 34 per cent of workers registering with Kalayaan reported that their employers still had their passports. ‘Without a passport, any migrant worker is vulnerable, as it is their only form of identification and confirmation that they can legally be in the UK.

An area of concern also was the lack of knowledge of many organisations of the plight of domestic workers and their rights. A further case study from the Kalayaan report highlights this issue:

### **Case study 2**

‘Divia is a 26 year-old migrant domestic worker from India. She and her employer arrived in the UK from Kuwait in May 2000. This employer was a relative of her previous employer in Kuwait. She was forced to sleep on a stone floor in the store room. She was given so little food her sight started to fail and she was continually shouted at and insulted. After six months, Divia



ran away from her employer, leaving her passport behind, not knowing that her visa was about to expire. In fact, Divia was never informed about her visa, since the employer applied for it for her and she never had an interview at a UK mission abroad. Divia believes her employer purposefully ‘forgot’ to renew her visa.

When she first ran away, Divia went to the police for help. But they could not understand her because her English was not very good and sent her away. Her embassy just told her to get a new passport. But they did not try to find out what her visa situation was. Divia did not learn of her irregular immigration status until 2005. Since she ran away from her employer, she has been working for free in people's house, sometimes for a week, sometimes for a month, in exchange for accommodation and food. She has worked for so many people she has lost count. She says some were nice and some were not. She has been beaten, exploited and sexually abused in jobs but cannot take any action against these employers due to her undocumented immigration status. When she cannot find anyone to stay with, Divia sleeps on benches or in parks’.

The report then outlined the existing protection offered to migrant domestic workers:

*Immigration rights* – the entitlement that allows such workers to change employers without being in breach of the immigration rules is seen as vital protection. Without being able to leave an abusive employer, migrant workers cannot challenge the ill treatment. It is important, according to Kalayaan, that the act of leaving an employer does not jeopardise a worker’s immigration status, because anyone in breach of that status has no access to any protection under employment law.

*The right to decent working conditions and fair pay* – being recognised as a worker is important in order to access employment rights. These rights include the national minimum wage, statutory holidays and sick pay, the right to a contract and wage slips and a notice period. It also means that the migrant worker can go to an employment tribunal to claim their entitlement. In order to exercise these rights a worker would probably have needed to leave the home of the current employer; and it would not be possible to enforce these rights if the migrant worker’s immigration status was dependent upon staying with the employer.

*The right to health care* – migrant workers are entitled to health care as being ‘ordinarily’ resident in the United Kingdom. Despite this they have, according to the Kalayaan report, difficulties registering with the health service. Matters are made worse when the employer has kept the passport, so they are unable to provide evidence of their identification.

The rest of the report concerns arguments against changing the system of awarding a domestic worker visa which had been proposed.

The UK Border Agency has on its website the current position for migrant domestic workers and visas (updated March 2009).<sup>58</sup> In order to come to the United Kingdom as a domestic worker you need, according to this guidance, to satisfy the following criteria:

- be aged between 18 and 65; and
- have been working as a domestic worker in the same house as your employer for at least one year immediately before your application; or
- have been working for at least one year immediately before your application, in a household that your employer uses on a regular basis
- and there is evidence of a connection between you and the employer; and
- intend to travel to the United Kingdom with your employer, your employer's spouse, or civil partner or your employers child who is under 18; and
- intend to work full-time as a domestic worker in the house that your employer is living in; or
- intend to work full-time as a domestic worker in a household that the employer uses regularly and you can show that there is a clear connection between you and the employer; and
- not intend to work in the United Kingdom except as a domestic worker; and
- you can support yourself and any dependants without the need for public funds; and
- hold a valid entry clearance for entry under the domestic workers category.

The guidance further states that

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<sup>58</sup> [www.bia.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/](http://www.bia.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/)

‘You will only be given permission to stay in the United Kingdom for a fixed period of time - at the end of this period you will need to either return home or apply to extend your stay.

The domestic workers category can be a short- or long-term immigration category. We will only extend your visa if you are still employed as a domestic worker when your old visa expires. You are allowed to change employers while you are in the United Kingdom, but you must still be employed as a domestic worker. If you change employers, you must notify us, and you will not be allowed to change into a different type of employment.

Once you have been in the United Kingdom for five years as a domestic worker, you can apply to stay here permanently’.

The following material derives from the website of the Health and safety Executive (HSE).

#### 1. Protection for domestic servants – guidance on legal protection

‘Section 51 of the Health and Safety at Work Act (HSWA) states that Part 1 of the Act does not apply in relation to the employment of domestic servants in a private household (see part on the legal situation). HSE cannot therefore enforce the provisions of HSWA against an employer insofar as those provisions relate to the employment of a domestic servant, nor against the domestic servant him/herself.

There is no case law that provides definitive guidance on when an employee is a ‘domestic servant’. The following factors may, however, be considered in deciding whether section 51 might apply:

- Whether the employee works for the upkeep and maintenance of a domestic establishment and for the convenience and comfort of those living there. It has also been suggested that domestic service might involve quite skilled roles and might not be limited to “housework”.
- The employee may be more likely to be a domestic servant if the employer is a member of the household or a private individual rather than, for example, a local authority or agency. The position might be complicated where the worker is employed directly by a private individual using money provided by a local authority. What duties exist will depend to a large extent on the facts of the case;
- The work must be done at a private household, as opposed to premises such as a nursing or residential home. However, domestic servants need not live in the household where they work and may be employed in more than one household;
- Section 51 will not apply (and Part 1 HSWA therefore will) in relation to any additional work carried out by the employee that falls outside the ambit of domestic service in a private household.

### **3. Telework.**

There is a Telework Association in the UK, which has a limited website at <http://www.tca.org.uk/home>. It publishes a Telework Handbook, but this was not available for this project.

#### **Articles**

O’Hara<sup>59</sup> carried out a scoping study whose aim was to identify key issues for research into the health and safety of homeworkers in the UK. Its main findings were that there were approximately 650,000 homeworkers in the UK accounting for 2.3% of the employed workforce. This has been an increasing figure. Women constitute the majority of those mainly working at home, with men working at home less frequently. It is not clear how this is changing, if at all.

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<sup>59</sup> O’Hara, Dr Rachel (2002) ‘Scoping exercise for research into the health and safety of homeworkers’ Health and Safety Laboratory

Baruch<sup>60</sup> explores how teleworking is perceived by employees and highlights its possible benefits and pitfalls. Interviews with sixty-two teleworkers in five UK organisations provide a comprehensive view on this mode of work. In particular the study examines teleworking impact on effectiveness, quality of working life, and family life. There are various reasons for employers to introduce or extend teleworking, but cost-effectiveness serves as the main impetus, and reduction of overhead costs seems to be a primary motivation. In fact, in some aspects, teleworking just shifts certain costs onto the employee (use of space, electricity and gas bills, etc.). The study identified five impacts of teleworking for the individual worker: identity, skills, context, role, demand and role outcomes. Teleworking alters the relationship between work and family life, and affects stress and occupational health.

Ward and Shabha<sup>61</sup> assess the social and psychological impact of telework in small to medium size businesses in Birmingham, UK between 1996 and 1998. The study found that teleworkers may lose the ability to exchange ideas, feel lack of companionship, isolation and a sense of belonging. It also found that the prevailing view of many managers is that people with high need for social interaction are simply not suitable for teleworking. This would mean that organisations could not utilise a significant number of their existing work force. The study suggests that the ideal approach would be to create a flexible mix of home-based and office-based work. Social factors at work need to be retained in order to meet the basic human need for companionship, otherwise social isolation might be experienced. Stress in the teleworker is more difficult to identify. While work related stress may be reduced by teleworking, domestic stress may worsen by interfering with family life and space. The findings also suggest the home environment is not a suitable place for work. The study identified advantages and disadvantages of teleworking. Advantages include increased productivity, effectiveness, retention as well as reduced stress, absenteeism and lower mileage. Disadvantages are isolation, loss of team feedback, difficulties with providing training, control and support.

