

ALLEN & OVERY



The Big Think

New forms of employment | the legal challenges

2015

The world of work is changing fast as not only employers, but also employees, demand more flexible ways of working. Yet the law in most jurisdictions is lagging far behind actual practice and legal change is likely to come slowly. So, how do companies meet the demand for greater flexibility while navigating often restrictive regulations? What new forms of employment are open to them? How can they change employment practices in ways that will allow them to remain efficient while attracting, retaining and motivating the employees they need to succeed?

Introduction

If Dolly Parton was sitting down in 2015, rather than in 1980, to write '9 to 5' – her high-energy ballad about the monotonies of working life – she might have a lot more material to work with.

In its day, the song – soundtrack to the film of the same name – became something of an anthem for set-upon office workers, and it stayed that way for many years.

However, it's fair to say that working life has now changed quite radically for many people and all the indications are that it will change a great deal more in the years to come.

We are seeing a rapid spread of new forms of employment across many markets, with a growing emphasis on flexibility.

The old routines of work have not, by any means, disappeared, but people are increasingly likely to have a very different relationship with work today than the one so biting characterised in the song.

These shifting patterns of work life, however, have two sides to them.

On the one hand there is an increasing drive from employers to seek more flexible work arrangements to capture greater efficiencies, both in work practices, resource allocation and in costs – a trend that has intensified since the financial crisis. While some of those new forms of employment may suit both the employer and employees well, they could also result in much greater insecurity for workers – the spread of zero hours and other casual contracts in liberalised markets like the UK and the U.S. are an extreme case in point.

At the same time there is a growing demand from employees for less routine and, therefore, more flexible, work arrangements – a phenomenon particularly apparent among young people (so-called 'millennials') just entering the labour market. They tend to be more mobile, interested in working in a number of fields rather than sticking doggedly to one employer or set career path, and have a much more fluid attitude about how work and the rest of life fit together.

Technology has played a huge part too. Digitalisation and the telecommunications revolution have, more than anything, made new ways of working a reality. Armed with a laptop, a smartphone and a good wi-fi connection, many professionals can do a great deal of their work whenever and from wherever they want, whether that's at a hot desk or in a home office.

Very different approaches to these new forms of employment are already apparent in different jurisdictions.

But one almost constant feature of all jurisdictions is the fact that employment law is lagging far behind actual practice in the marketplace. That puts employers and their legal advisors in tricky territory in deciding to what extent they can embrace new working methods.

As Claire Toumieux, who leads Allen & Overy's Employment practice in Paris, puts it: "These new work patterns clearly demand changes in employment legislation. But as the law is likely to continue moving quite slowly, they also demand much more creative approaches from employment lawyers in helping clients get to grips with the issues and implement new working practices."

In this, the fourth edition of Allen & Overy's Big Think, we look at the most prevalent new forms of employment, the legal constraints imposed by existing labour regulations and the legal challenges they present. And, drawing on the expertise of lawyers across our global network as well as clients and leading researchers, we ask: what does the future of work really look like?



