



A Challenging Future for the Employment Relationship

Employment Law Specialists Association (Luxembourg)
April 2018

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The significance of employment relationships

- An essential mechanism for structuring labour markets:

It is no exaggeration to think of the classification of work relationships as the central defining operation of any labour law system. Without classification the law cannot be mobilized.

Deakin and Wilkinson, *The Law of the Labour Market –Industrialization, Employment and Legal Evolution*, Oxford University Press, 2005, p 4

- The intersection of private and public governance of work



Challenges

- The proliferation of Non Standard Employment
 - Agency work
 - Casual work
 - Gig economy/crowdwork/the platform economy
 - Fixed term employment
- The places where the promise never made good
 - Informality
 - Subsistence agriculture



Evaluating non-standard employment

- Can offer:
 - Entry or re-entry to the labour-market
 - Skill development
 - Flexibility to meet other responsibilities (eg caring)
- “Challenges arise, however, when non-standard employment is an involuntary choice, or when transitioning to standard employment is compromised.”
 - ILO, *Non-standard forms of employment* (ILO, Geneva, 2015, p 19)
- Outcomes in practice:
 - Wage differentials
 - Poorer access to training and social security
 - Limited ability to exercise freedom of association

Conceptual and regulatory significance



“Even with the proliferation of new working arrangements, and the advent of further layers of governance, the contract of employment remains the conceptual touchstone for state action to design measures to ensure legal protection for workers in non-standard forms of employment (Deakin, 2013).”

ILO, *New Directions in the Governance of Work*, Global Commission on the Future of Work Issue Brief # 11



Questions that arise

- Which protections should subordinate workers have?
- Given the challenges, what policy and regulatory options can help deliver those protections?
- What are the alternatives, including adaptation of regulatory models to the characteristics of labour markets?
- What might be the benefits and disadvantages of legal concepts other than subordination, such as economic dependence?
- How can we maintain the employment relationship's important economic and social functions in market economies, including intra-firm work coordination, and the management and distribution of risk in society? How else might these functions be fulfilled?
- What are the connections between individual work within an employment relationship, and social solidarity, including trade unionism?

ILO Standards – Recommendation No. 198



Preamble:

- Decent Work Agenda
- 1998 Declaration

Formulation of national policies

Criteria for the determination of an employment relationship

Monitoring and implementing

No impact on Convention No. 181 or on Recommendation No. 188