Done<sup>62</sup> looks at options for employees working from home. It is suggested that the health and safety of the worker should be easily and effectively managed by carrying out an assessment of the proposed working area to “accident-proof” the employee's new working space, particularly for electrical safety. The article discusses homeworking agreements, their voluntary nature, together with a trial period and regular reviews. Employers need to put in place procedure for measuring productivity with regular reviews to ensure that satisfactory work is done and employees are happy with the arrangements.

Fidderman<sup>63</sup> suggests that the benefits derived from teleworking can mean that ‘homeworkers are likely to behave more safely than they would at their employer's premises; and employers are more likely to have thought through the health and safety aspects of the working arrangements precisely because they are something new rather than just another day at the office’. The article suggests that advice from Health and Safety Executive (HSE) and the institution of Safety and Health (IOSH) have remain unchanged, although there have been changes in emphasis. Successful homeworking depends on trust as the most difficult barrier for employers is in exercising control away from the office. The article identifies three main categories of hazards associated with homeworking:

- those that would be found in any office-based workplace, such as badly configured chairs
- those that are common in any office but are made worse because workers are away from the employer's control and premises, for example working without proper breaks

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<sup>60</sup> Yehuda Baruch, Teleworking: Benefits and Pitfalls as perceived by professionals and managers, *New Technology, Work and Employment* 15(1)

<sup>61</sup> Neal Ward and Ghasson Shabha “Teleworking: An assessment of socio-psychological factors” *Facilities*, Vol 19, Issue 1 /2, 61-71

<sup>62</sup> Danny Done ‘Doing Your Homework’, *Payroll and Human Resources*, June 2008, 47

<sup>63</sup> Howard Fidderman ‘House of Hazards?’ *The Journal of the Working Environment Tolley's Health and Safety at Work*, February 2008, 18

- those linked to the home environment, stemming from isolation, the presence of children and pets, and precisely because the home is used as a home.

Maruyama et al<sup>64</sup> highlight the conflicting views about teleworkers. One broad view is that is that telework enables teleworkers to balance work and family needs effectively. The alternative is that teleworkers can experience an inability to cope with needs from the two different domains and cannot play an effective role in either domain, leading to strain. The study shows that overall the majority of teleworkers (74%) report positive work-life balance. However, 60% agreed strongly that they worked longer hours. The paper made a further contribution to existing studies by identifying key factors that affect Work Life Balance reported by the sampled teleworkers, including flexible use of working hours, being based in a home environment, and teleworkers' age. Among these factors, it identified the time flexibility as the most powerful predictor of positive WLB reported by teleworkers.

Mann and Holdsworth<sup>65</sup> examine the psychological impact of teleworking compared to office-based work. Results suggest a negative emotional impact of teleworking, particularly in terms of such emotions as loneliness, irritability, worry and guilt, and that teleworkers experience significantly more mental health symptoms of stress than office-workers and slightly more physical health symptoms.

### ***Health and Safety Executive***

The following material comes from the UK Health and Safety Executive (HSE) website – [www.hse.gov.uk](http://www.hse.gov.uk)

A report for the HSE<sup>66</sup> in 2006 revealed that some 8% of the working population are teleworkers (3.1 million people). This compares to 4% in 1997. This figure is expected to continue to increase in the future. From 1997 to 2002 the number of teleworkers increased by about 13% per year compared to an average growth rate for all employees of 1.6%. It is suggested that by 2015 or so, 70% to 80% of those employed could be, at least partially, working from an outside or remote location. The upward trend in the proportion of the workforce who are teleworkers has been driven mainly by an increase in people teleworking in different places with home as a base.

Overall, teleworkers are most likely to be men (65%), although those who work at home are more likely to be female and to work part-time. The majority are employed in managerial, professional, technical or skilled trades occupations. Mobile teleworkers, i.e. those who use home as a base, are more likely to be men, the predominant reason being that more men than women are self-employed. Most teleworkers, according to the HSE report, are self-employed (62%). Teleworking is also more common, and is growing at a faster rate, among older workers than among younger age groups. The teleworking rate among workers aged 50 or over increased from 5 per cent in spring 1997 to 12% in spring 2005. Teleworking is much less common in the youngest age group; only 2 per cent of workers aged 16-24 are teleworkers. A number of reasons can be speculated for increased teleworking with age, including the possibility that increased flexibility is afforded to employees as they progress through their careers. In addition, rates of self-employment are higher among older workers.

The HSE also has guidance on the employment of homeworkers<sup>67</sup> (see below) and cites one research project on the effectiveness of this guidance. The research project report had the following key findings, which are of relevance. There are examples of good practice in

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<sup>64</sup> Takao Maruyama, Peter G Hopkinson and Peter W James, A multivariate analysis of work-life balance outcomes from a large scale telework programme, *New Technology, Work and Employment* 24:1

<sup>65</sup> Mann S. Holdsworth L. "The psychological impact of teleworking: stress, emotions and health" *New Technology, Work and Employment*, Volume 18, Number 3, November 2003 , pp. 196-211(16)

<sup>66</sup> Zara Whysall and Peter Ellwood (2006) HSE Horizon Scanning Intelligence Group Demographic study – Report

<sup>67</sup> O'Hara, Rachel; Williamson, Julian; Collins, Alison; Higginson, Danny (2004) Health and safety of homeworkers: Good practice case studies Health and Safety Laboratory, Sheffield

resolving the management of health and safety issues associated with the employment of homeworkers:

(a) It is important that homeworkers have one or two contacts within the organisation for maintaining regular communication. A number of companies had outwork co-ordinators specifically to deal with homeworkers. The identity of the co-ordinator was reinforced by using their photograph on documentation and notice boards for homeworkers, as well as promoting the use of a dedicated telephone line and voice mail by which the outwork co-ordinator could be contacted. It is good practice to conduct risk assessments that are specific to each homeworker's work environment and involve the homeworker in the process of identifying potential hazards. Companies that have carried out risk assessments for individual homeworkers have addressed a range of significant hazards in the home workplace, e.g. electrical, manual handling, chemicals, ventilation, lone working/isolation.

(b) Regular reviews of risk assessments should be carried out to ensure that there have been no significant changes. One organisation provides homeworkers with a home workplace inspection form to conduct their own risk assessment on a monthly basis. Similar reviews are also scheduled to be carried out on a three monthly basis by the homeworkers' team leader. Risk assessments are also reviewed if the homeworker's circumstances change, such as pregnancy or a house move.

(c) Providing and maintaining work equipment can help to ensure that homeworkers work safely as well as efficiently. Many companies go beyond providing the essential work materials and tools required for the job.

(d) A lot of emphasis is put on supplying information to homeworkers, but it is also important to supply information on managing homeworkers to line management. Types of information that are useful include: competencies involved; how to manage high levels of trust and low levels of control; how to empower staff to work independently; information to help line managers support homeworkers and avoid potential consequences of lone working such as stress or isolation.

(e) Any incidents involving homeworkers need to be communicated to, and recorded by employers. This includes accidents and any 'near miss' occurrences. One company provides its homeworkers with a diary to record their hours worked and any problems or 'near miss' occurrences. These workers are also provided with a dangerous occurrence/near miss report form and an accident report form.

(f) A grey area exists for the health and safety management of homeworkers over the demarcation of health and safety responsibilities between the company and the homeworker, especially as the homeworker's property becomes the work environment. Several companies draw up a plan or take a photograph of the area that is used for work, in order to demarcate the area of the property for which risks will be assessed.

(g) Companies employing homeworkers felt that addressing the health, safety and welfare of homeworkers contributes to a higher level of commitment and makes them feel valued. It also helps to ensure safe working practices and avoids the potential costs of interruptions to work output from ill-health or injury.

(h) Homeworking – Guidance for employers and employees on health and safety; this guidance has been in existence since 1996 and has been periodically amended.

It begins with a statement of what the law requires:

- The Health and Safety at Work Act 1974 (HSWA) places a duty on employers, self-employed people and employees. Employers have a duty to protect the health and safety of their employees, including homeworkers.
- Most of the Regulations under the HSWA apply to homeworkers as well as to employees working at an employer's work place. Examples include the Management of Health and Safety Regulations 1999, the Display Screen Equipment Regulations 1992, the Manual Handling Operations Regulations 1992, the Provision and Use of Work Equipment Regulations 1998 and the Control of Substances Hazardous to Health Regulations 2002.