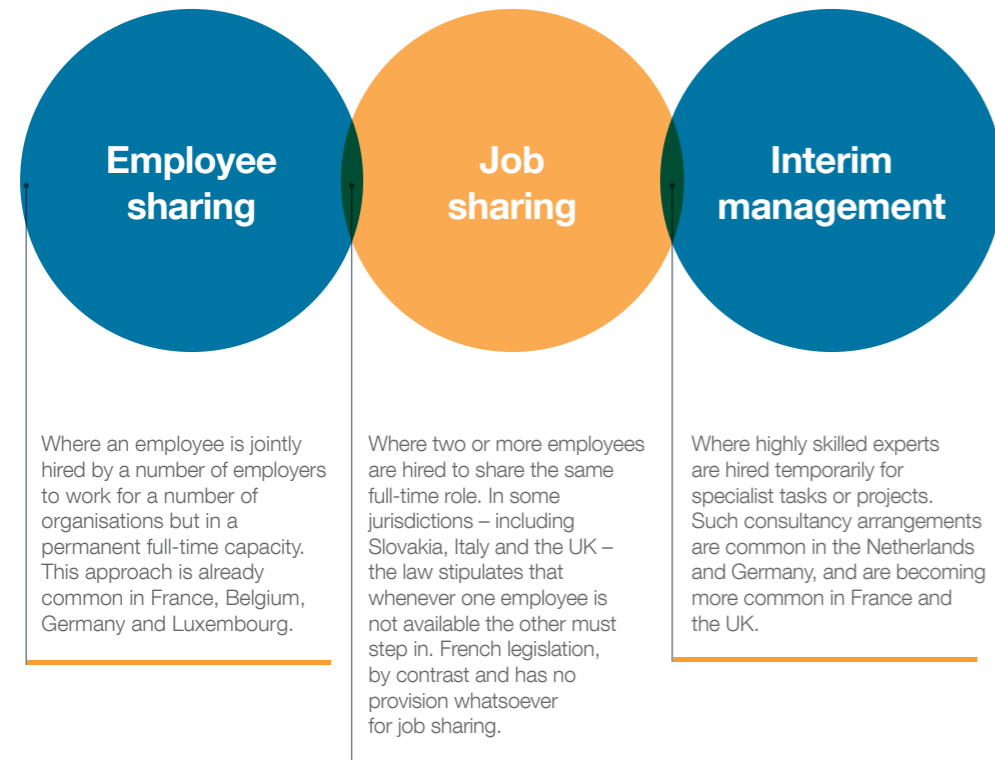
Mapping the *new landscape*

While few would argue about how labour markets across the world are changing fast, it's nevertheless quite hard to classify all the different new forms of employment that are being used.

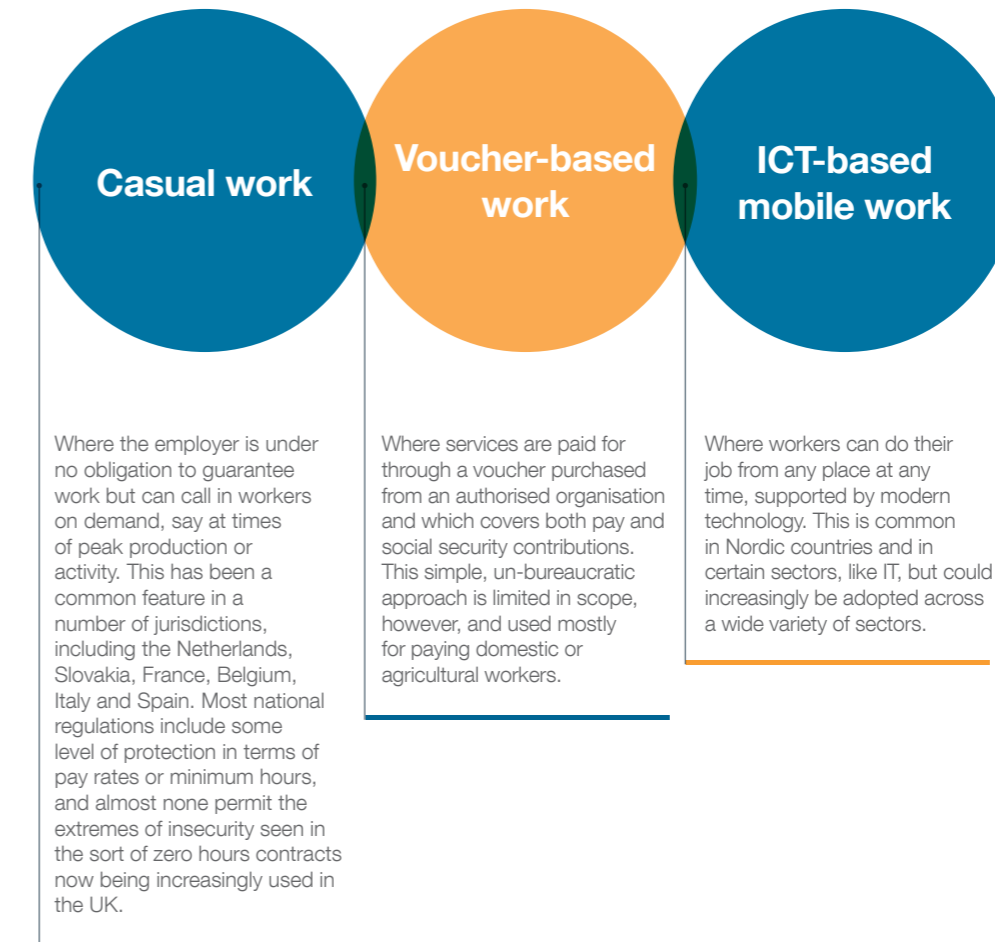
For just that reason, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) – an agency of the EU Commission – set about mapping emerging trends across all EU member states and Norway in 2013.