- The Management of Health and Safety at Work Regulations 1999 require employers to carry out a risk assessment of the work activities carried out by homeworkers. Completing a risk assessment involves identifying the hazards relating to the homeworkers' work activities and deciding whether enough steps have been taken to prevent harm to them or to anyone else who may be affected by their work. A risk is the chance that someone will be harmed by a hazard. A hazard is anything that may cause them harm.

The guidance then describes how to do a risk assessment. There are five stages to be undertaken:

- Identify any hazards
- Decide who might be harmed and how
- Assess the risks and take appropriate action
- Record the findings
- Check the risks from time to time and take steps if needed.

Some common hazards are then identified:

- Handling loads; this is concerned with handling loads that are heavy, bulky, difficult to grasp, or unstable; awkward lifting, reaching or handling; pushing or pulling; repetitive handling that does not allow enough rest time between loads; twisting and stooping.

- Using work equipment at home; employers who provide homeworkers with equipment to carry out their work have a duty to ensure that the equipment is correct for the job to be done; proper information and training is given on how to use the equipment, so that the job can be done safely and properly; the equipment being used is checked regularly and kept in a condition that does not cause harm to the homeworker or others; the people who are testing the equipment and/or training the homeworkers are properly trained themselves, so that they provide the correct information and training; the machine being used has protective equipment such as machine guards to prevent injury; the necessary personal protective equipment is provided for using the work equipment safely, such as gloves etc; the equipment has the right controls to allow the work to be done safely; checks on equipment are carried out safely.

- Using electrical equipment at home includes ensuring that electrical equipment is turned off before it is checked; checking that plugs are not damaged and are correctly wired and maintained; ensuring that domestic electrical systems are adequate for electrical equipment; check leads, wires or cables for damage to the outer covering; check for burn marks or staining that suggests overheating; check that there are no trailing wires.

- Using substances and materials from home; are they flammable, toxic or corrosive; do they give off fumes; are they stored safely, for example could children reach them; does anyone suffer from dizzy spells, feel sick or have headaches; does anyone suffer from skin irritations; does anyone suffer from asthma.

- Working with visual display units (VDUs); this is covered by the Health and Safety (Display Screen Equipment) Regulations 1992 as amended; employers have a duty to ensure that the display screen equipment used by homeworkers is safe and does not affect the user's health; this can mean working in a comfortable position and taking breaks from work; correct eyesight is important so VDU users can request an eye examination and eye test from their employer.

The Guidance also has a section on 'new and expectant mothers' which aims to implement the Pregnant Workers' Directive; this means assessing risks to the homeworker in respect of the unborn child or to the child who is still breast feeding.

In Appendix 6 there is a list of the likely hazards and control measures to be taken with regard to health and safety of homeworkers using computing equipment. It gives a brief but full summary on a number of hazards such as use of display equipment, use of work equipment generally, electrical hazards, manual handling of office equipment, slips and falls and the issue of isolation. It is taken from a report to the HSE titled 'Health and safety of homeworkers':

Good practice case studies'.<sup>68</sup> Appendix 7 provides a useful case study of the management of a home working health and safety regime taken from a UK local authority.

### ***Implementing the Framework Agreement on Teleworking:***

As has been stated elsewhere in this document the Framework Agreement reached by the social partners was, according to the report to the social partners, implemented in the United Kingdom by a code of practice. In fact it is implemented by an 'agreed guidance on telework'. It is not clear whether this guidance has had any impact on collective negotiations or any other agreements between management and employee representatives. In fact, it has proved impossible to find on the appropriate Government website. It is, however, on the website of the employer's organisation, the CBI<sup>69</sup> and contains an introduction by a Government Minister and by the Director General of the CBI and the General Secretary of the TUC (Trades Union Congress).

The document begins by emphasising that there are benefits to employers and employees of teleworking, in particular it can enable companies to modernise the way work is organised and it can also help in reconciling work and family life. It states that there is no definition of teleworking in UK law and that telework is not a job, but a method of working. There is a list of the issues for consideration. These are:

- Contractual arrangements for distant workers
- Health and safety arrangements
- Furniture, equipment and computer communications provision, systems issues (e.g. remote access to company databases and applications
- Information security
- Expenses and allowances (e.g. for home heating and lighting) and additional travel
- Taxation
- Human resources, such as recruitment, training and career progression
- Personal support (e.g. measures to ensure the teleworker does not become isolated).

There are then a number of useful sections which are summarised here:

#### *1. Voluntary character*

Teleworking is best introduced by consensus. From April 2003, parents of children have been able to request flexible working and employers are under a duty to give such requests serious consideration. This right to request flexible working includes being able to ask to telework (although this is not explicit in the legislation). Employers are also required to give employees a written statement of terms of employment within two months of commencement. This applies equally to those teleworking. These terms include a statement of the place of work. If the introduction of teleworking means a change of place of work for the employee, then this can only be achieved by consent. The employer also needs to make clear that the employee's employment status has not changed, unless otherwise agreed. If teleworking is tried and the employee wishes to revert to the employer's premises then this must be allowed, wherever possible.

#### *2. Employment conditions*

Teleworkers should be entitled to the same rights as comparable workers at the employer's premises. There are some particular issues which need further attention with regard to teleworkers. These are: place of work; hours of work; expenses policies; allowances for business rates, heating, lighting, wear and tear in the teleworkers home location need to be considered; health and safety arrangements may mean a risk assessment of the home workplace; provision of equipment, telephone lines etc; employer's insurance arrangements; holiday and

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<sup>68</sup> Rachel O'Hara, Julian Williamson, Alison Collins, Danny Higginson (2004) HSE [www.hse.gov.uk/RESEARCH/rrpdf/rr262.pdf](http://www.hse.gov.uk/RESEARCH/rrpdf/rr262.pdf)

<sup>69</sup> [www.cbi.org.uk/ndbs/PositionDoc.nsf/81e68789766d775d8025672a005601aa/b68f347c976b90a580256d9500310663/\\$FILE/teleworkbrief.pdf](http://www.cbi.org.uk/ndbs/PositionDoc.nsf/81e68789766d775d8025672a005601aa/b68f347c976b90a580256d9500310663/$FILE/teleworkbrief.pdf)

sickness arrangements; and the procedure if the teleworker were to wish to return to working in the office.

### *3. Data protection*

This is about abiding by the principles contained in the Data Protection Act 1998. Employers and teleworkers need to ensure that other household members do not have access to any personal data as defined by the Act. Remote working and the use of laptops can raise issues of security.

### *4. Privacy*

The employer respects the privacy of the teleworker. This means agreement about when the worker can be contacted and when he/she cannot. It also requires the installation of a separate telephone line for business use.

### *5. Equipment*

All questions concerning work equipment, liability and costs need to be clearly defined before starting telework.

### *6. Health and Safety*

The employer is responsible for the protection of the occupational health and safety of the teleworkers in accordance with Directive 89/391 and its daughter Directives. Health and safety legislation applies whether the employee is working in a conventional office or remotely, so far as is reasonably practicable. It is the employee's responsibility to report all employment related hazards to their own or others' health. Employers are required to carry out a risk assessment under the Management of Health and Safety at Work Regulations 1999. This includes those who work at home. It is good practice for teleworkers themselves to carry out their own risk assessment concerning work carried out at home.

Hazards arising from electrical equipment and VDUs are mentioned plus the need for risk assessments for pregnant women or those who have given birth in the last 6 months or who are breast feeding. In addition there are specific recommendations:

- Employers should avoid the need for hazardous manual handling by teleworkers
- Employers should ensure that all equipment provided is appropriate for to job requirements and, where necessary, training is provided. The employer is responsible for the safety of the equipment they supply.
- All electrical goods must comply with existing safety regulations. The employer is responsible for checking compliance. The teleworkers' domestic electrical system is their own responsibility.
- It is the employees' responsibility to report all faults which may be a hazard to their own or to others' health.
- It is the employer's responsibility to provide adequate first aid provisions for teleworkers.
- Teleworkers can stop work in the event of serious danger arising from the work they are doing without affecting their employment rights. In the event of this the employer should be informed.

The Health and Safety (Display Screen Equipment) Regulations (which implement Directive 90/270) apply where there are teleworking employees. The employer must assess and reduce risks; ensure workstations meet minimum requirements; plan breaks or changes of activity; provide eye tests on request; and provide health and safety training and information.

Within the limits of national legislation and collective agreements, representatives of employers, workers' representatives and/or relevant authorities have access to the telework place. If this is the teleworker's home then such access is subject to prior notification and his/her agreement. The teleworker may also request inspection visits.

### *7. Organisation of work*

The teleworker, within the framework of applicable legislation, collective agreements and company rules, manages his or her working time. Employers should ensure that teleworkers are aware of the potential problems of teleworking in advance of commencement. The employer should also take measures to prevent the teleworker from being isolated from the rest of the working community. Measures could include giving him or her the opportunity to meet with

colleagues on a regular basis and access to company information. Distant working staff have the right to have the same information and news about the company as their office based colleagues.

#### 8. Training

Teleworkers should have the same access to training and career development opportunities as comparable workers at the employer's premises. They should also be subject to the same appraisal policies as other workers. There may be some training specific to teleworkers.

#### 9. Taxation

A measure introduced in the 2003 Government budget means that some employers will be able to meet some or all of the incidental household costs incurred by the employees who work at home without it giving a rise to a tax charge.

#### 10. Collective rights issues

Teleworkers have the same collective rights as workers employed at the employer's premises.

### 4. Dependent self employment.

Please see the part of this report relating to the law on health and safety in the United Kingdom. The definition of who is an employee and who is not has mostly been left to the judiciary.

According to a useful HSE report, already cited here, women account for 44% of all economically active people in the UK, but only 25% of the self-employed population are women, compared to men at 75%. However, the number of self-employed women is growing. More recent statistics show that the participation rates of Black and Mixed ethnic groups appear to be increasing. The business activities of ethnic minority entrepreneurs are concentrated very heavily in the transport and distribution sector. Self-employment rates also appear to increase with age. The main reason given for self-employed individuals not employing any staff was that they felt they could not attract, or were not attracting enough work to necessitate taking on any staff (47.7% of sole proprietorships). Another 27.1% said that they preferred to work alone, 11.9% cited the expense of employing labour, and 7.4% cited employment regulations.

The report describes a MORI study commissioned by the HSE Occupational Health Advisory Committee which revealed that employers from small organisations felt that because their companies were small and everyone talked to each other, there was no need for external help with controlling risks to employee health. 'It is suggested that this may be due to a reluctance to attract the attention of enforcing authorities and invite unwelcome recommendations. A recent HSE study found that large companies were most likely to provide occupational health support (74%), compared to medium-sized (54%), small (34%), and micro-sized organisations (13%)'.

The TUC Commission on Vulnerable Workers<sup>70</sup> included, in its final report, a concern with bogus self-employment. It stated that a growing number of workers are being classified as self-employed but in reality are dependent workers who do not have the independence and autonomy over their work that characterise genuine self-employment. 'This group are described as the 'bogus self-employed'. Many construction workers are classified in this way, as are many home-workers engaged in manufacturing, courier or telesales work. These workers can work for the same employer for years without entitlement to the most basic of employment rights, for example paid holiday, maternity leave or statutory sick pay. They can also be sacked or asked to leave at a moment's notice, and cannot claim unfair dismissal or redundancy pay'. Its research found three examples of this issue affecting homeworkers:

(a) Research by the National Group on Homeworking (NGH) and Oxfam provided evidence that the lack of clarity in employment law means that many homeworkers find themselves falsely classified as self-employed. Findings from an NGH survey of 200 homeworkers found that only 33 per cent received holiday pay, and even fewer were provided with sick pay, although only 1 in 40 were found to have clear self-employed status. The vast majority of homeworkers were women, around 50 per cent of whom were from minority ethnic groups. 44 per cent had low

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<sup>70</sup> Supra

awareness of their rights, and 40 per cent were not aware that their employment status had an impact on their treatment. Importantly, even among those who were classified as self-employed, very few claimed expenses against tax. The homeworkers were therefore doubly disadvantaged from bogus self-employment, losing employee rights and employment protections, and also unaware of the possible tax benefits.

(b) The Welsh Minority Ethnic Women's Network reported on their research which found that out of a group of nine homeworkers six received none of the rights of 'workers' or 'employees', despite doubting that they were self-employed.

(c) NHG have also published a new study on the experiences of homeworkers, based on the experiences of 67 workers across the UK. It found that few of the homeworkers were seen as 'employees' and around half were not even considered 'workers', instead being defined by employers as 'self-employed' – despite lacking the genuine autonomy that characterises self-employment.

Böheim and Muehlberger<sup>71</sup> argued that those workers who are in dependent self-employment faced two forms of dependence. Firstly, an economic one, where the workers carry all the entrepreneurial risk; and, secondly, relating to dependence in time, place and content of work. The degree to which a dependent self-employed worker is more similar to an employee or to independent self-employed persons is decided by the degree of these two forms of dependency. 'Dependent self-employed workers lose their rights under labour law, receive less favourable benefits from social security protection and are beyond trade union representation and collective bargaining.

They cite an empirical study by Burchell et al<sup>72</sup> which estimated that around 30% of those in employment had an unclear employment status. The report argued that a greater use of the concept of 'worker', rather than 'employee' would widen the scope of employment protection. At the moment some protection is offered to employees and some to this wider concept of worker (which includes employees). There have been, according to Böheim and Muehlberger, only a limited number of empirical studies of dependent self-employment in the UK. Using the British Labour Force Survey they identified a number of dependent self-employed workers. Their analysis showed that some 78% of the sample dependent self-employed were men. Most dependent self-employed are in a skilled trade, with only a few in clerical occupations, or sales and other customer services. The analysis also showed that 'dependent self-employment is associated with more labour market fluctuation, those with short job tenures are more likely to be working as dependent self-employed than as employees, in comparison with those with considerable longer job tenures'. The conclusions to their study include the need for more legal protection for this group of worker.

## **5. Vulnerable work.**

A report for the HSE<sup>73</sup> reveals in 2006 an outline of UK industry. It shows the size of the small business sector and the growth in outsourcing.

'Of the 4.3 million UK businesses in existence at the start of 2004, over 99% were small businesses (0-49 employees), employing 46.8% of the private sector workforce.

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<sup>71</sup> Böheim, René and Muehlberger, Ulrike (2006) 'Dependent Forms of Self-employment in the UK: identifying workers on the border between employment and self-employment' IZA [ideas.repec.org/p/iza/izadps/dp1963.html](http://ideas.repec.org/p/iza/izadps/dp1963.html)

<sup>72</sup> Burchell, B; Deakin, S; and Honey, S. (1999) 'The employment status of individuals in non-standard employment' Report for the British Department of Trade and Industry

<sup>73</sup> Zara Whysall and Peter Ellwood (2006) HSE Horizon Scanning Intelligence Group Demographic study – Report [www.hse.gov.uk/horizons/demographics.pdf](http://www.hse.gov.uk/horizons/demographics.pdf)



- Of these businesses, 3.1 m had no employees, i.e. they were sole proprietorships or companies comprising only a sole director (72% of all enterprises). The number of SMEs is predicted to increase to 4.5 million SMEs by 2010.
- Self-employment is highest in the construction sector, a trend that saw continued growth between 2000 and 2003.
- The prevalence of self-reported work-related illness and working days lost both tend to be significantly lower for small organisations. A similar trend is evident for reported accidents, although on site monitoring recorded more accidents smaller organisations.
- Outsourcing has continued to grow in popularity over recent decades, facilitated by the emergence of technologies that have allowed organisations to outsource a wider range of non-core aspects of their operations. Skilled services such as training, human resources, and legal services are now increasingly being outsourced.
- For the same reasons, the geographical location of the service provider has also become much less important, a situation that has led to many companies outsourcing to areas with lower cost labour. Common offshore locations include India, China, and the Czech Republic<sup>74</sup>.