Its report, published in March 2015, represents one of the most intensive regional studies of new employment forms. Using both qualitative surveys and some 66 detailed case studies compiled by a network of correspondents across the mapping area, it boils down current trends into nine different forms of new employment which are either being widely used or are increasingly evident.

The nine categories Eurofound identified include forms of employment that clearly offer beneficial working conditions, blending greater flexibility with a good level of security for employees. These include:



Three forms of employment were seen, to varying degrees, as inherently insecure for employees, including:



Finally, Eurofound identified three forms of mostly freelance work which may lead to a richer work life, including:

Portfolio work

Where a self-employed, often highly skilled, individual completes work for a number of clients; an approach common in the UK, the Netherlands, Spain and Italy.

Collaborative employment

Where a group of freelancers or small organisations might club together to create the scale to offer services to much bigger clients.

Crowd employment

Where an online platform matches employers with specific needs to workers with the appropriate skills. With larger tasks, the work is often split among a number of people drawn from a "virtual cloud" of workers.

Advantages *and risks*

Irene Mandl, who led the Eurofound research effort, warns that the new forms of work identified in the report are quite different from each other. It is quite difficult to draw general conclusions, she says.

"I think, in general, it doesn't make too much sense to talk about new forms of employment in one block – they are quite heterogeneous and often have different objectives from the point of view of employers and employees."

And yet one general conclusion can be drawn. "There's been a significant shift in the discussion about flexibility," she adds.

In the past talk about 'flexicurity' was all focused on the needs of employers, with little thought about the security of employees. Now it's clear that some of the demand for increased flexibility is coming from employees themselves.

That's true even for the forms of new employment that are the most insecure from the employee's perspective, such as casual and ICT-based work. Even casual employment, which tends to be used in lower skilled work, might prove attractive to certain groups – students looking to support themselves through education, for instance, or carers looking after elderly dependants.

ICT-based work will often attract more highly skilled workers who might be prepared to accept that the negatives of this more insecure way of working are outweighed by the benefits of the flexibility and independence it brings.

Of the nine categories, three clearly offer a good blend of flexibility and security, providing benefits to employers and employees alike – job sharing, employee sharing and interim management. That's an important distinction given that labour laws have not, in general, caught up with changing practice in the marketplace.

"In principle we strongly suggest that regulations should include some kind of safety net which could be provided by the law or through collective bargaining," says Irene.

"But identifying the new trends is an important starting point because it means there is an increased level of awareness that these forms exist and that they could have negative aspects – particularly for workers, but also for employers – which should, at least, be considered."

"For now the law is largely out of step," she says.

"Some countries have no legislation covering new work arrangements at all, others have some but the regulation is often not fit for purpose, while others seem to be trying to adapt laws so frequently that it becomes hard for the labour market to adjust."

She also notes that some forms of employment are difficult, if not impossible, to regulate at national level.

For example, crowd employment platforms, such as Amazon's Mechanical Turk site, are still relatively new and untested in their scope. But it's already clear the challenge they might pose – the platform could well be in one country, the employer in another, and the employee in a third, rendering national laws redundant.

In the light of these big changes in employment trends, the European Commission is currently reviewing a number of work-related directives.

Claire Toumieux is one of a panel of academic and legal experts who have conducted reviews on behalf of the Commission. Comments are now also being sought from social partners. Despite this, the exercise is thought unlikely to result in new, purpose-built legislation, with most seeing it as a refit exercise rather than an effort to build laws fit for the new realities of working life.

"We are providing advice to clients in an environment that is changing very fast and in a way that will allow them to grasp opportunities," says Claire.