The same report highlights those employment characteristics related to reportable injuries at work:

- The risk of workplace injury declines rapidly as employment tenure increases. The increased risks associated with tenure are particularly apparent during the first 4 months within a new job.
- In terms of the length of the working day, after correcting for exposure, those working less than 10 hours per week were most likely to report having had a reportable workplace injury per hour worked.
- Among other employment characteristics, shift working, and working in the public sector were associated with individuals being more likely to indicate that they had suffered a reportable workplace injury. Being self-employed and working within small establishments (less than 10 employees) were each associated with a reduced likelihood of individuals reporting that they had suffered a reportable workplace injury.

There has been much interest in the subject of vulnerable workers. Two reports are highlighted here, one by the Government and one by the Trades Union Council (TUC).

The Government established a ‘Vulnerable Worker Enforcement Forum’ in June 2007. It brought together trade unions, workplace enforcement agencies, business groups and advice bodies to look at evidence about the nature and extent of abuse of workplace rights. It published its final report in 2008.<sup>74</sup> In chapter 2 it highlighted the employment rights abuses suffered by vulnerable workers (table UK1):

**Table UK 3. Breaches of employment rights highlighted.**

- No written terms of engagement
- Workers being paid below the minimum wage and not being paid for all \_ the hours worked
- Unauthorised deductions being made from wages
- Holiday pay not being paid
- Wages and holiday pay owed not being provided after leaving a job
- Inadequate rest breaks being given
- Excessive hours
- Workers not being provided with safety equipment
- The provision of sub-standard “tied” accommodation

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<sup>74</sup> Vulnerable Worker Enforcement Forum – Final report and Government Conclusions August 2008 [www.berr.gov.uk/files/file47317.pdf](http://www.berr.gov.uk/files/file47317.pdf)

There was an interesting analysis of calls made to a national helpline (run by the Advisory, Conciliation and Arbitration Service – ACAS) and the questions from those who used the language translation facility available (table UK2):

**Table UK 4. Analysis of calls made by workers to the Acas helpline using the Language Line service.**

Subject matter of call	% of language line calls	All worker calls %
Holidays and working time	29	12
Wages and NMW	26	8
Discipline, dismissal and grievance	17	23
Contracts	9	17
Maternity, paternity and adoption	8	8
Diversity and discrimination	5	4
Absence, sickness and stress	3	5
Redundancies, lay offs, business transfers	1	15
Family friendly policies	0	3
Others	2	5

Those using the non-English speaking help line were much more concerned with issues related to holidays and working time, wages and the national minimum wage (NMW) than the overall average.

Another important issue was the awareness of vulnerable workers of their employment rights. The percentage of workers<sup>75</sup> who reported not being very well informed, or not informed at all, about employment rights were:

All workers	34%
Young workers	48%
Low paid earning under £15,000	44%
Part time workers	40%
Workers in small workplaces (1-9 employees)	40%

Other issues identified were:

- A reluctance amongst vulnerable workers to report problems
- Confusion about where to complain
- Poor language skills for some migrant workers
- Overseas domestic workers vulnerable to abuse
- Use of the informal economy

In respect of the informal economy, the report stated that ‘workers employed in the informal economy are at a high risk of not receiving basic rights such as the national minimum wage, paid holiday and statutory sick pay; and the existence of an informal economy also undercuts reputable businesses. Unions represented on the Forum also pointed to bogus self-employment as being a problem, particularly in the construction sector. Workers in this position do not usually receive basic employment rights’.

The issues concerning migrant workers and languages have been highlighted elsewhere. A report by the Citizens Advice Bureau, *Rooting Out the Rogues*, while highlighting the problem of bad employers in general terms, emphasises the vulnerability of migrant workers:

<sup>75</sup> Taken from ‘Employment Rights at Work – Survey of Employees 2005’ BERR

Whilst the vast majority of employers try hard to meet their legal obligations to their workforce, there are still far too many unscrupulous or rogue employers (and employment agencies) prepared to flout the law and so profit from exploitation. As a result, many tens of thousands of the most vulnerable workers from the newly expanded European Union and elsewhere - are failing to benefit from the Government's very welcome policy programme since 1997 to establish a framework of decent standards in the workplace<sup>76</sup>.

The TUC set up a Commission on Vulnerable Employment (CoVE)<sup>77</sup>. This Commission was established because of TUC concern that unsafe, low paid, insecure work is causing misery for millions of workers in the UK. It took the view that the well being of any single employee and that employee's family is too important to be left unprotected. The Commission believed it was time to address this exploitation – and to challenge the poor or non-existent employment rights of millions of hard working people in the UK labour force. So it set up CoVE to carry out a major investigation of the causes of, and solutions to, vulnerable employment.

The TUC's final report is entitled *Hard Work Hidden Lives*<sup>78</sup>. The TUC devotes the first chapter of the report to providing its own definition of vulnerable working. The report firstly<sup>79</sup> defines vulnerable employment as 'precarious work that places people at risk of continuous poverty and injustices resulting in an imbalance of power in the employer-worker relationship'. The Report finds that:

Vulnerable work is insecure and low paid, placing workers at high risk of employment rights abuse. It offers very little chance of progression and few opportunities of collective action to improve conditions. Those already facing the greatest disadvantage are more likely to be in such jobs and

less likely to be able to move out of them. Vulnerable employment also places workers at greater risk of experiencing problems and mistreatment at work, though fear of dismissal by those in low-paid sectors with high levels of temporary work means they are often unable to challenge it; The Commission believed that vulnerable employment is the product of existing social and economic inequalities and is the UK's approach to labour market regulation. It notes that in the past ten years employment rates have risen so that 75% of those of employable age are now in employment, but there is a 14% gap between overall employability and employment of minority ethnic groups<sup>80</sup> and a 27% gap for people with disabilities and employment rates for low skilled are only a little above 50%<sup>81</sup>.

The Commissioners believe that much exploitation of workers occurs because the law is not strong enough to prevent it. Some employers find gaps in the law but others break the law. It found that in certain low paid sectors, including care, cleaning, hospitality, security and construction there was evidence that the law was regularly broken. It believed that enforcement agencies did not have enough resources to guarantee employment rights.

The report's 60 recommendations<sup>82</sup> are mainly addressed to Government Departments. They emphasise the need to ensure that existing legal rights are enforced, but draw attention to at least three areas where changes in the law are needed. These are set out in the initial summary<sup>83</sup>:

The unequal treatment of agency workers must end. There should be a legal guarantee of equal treatment between agency workers and directly employed staff undertaking the same work.

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<sup>76</sup> [www.citizensadvice.org.uk/rooting\\_out\\_the\\_rogues.pdf](http://www.citizensadvice.org.uk/rooting_out_the_rogues.pdf)

<sup>77</sup> See Barrett, B and Sargeant, M (2008) 'Health and safety issues and new forms of employment and work organisation' *International Journal of Comparative Labour Law and Industrial Relations* vol 24/2 241-259

<sup>78</sup> [www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

<sup>79</sup> At p.13

<sup>80</sup> Citing Equality and Human Rights Commission

<sup>81</sup> Opportunities for All Data taken from web site of Department for Work and Pensions in April 2008 [www.dwp.gov.uk/ofa/indicators/indicator-19.asp](http://www.dwp.gov.uk/ofa/indicators/indicator-19.asp)

<sup>82</sup> At pp. 221-230

<sup>83</sup> At pp.4-5

It is wrong that ‘workers’ and the bogus self-employed should be denied the legal protection enjoyed by ‘employees’ – employment rights in the UK are assigned using a complicated and out-dated system that requires review.

Many migrant workers are forced into vulnerable employment by immigration regulations. Across the immigration system regulations relating to low-paid migrant workers should be reviewed, with specific consideration to areas where their impact leads to a higher risk of exploitation.

The report states that failure to comply with health and safety legislation is extensive and cites HSE as authority for the statement that ‘most legally reportable workplace accidents, including major injuries are not being reported’. The Commissioners had also seen evidence of low health and safety compliance amongst private contractors such as employment agencies and gangmasters<sup>84</sup>. They found that although the work might be risky there was no clear understanding who had responsibility for health and safety issues. They point out that when HSE gave evidence to the Select Committee on Work and Pensions they highlighted the difficulties employment agencies create for health and safety enforcement. Its Chief Executive said that, although HSE was trying to make it clear that health and safety responsibilities could not be delegated out to employment agencies, as the workforce became more fragmented it could be harder to enforce health and safety policy and to keep control over its implementation<sup>85</sup>. The report also notes evidence that employers in small firms were not fulfilling their obligations to undertake a formal risk assessment for their pregnant staff, either because they were unaware of the duty or because they felt that it was common sense<sup>86</sup>. During the course of their research the TUC Commission identified a poll of young workers by a trade union (UNITE). This had found 17% of all young workers have worked in unsafe workplaces whilst 22% of all young workers polled had wages deducted when they were ill<sup>87</sup>.

### ***Women workers***

The following is taken from the TUC Commission on Vulnerable Employment’s final report called ‘Hard work, hidden lives’.<sup>88</sup> It highlights the vulnerability of women in employment when compared to men:

‘Although the female employment rate is the highest it has ever been, the full-time gender pay gap is persistently high, with women being paid 17.2 per cent

less than men, one of the largest pay gaps in Europe. Patterns of part-time work are strongly gendered, with women four times more likely than men to undertake part-time work. Around 40 per cent of working women, and the majority of working mothers (around 58 per cent of all mothers, and 64 per cent of mothers with children aged 0–4) are in part-time work, compared to around 9 per cent of men. Women who are carers are also more likely than men who are carers to be in part-time work (46 per cent compared to 11 per cent). For women working part-time the pay gap increases to around 35.6 per cent.<sup>37</sup> These women therefore earn around 60 per cent of the average hourly earnings of men working full time – a trend that has shown little change since the mid-1970s.

Working time also shows strong trends by gender. While women remain responsible for more unpaid work, including childcare, other caring commitments and housework, men in the UK continue to work extremely long hours. The proportion of women doing unpaid overtime drops from 24.2 per cent to 17 per cent when they have children: for men who are fathers the

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<sup>84</sup> At pp. 127/8

<sup>85</sup> 38 House of Commons Select Committee on Work and Pensions, Uncorrected Oral Evidence, One-off Evidence Session with Ms Judith Hackitt, the Chair of HSC, and Mr Geoffrey Podger, the Chief Executive of HSE 28th November 2007.

<sup>86</sup> ACAS (2004) ‘Pregnancy at Work: Research to Explore Experience of Employers in Small Firms’ London. ACAS p.6

<sup>87</sup> [www.vulnerableworkersproject.org.uk/](http://www.vulnerableworkersproject.org.uk/)

<sup>88</sup> [www.vulnerableworkers.org.uk/2008/05/full-report-of-the-commission-released/](http://www.vulnerableworkers.org.uk/2008/05/full-report-of-the-commission-released/)

proportion doing unpaid overtime remains relatively unchanged, dropping only slightly from 22.6 per cent to 21.7 per cent; 57 per cent of working women have some kind of flexible working arrangement, compared to 23 per cent of men.

Low income in work is all too common in modern-day Britain. In 1977, 12 per cent of workers earned less than two-thirds of the median; this had risen to 21 per cent by 1998. By April 2006, more than one-fifth (23 per cent) of all UK workers – 5.3 million people – were paid less than this amount (£6.67 an hour). Nearly two-thirds (60 per cent) of low-paid workers are women, and over

two-fifths of low-paid workers in total are women working part time. Over half of women working part time in low-paid jobs are ‘working below their potential’, not using their skills and experience or their qualifications in their jobs. This places women at much greater risk of cycling between low-paid jobs without opportunities for labour market progression’.

### ***Migrant workers***

A report<sup>89</sup> for the HSE looked at the health and safety risks associated with migrant workers in the UK. It revealed that migrant workers were at a greater health and safety risk than others because of:

- Relatively short periods of work in the UK;
- Limited knowledge of the UK’s health and safety system;
- Different experiences of health and safety regimes in countries of origin;
- Motivations in coming to the UK, particularly where these are premised on earning as much as possible, in the shortest possible time;
- Ability to communicate effectively with other workers and with supervisors, particularly in relation to their understanding of risk;
- Access to limited health and safety training and their difficulties in understanding what is being offered, where proficiency in English is limited
- Failure of employers to check on their skills for work and on their language skills;
- Employment relationships and unclear responsibilities for health and safety, in particular where workers are supplied by recruitment agencies or labour providers or are self-employed; and
- Lack of knowledge of health and safety rights and how to raise them, including knowledge of the channels through which they can be represented.

The main issues raised in the report, which was based upon a qualitative analysis of some 200 migrant workers, were<sup>90</sup>:

#### *(a) Demographics of the migrant group*

Practically all the migrants interviewed were working with other migrant workers. In some cases a particular nationality might be dominant but in others the workforce could consist of workers from many different countries, speaking different languages and with different skills and experiences and knowledge of health and safety systems.

#### *(b) Access to work and recruitment*

The most likely method of accessing work was through word of mouth. Employers indicated that whereas they initially may have used recruitment agencies or labour providers to supply migrant workers, as their number in the workplace increased supply through agencies was being replaced by word of mouth recruitment directly to the workplace.

#### *(c) Use of recruitment agencies or labour providers*

Although some workers were grateful for the assistance they had received from recruitment agencies or labour providers in obtaining work, the majority of those surveyed had negative experiences of working through agencies. They reported being paid less, having unexplained

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<sup>89</sup> Dr Sonia McKay, Marc Craw, Deepta Chopra (2006) Migrant workers in England and Wales An assessment of migrant worker health and safety risks HSE Books

<sup>90</sup> These are extracts taken directly from the report



deductions from wages, having irregular work and not being clear where responsibility for their health and safety lay.

*(d) Working hours and holidays*

Although in the Cleaning sector some migrants were working only a few hours a day, the pattern of migrant work was that working hours are long. There were a variety of reasons for this. First, in some of the sectors in which they were employed, for example Agriculture, long working hours are routine. Second, migrant workers were more willing to work long hours because in this way they could increase their earnings and their primary aim in coming to the UK was after all to earn money.

*(e) Health and safety training*

More than a third of the migrants interviewed had not received any training in health and safety and for the remaining two-thirds the training that had been offered was generally limited to a short session at induction. But there were some differences by sector, for example those in Public Healthcare had longer periods of induction training and were more likely to be offered ongoing training.

Communicating health and safety training where there is no common language presents challenges to employers and some had responded by developing means of conveying information through non-verbal mediums. Migrant workers particularly welcomed visual aids, as they could overcome the limitations that a lack of English presented. However, the greater the range of methods used to communicate, the more successful they were perceived to be by the workers interviewed. Any single method used exclusively was unlikely to deliver a comprehensive message, understood by all workers.

*(f) The system of health and safety in the workplace*

There was a widespread lack of knowledge of basic health and safety procedures, including fire safety. Although most workers had been provided with some protective clothing, this often failed to take account of the fact that workers had difficulty in acclimatising themselves to the different environmental conditions they experienced in the UK, in contrast to their own country. In addition, since many migrant workers had not previously worked in the occupations they were following in the UK, acclimatisation was sometimes a difficulty, particularly where migrants did not possess suitable clothing even though they were working outside or inside but in chill departments. Allocation to the least desirable work also meant that workers were more likely to be working in areas that experienced extremes of temperature. Workers consequently fell ill more frequently and in general believed that their health had suffered as a consequence of the work they were doing.

*(g) Appropriate health and safety for a transient workforce*

The investigation of health and safety incidents is made more difficult where there is little incentive for the migrant worker to remain in the UK and that is more likely to be the case where the incident would require time off work. Since the primary purpose of migration is to earn money, remaining in the UK without being able to work appears to serve no useful purpose to the migrant worker who is generally faced with higher living costs in this country. The migrant workers interviewed rarely had access to occupational sick pay or knowledge of its existence.