"That involves a balance. On the one hand we have to make sure that systems can be implemented across jurisdictions in a safe and legitimate way. But also we are encouraging clients not to be too conservative and, with regulation where it is, not to assume that everything that is not authorised by regulation is prohibited – there's considerable scope for creativity."

Where things *stand*

Nowhere is that juggling act harder to perform than Germany, where employment regulations continue to be based on work patterns that are increasingly out of date, says Hans-Peter Löw, a partner in our Frankfurt office.

German regulations still work on a definition of the workplace and working hours that more closely reflects practice in the 1950s, '60s and '70s, he suggests. Working time, for example, is defined in regulations based on the traditional 8 to 4 or 9 to 5 working day and includes a rule that there must be an 11-hour gap between finishing work and starting again.

“Theoretically, if someone goes home and later in the evening, while watching TV, looks at a work-related email on a smartphone, that should trigger a new 11-hour break – this is nonsense!” he says.

Germany has seen the increasing use of crowd employment, which started in the IT sector and has now moved to other areas. Project work has also increased significantly. The trend in law is, if anything, away from greater flexibility, particularly where there is a question around whether a person is genuinely self-employed or is doing work that has been contracted out.

“The Temporary Work Act has provided for some flexibility,” says Hans-Peter. “But the overall trend is towards limiting the scope of temporary work, in line with EU law.” Flexible contracts must include minimum hours and zero hours contracts simply do not exist.

“One of the arguments against flexibility is that it means people work more than before without being properly paid for it. The rules are there, in a way, to stop employees exploiting themselves,” he adds.

The strength of the unions and the powers they have within the social partnership model to safeguard collective bargaining agreements have clearly helped to curb some of the more insecure forms of flexible working. The unions do, however, have something of a problem. “They cannot deny these developments and have to recognise that employees who want a more flexible model are not typical union members. So they are trying to broaden their offering to attract these people as well.”

Temporary work – *a grey area*

The spread of temporary contracts in several jurisdictions is in part a response to the financial crisis, as employers look for ways to contain the costs of hiring people on a permanent basis. As a result, this creates a grey area.

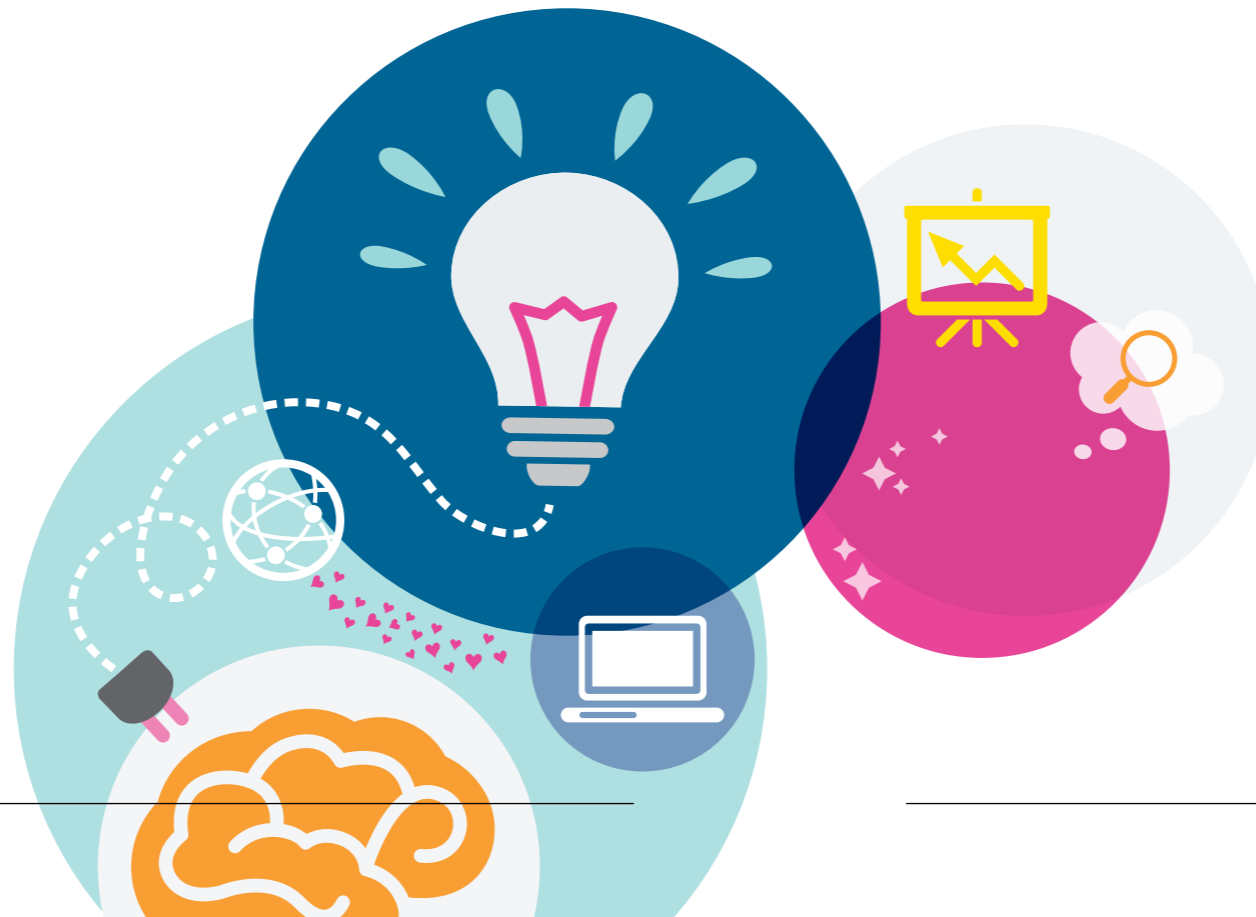
That’s certainly the case in Spain, says Moira Guitart, counsel in our Madrid office. “Temporary contracts are quite often used to satisfy the permanent needs of a company. But the Spanish courts are very pro-employee and very protective. Claims are quite often lodged by employees, and if a temporary contract falls close to that permanent employment relationship the employee would be treated like a permanent employee, with all the benefits that go with that.”

Clients, therefore, have to tread carefully in seeking to secure greater flexibility. “When we advise clients we make sure that contracts are clear and fully integrated in terms of the services to be rendered and the scope of the liability and we educate them in what not to do to avoid putting themselves at risk,” she says.

Spain, however, faces significant cultural issues in trying to replicate the flexibilities available in other markets. People in general still favour, stable, permanent working arrangements, working from home has not caught on here to a significant extent and working in the morning and later into the evening with a long break in between remains the cultural norm in many organisations.

Such attitudes take time to shift, says Moira, although she notes that some companies are successfully innovating. For instance, a few years ago Iberdrola, the energy giant, introduced a new system of concentrated hours, with shifts starting earlier and ending at 3 or 3:30pm. The result: productivity and employee satisfaction levels are both reported to have risen.

However, innovation of this sort is not yet actively supported by the law, says Moira. “In Spain, labour regulations are still a step behind many other European countries in terms of flexibility. The government will face a significant challenge if it wants to reform these regulations in the next few years.”



Balancing flexibility *and security*

Italy has recently introduced new legislation that quite deliberately turns away from greater flexibility, says Livio Bossotto, employment counsel in our Milan office.

The Jobs Act which came into force in the Spring of 2015 stipulates that workers employed after March 2015 should be offered only secure open-ended contracts. It is an effort to stimulate economic activity as Italy continues to haul itself out of recession – it's far easier for workers to gain access to credit, mortgages and loans if they have a secure employment contract; indeed, it is often a pre-requisite.

Since March some 200,000 people have been employed on these contracts, with big employers, like Fiat and ENI, waiting for the March deadline to start hiring in order to qualify for government incentives (worth EUR8,000 per head) to hire in this way.

The only added flexibility offered to employers has been a considerable relaxation of rules governing dismissals. Rights to re-instatement for unfair dismissal have been scrapped, with rates of compensation also capped.

These two provisions completely turn the tide on traditional employment practice in Italy, which was consistently moving towards greater flexibility in the years before. Collaborative contracts that were once often used by companies to cover their full-time needs are being deliberately phased out, and, although self-employed consultants will still be able to work independently, they will have to prove their status is genuine.