*(h) Undocumented and unauthorised workers*

Among those interviewees who were undocumented the fact that they were working without documentation meant that they were at greater risk of dismissal where the employer feared an immigration raid. The effect could drive undocumented workers further into forms of work that presented greater risks to their health and safety.

*(i) Discrimination and racism*

One of the issues migrant workers raised in the course of the interviews was their experience of discriminatory treatment at work, often related to their nationality or status. Many of the workers interviewed believed that they and migrant workers generally were often allocated to the worst shifts, were denied concessions that were available to local workers and had less favourable terms and conditions.

*(j) Knowledge of English within the migrant group*

Only half of those interviewed had good or perfect English and many workers asserted that their inability to speak English was the reason why they were working below their qualifications or skills. Workers admitted to pretending to understand English for fear of not getting work or losing their jobs if their lack of English was known. But this had implications, particularly in relation to health and safety training, where some of those interviewed admitted that they had not been able to follow the training they were offered.

*(k) Women migrant workers*

Women were more likely to report that they had not been given any induction training. They were also more likely to believe that their health, both physical and mental was being compromised by the work they were doing. And they were more likely to say that they had experienced discrimination at work.

In relation to pregnancy, women migrants faced particular problems. They had come to the UK to work and naturally were anxious not to have to stop working too early into the pregnancy. If they did become pregnant employers sometimes did not make adjustments to enable them to work safely and there was evidence of women compromising their health to continue in work.

*(l) Knowledge and enforcement of health and safety rights*

The migrant worker group expressed a low level of knowledge of their health and safety rights and of how to enforce them.

### **Children**

There is a well composed Government website on the rights and responsibilities of young workers. This can be found at [www.direct.gov.uk/en/YoungPeople/Workandcareers/Yourrightsandresponsibilitiesatwork/index.htm](http://www.direct.gov.uk/en/YoungPeople/Workandcareers/Yourrightsandresponsibilitiesatwork/index.htm)

Health and safety issues with regard to protecting young people from economic exploitation and harmful work are now covered by the Management of Health and Safety at Work Regulations 1999. Generally protection is offered by the Children and Young Persons Acts 1933 and 1963 and various measures relying on these Acts for authority.

With reference to the Management of Health and Safety at Work Regulations

Regulation 2(2)(b) excludes their application to any work not harmful, damaging or dangerous, in respect of work in a family undertaking;

Regulation 3(4) provides that a young person may not be employed until a risk assessment has been carried out;

Regulation 10(2) provides that every employer, before employing a child, shall provide the child's parent with 'comprehensible and relevant' information on any risks identified by the risk assessment and the preventative and protective measures that have been adopted.

Regulation 19 is headed 'Protection of young persons' and provides, in Regulation 19(1), that 'every employer shall ensure that young persons employed by him are protected at work from any risks to their health or safety which are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured'.

It further provides that young persons should not be employed in work which is beyond his or her physical or psychological capacity;

(a) involves harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health;

(b) involves harmful exposure to radiation;

(c) involves the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or

(d) in which there is a risk to health from extreme cold or heat, noise or vibration.

This is subject to the proviso that such work could be carried out if necessary for a young person's training, so long as there is supervision by a competent person and where the risks are reduced to the lowest level that is reasonably practicable.<sup>91</sup>

Many children are employed in paper delivering and one pressure group, the Association of Convenience Stores<sup>92</sup>, published this guide to the applicable rules:

'In most circumstances no child under the age of 14 years may be employed. However, local authority bye-laws may specify certain categories of light work (e.g. delivering newspapers and shop work) that can be undertaken by 13 year olds. Local authorities may vary regarding some bye-laws so it is important to check in the district where the child is to be employed.

Any child who works whether paid or unpaid (even helping out in the family business) needs a work permit. Application forms can be obtained from the local authority.

Children do not pay National Insurance. The National Minimum Wage does not apply.

Children may not work:

- (a) during school hours on school days.
- (b) before 7.00 am or after 7.00 pm
- (c) more than 2 hours on school days or Sundays.

Children aged 15 years or more may work up to 8 hours per day or 35 hours per week on non-school days other than Sunday.

Children under 15 years may work up to 5 hours per day or 25 hours per week on non-school days other than Sunday.

Children may not work for more than 4 hours in any day without a rest period of one hour.

Children may not work at anytime unless at least 2 consecutive weeks without employment are available during non-school periods in any year<sup>3</sup>.

The rules are not always followed, however. One report<sup>93</sup> stated that research had found that many small employers did not fulfil their health and safety responsibilities and duties. The report found that four in five small businesses did not assess risks to young people before they started work, and they did not provide information to parents of young workers about the risk and control measures introduced.

The TUC Vulnerable Workers Commission<sup>94</sup> reported that 'large-scale survey work by MORI, commissioned by the TUC, has identified that regulations relating to working children are frequently broken; nearly half of working children surveyed were employed after 8pm, and nearly a quarter before 6am, both breaches of UK law. Children in the survey also reported working in significant excess of their legally permitted hours, on average more than two hours on school days and almost four hours on Sundays, and there was evidence of children under 15 working over 40 hours a week. The findings also highlight the consequences of such limited enforcement, with one in ten children admitting to having played truant in order to do paid work, and one in four children under 13 admitting to doing paid work either during term or in the summer holidays, even though this is illegal'.

### ***Insecurity***

A TUC report called 'Agency Workers: Counting the Cost of Flexibility' 2007<sup>95</sup>, identified the following figures on temporary working in the UK (Table UK3):

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<sup>91</sup> Young person is someone under the age of 18 years; a child is someone who has not yet reached the minimum school leaving age of 16 years

<sup>92</sup> [www.acs.org.uk/en/](http://www.acs.org.uk/en/)

<sup>93</sup> Sreenivasan, Balraj (2001) 'A Review of Young People's Attitudes to Health and Safety' Health and Safety Laboratory [www.hse.gov.uk/research/hsl\\_pdf/2001/hsl01-03.pdf](http://www.hse.gov.uk/research/hsl_pdf/2001/hsl01-03.pdf)

<sup>94</sup> TUC Commission on Vulnerable Employment's final report called 'Hard work, hidden lives' supra

<sup>95</sup> [www.tuc.org.uk/extras/sectorreport.pdf](http://www.tuc.org.uk/extras/sectorreport.pdf)

**Table UK 5. Temporary employees as a percentage of all UK employment.**

	1992	1997	2001	2005	2006
Seasonal work	0.8	0.8	0.6	0.5	0.5
Fixed term or Fixed task contract	2.9	3.8	3.1	2.6	2.5
Agency temping	0.4	1.0	1.1	1.1	1.1
Casual work	1.4	1.7	1.3	1.2	1.3
Not permanent other	0.9	0.8	0.8	0.6	0.7
Permanent employees	93.6	91.9	93.0	93.8	94.0

The report summarises relevant parts of its findings in this way:

- Many agency workers are drawn from groups of worker that are vulnerable to exploitation in the labour market. Temporary agency workers tend to be young, are more likely to be from an ethnic minority background, and tend to be slightly less qualified than the workforce overall. Men and women are equally likely to engage in temporary agency work, but are concentrated in different industries and occupations.

- A significant proportion of agency workers are reluctant temps. Just under half of all agency temps in mid-2006 were undertaking temporary agency work because they could not find a permanent job. Although temporary agency work is traditionally seen as being of short duration, a significant minority (just over one-quarter) of agency workers were in an assignment for over one year. Yet confusion over their employment status acts to deny these workers important employment rights that would apply to permanent employees who had been with one employer for at least one year.

- Agency workers are economically vulnerable: they have no security of tenure and can be laid off and face unemployment at any time.

- This economic insecurity is reinforced by their legal position. In an economy where employment rights are often dependent on being an employee and having worked for the same employer for at least one year, agency workers lose out on both counts.

- As a result, agency workers tend to be paid less, be engaged on worse terms and conditions than directly employed workers in the same organisation and often have access only to statutory minimum benefits and rights such as the national minimum wage, statutory sick pay and maternity/ paternity pay and state pension only. The TUC is even aware of cases, where agency workers do not receive these statutory minimum entitlements, to which they are entitled.