“The effect,” says Livio, “will be a significant reduction in the number of people who are self-employed. But the changes have been welcomed by employers, because, with the provisions on dismissals, there is a balance of interests.”

New Dutch laws introduced this year are also trying, with limited success, to strike this balance between flexibility and security in a market where self-employment is common and is growing fast, often creating tensions between those on indefinite contracts and those with less secure arrangements.

The new law has cut the time after which a company must offer an indefinite contract to workers from three years to two, but the new law has slightly back-fired, explains Suzanne Sikkink, a partner in Amsterdam.

“The idea is the people get indefinite contracts sooner. But what's happened is that companies are now letting people go within the two-year period rather than three and people still don't get that sought after contract,” she says.

Elsewhere, some interesting new trends are emerging. PostNL, the privatised post and parcels business, exemplifies a new trend in self-employment, hiring some 1,000 independent delivery people equipped with their own vans who work alongside full-time couriers. Dissatisfied with their pay, the independent couriers actually staged a collective strike this summer, forcing the company to offer either a full-time job or a 10% pay rise.

With such arrangements becoming more common in the Netherlands, insurers and pension funds are beginning to realise these groups of independently employed people – who take care of their own pension and social security provision – are an important audience.

The Dutch government has proposed new legislation that should eliminate obstacles for independently employed people to take out pension insurance. This includes the exemption of certain funds for old-age provision when receiving social assistance and the extension of the period that an independently employed person can continue participating on a voluntary basis with the pension provider of his previous employer.

“Insurers and pension funds are looking at this because it is a large group of people and, potentially, a very interesting market,” says Suzanne. It is also a clear mark of how employment trends are changing so radically.

Full-timers *in disguise*

With the spread of temporary and casual forms of work, lawmakers in many jurisdictions are tightening up their scrutiny of short-term employment contracts and freelance contracts that have all the hallmarks of a permanent employment relationship. We're seeing this in markets as diverse as the Czech Republic, Slovakia, and even in the highly deregulated U.S. market.

It was, after all, the California Labor Commission that recently challenged the business model of global ride-sharing service, Uber, declaring that one of its drivers was not an “independent contractor” but an employee. Brian Jebb, senior counsel in our New York office, says that the decision is up for appeal and may or may not become a precedent, but is indicative of the growing number of legal challenges around new, more temporary forms of employment.

More regulated markets face similar issues. Ondrej Kramolis, associate in our Prague office, says that Czech employers tend to be quite conservative and resist new forms of employment unless they are clearly covered by regulation. But there is a widespread use of freelance contracts for type of work normally covered by employment contracts.

“These contracts are much more flexible in terms of termination and tax, health and social security provisions can be tens of percent lower. But the danger is that such a contract will be seen by the authorities as disguised self-employment and reclassified as a permanent work relationship,” he says. “A lot of people want to structure their working arrangements to look like self-employment and we're seeing it in all areas of the labour market, from manual workers through to professionals, like architects.”

The big question is how the government views such arrangements, he adds. On the one hand they mean a loss of tax revenue, but on the other they help to control unemployment. “At times the government has campaigned against disguised contracts only to go quiet on the issue later – not least during the financial crisis,” he says.

Slovakia's government has similarly harmonised the social security contributions made by employers on both full-time and short-term employment in a bid to encourage greater security, says Katarina Matulnikova, who leads our employment practice in Bratislava.

More widely, she says current regulation could be a considerable hurdle in the use of other new forms of employment. Slovakia is a key location for international shared service centres – with Dell, IBM and AT&T among the international companies that have set up here. This is work that is ripe for the introduction of office/home working arrangements. “But home work is a grey area where the regulations are concerned. Who takes care of health and safety? Who regulates overtime?” she says.

Introducing a compressed working week – with employees completing their hours of work in four rather than five days – also faces difficulties. “There's huge demand for this from employees, but the regulations stipulate that people cannot work more than nine hours in one shift. However, the Ministry of Labour has indicated it might look to change this provision if demand continues to grow,” she says.

Zero *point*

Some forms of flexible working are inherently controversial, and none more so than zero hours contracts, which became a dominant theme in the 2015 UK general election. Few jurisdictions allow the degree of insecurity offered by these contracts, yet they continue to grow and show every sign of staying in place despite several recent high-profile claims being lodged against companies, such as retailer Sports Direct.