A further piece of research<sup>96</sup> makes the following findings with respect to the United Kingdom:

- Throughout most of the last decade, almost half of the men, and a third of the women, making a new claim for Jobseeker's Allowance [unemployment benefit] were last claiming this benefit less than six months previously. In other words, almost half of men who lose their job, and a third of women, had had that job for less than six months. This shows the short-term nature of the jobs that many unemployed people go into.

- In the first quarter of 2009, these proportions fell substantially. This is not, however, because of a fall in the numbers making a new claim who were last claiming less than six

<sup>96</sup> [www.poverty.org.uk/57/index.shtml](http://www.poverty.org.uk/57/index.shtml)

months ago. It is because the total number of new claims rose at an even faster rate (almost doubling between the first quarter of 2008 and the first quarter of 2009).

- The vast majority of part-time employees – 85% – do not want a full-time job. By contrast, only 25% of temporary employees do not want a permanent job. This suggests that, whereas part-time employment is generally a positive choice, temporary employment is often not.

- At 1.4 million, the number of people in temporary contracts is somewhat lower than a decade ago, when the figure stood at 1.7 million.

- The proportion of workers belonging to a trade union is lower among low-paid employees than among any other pay group. Only one in seven workers earning less than £7 an hour belong to a trade union compared with around two-fifths of those earning £10 to £20 an hour.

A report published by the Joseph Rowntree Foundation found that feelings of insecurity were rising during the 1990s, especially amongst professional groups.<sup>97</sup> More importantly for this study it also examined the effects of this insecurity. It found that there was ‘a significant correlation between job insecurity and ‘poor general health’. Analysis based on the longitudinal British Household Panel Survey also revealed that people do not adjust to job insecurity. On the contrary, physical and mental well-being continues to deteriorate the longer employees remain in a state of insecurity’. Other findings included

- The more insecure people felt at work, the more likely they were to experience tension at home, irrespective of whether the affected employee was a man or a woman, or was working full- or part-time.

- the relationship between job insecurity and self-reported motivation levels is a negative rather than a positive one

- Pressure levels were strongly associated not just with poor general health but also with tensions in people’s family life. The pressures came from managers, from colleagues, and from inadequate staffing levels. But pressure ‘from the sheer quantity of work’ seemed to have the greatest impact. Again, this relationship was equally strong for men and women, and for full- and part-timers.

### ***Stress***

The HSE website provides the following information on stress at work:

- It is estimated that work-related stress, depression or anxiety affected 442 000 individuals who had worked in the last 12 months in 2007/08, with a corresponding estimated 13.5 million lost working days due to these work-related conditions. This represents an estimated average of 30.6 working days lost per affected case and makes stress, depression or anxiety the largest contributor to the overall estimated annual days lost from work-related ill-health in 2007/08.

- A further estimated 27 000 people who worked in the last 12 months reported suffering from work-related heart disease in 2007/08. Evidence from the 1995 survey suggests most of those reporting work-related heart disease ascribed its cause to work stress. Consequently most of these estimated 27 000 may also represent indirect reports of work stress, indicating a prevalence estimate of around half a million people who worked in the last 12 months reporting work stress at a level that was making them ill.

- Just over half of the reported cases of stress, depression or anxiety reported by people who had worked in the last year were cases which the individual first became aware of within the last 12 months – some 237 000 cases. This gives an incidence rate of 780 cases per 100 000 people who worked in the previous year.

- Looking over time, both the prevalence and incidence rate of self-reported work-related stress, depression or anxiety in people who worked in the last 12 months has remained broadly level over the period 2001/02 to 2007/08, with the exception of 2005/06 where both rates were statistically significantly lower than all other years.

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<sup>97</sup> Brendan J Burchell, Diana Day, Maria Hudson, David Ladipo, Roy Mankelow, Jane P Nolan, Hannah Reed, Ines C Wichert and Frank Wilkinson (1999) ‘Job Insecurity and Work Intesification’ Joseph Rowntree



- Days lost estimates have followed a similar pattern to the prevalence and incidence rates: days lost per worker have been broadly level over the period 2001/02 to 2007/08 with the exception of 2005/06 where the rate was statistically significantly lower than in 2001/02, 2006/07 and 2007/08. However, the average days lost per case attributed to work-related stress, depression or anxiety was of the same order from 2001/2 to 2007/8.

The HSE defines the term 'work-related stress'<sup>98</sup> as meaning the process that arises where work demands of various types and combinations exceed the person's capacity and capability to cope. It is, according to the HSE, a significant cause of illness and disease and is known to be linked with high levels of sickness absence, staff turnover and other indicators of organisational underperformance - including human error.

The HSE has developed management standards for stress which 'defines the characteristics, or culture, of an organisation where the risks from work-related stress are being effectively managed and controlled'

The Management Standards considered by the HSE cover six key areas of work design that, if not properly managed, are associated with poor health and well-being, lower productivity and increased sickness absence. In other words, the six Management Standards cover the primary sources of stress at work.

These are:

*Demands* – this includes issues such as workload, work patterns and the work environment.

The standard is that employees indicate that they are able to cope with the demands of their jobs; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: the organisation provides employees with adequate and achievable demands in relation to the agreed hours of work; people's skills and abilities are matched to the job demands; jobs are designed to be within the capabilities of employees; and employees' concerns about their work environment are addressed.

*Control* – how much say the person has in the way they do their work.

The standard is that: employees indicate that they are able to have a say about the way they do their work; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: where possible, employees have control over their pace of work; employees are encouraged to use their skills and initiative to do their work; where possible, employees are encouraged to develop new skills to help them undertake new and challenging pieces of work; the organisation encourages employees to develop their skills; employees have a say over when breaks can be taken; and employees are consulted over their work patterns.

*Support* – this includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.

The standard is that: employees indicate that they receive adequate information and support from their colleagues and superiors; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: the organisation has policies and procedures to adequately support employees; systems are in place to enable and encourage managers to support their staff; systems are in place to enable and encourage employees to support their colleagues; employees know what support is available and how and when to access it; employees know how to access the required resources to do their job; and employees receive regular and constructive feedback.

*Relationships* – this includes promoting positive working to avoid conflict and dealing with unacceptable behaviour.

The standard is that: employees indicate that they are not subjected to unacceptable behaviours, eg bullying at work; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: the organisation promotes positive behaviours at work to avoid conflict and ensure fairness; employees share information relevant to their

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<sup>98</sup> [www.hse.gov.uk/stress/furtheradvice/wrs.htm](http://www.hse.gov.uk/stress/furtheradvice/wrs.htm)

work; the organisation has agreed policies and procedures to prevent or resolve unacceptable behaviour; systems are in place to enable and encourage managers to deal with unacceptable behaviour; and systems are in place to enable and encourage employees to report unacceptable behaviour.

*Role* – whether people understand their role within the organisation and whether the organisation ensures that they do not have conflicting roles.

The standard is that: employees indicate that they understand their role and responsibilities; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: the organisation ensures that, as far as possible, the different requirements it places upon employees are compatible; the organisation provides information to enable employees to understand their role and responsibilities; the organisation ensures that, as far as possible, the requirements it places upon employees are clear; and systems are in place to enable employees to raise concerns about any uncertainties or conflicts they have in their role and responsibilities.

*Change* – how organisational change (large or small) is managed and communicated in the organisation.

The standard is that: employees indicate that the organisation engages them frequently when undergoing an organisational change; and systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved: the organisation provides employees with timely information to enable them to understand the reasons

for proposed changes; the organisation ensures adequate employee consultation on changes and provides opportunities for employees to influence proposals; employees are aware of the probable impact of any changes to their jobs. If necessary, employees are given training to support any changes in their jobs; employees are aware of timetables for changes;

Based on these management standards it has a publication called 'Managing the causes of work related stress' and a leaflet on the same subject<sup>99</sup>.

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<sup>99</sup> [www.hse.gov.uk/pubns/indg406.pdf](http://www.hse.gov.uk/pubns/indg406.pdf)