According to the UK's Office of National Statistics, use of zero hours contracts in the UK rose by 6% last year, with an estimated 744,000 people employed this way. Some 55% of these contracts offered no guarantee of minimum hours, the ONS reported. Of those on such contracts, 55% were women, 20% were in further education, 34% were aged 16 to 24, and 6% were aged over 65.

Some limited prohibitions are now being placed on these contracts. Employers can now no longer forbid a zero hours employee from taking on other work. But it's a marginal reform that still leaves the UK a long way from more regulated markets. In Belgium, for instance, any part-time contract has to offer at least one-third of normal working hours and three hours of work a day.

Trends and *counter-trends*

The increasing diversity of working arrangements presents, as Eurofound discovered in its mapping exercise, a range of differing trends and not all of them are leading to more independent relationships between employers and employees.

Sarah Henchoz, a partner in London recently back from a visit to Silicon Valley, was surprised to discover that tech companies are, if anything, moving in a different direction.

“You'd expect these companies to be all over this kind of thing – greater flexibility to work whenever and wherever, meeting the demands of a younger group of employees. But actually it seems quite the opposite. With their campus-like set ups, allowing people to bring dogs to work, providing free food all day, their main aim seems to be to bring people together in one place – they see a value in having everyone there working closely together.”

Brian Jebb notes that Netflix is just one of the new breed of companies that is looking to offer more generous work arrangements to attract and retain key talented people. The movie streaming company has just offered parents, female and male, the chance to take as much paid time off as they want in the first year after a child is born or adopted.

“In some industries, for the biggest employers it's not a matter of how can I save a dollar here and cut back on employee benefits? It's how can I attract the best people, the smartest engineers? As a result, benefits are getting more generous. There is a particular focus to attract and retain female talent, of which there is a shortage in Silicon Valley. It means more secure full and part-time employment, backed by more generous employee benefits.”

Elsewhere, though, it seems that traditional loyalty ties between employees and employers are changing fast. It's something that may even have been exacerbated by the crisis, suggests Claire Toumieux. “When young people see entire workforces laid off it is quite a shock and they draw their own conclusions. And maybe they've concluded it's safer to sort out your own working life in a more independent way.”

Sarah Henchoz puts it slightly differently: “There's been a tremendous shift. My generation has tended to be loyal to an employer. Generation Y people tend to be loyal to a profession, though not necessarily to one employer.”

“For millennials it's about being loyal to themselves and their own working lives – they take ownership of their careers. They are prepared to work hard and be part of the team, but they want other things out of life. That means employers have to work much harder to create a sense of loyalty.”

The view *ahead*

So how will these pressures be reconciled? How can employers meet their own needs for greater flexibility and demands for increased independence from their employees, while working within the constraints of existing legal frameworks?

Inge Vanderreken, a partner in our Brussels office, is clear legal change will not come quickly, not least with so many stakeholders and interests to satisfy.

“Governments will struggle to make changes, but the market is clearly demanding new approaches and that’s particularly true of young people. So I think employers will try to come up with solutions that work – for instance offering people the chance to take breaks to travel or study, increased work from home, much more relaxed approaches to working in one set place, 9 to 5.”

We’re even seeing examples of innovation in Asia, where flexible working is rarely a feature of most markets. Susana Ng, co-head of our China/Hong Kong employment practice, says that agency work is seen in some jurisdictions, including China, Vietnam, Malaysia and Thailand. However, this tends to be tightly controlled – China, for instance, limits agency employment to 10% of a company’s workforce and insists these workers must be in ancillary or back office roles, with fines imposed for any breaches.

Clients investing in China are looking for new ways of working with our help – one has created an innovative workforce-sharing scheme with another manufacturer which has a different “production season”. “We helped them structure the arrangement so that it was more enforceable,” says Susana.

A consistent trend our lawyers expect to see is a change to basic company structures, with a smaller group of fixed employees at the centre of the company, drawing on the specialist skills of a much wider group of flexible employees or consultants who work on specific projects, as and when required.

It’s a model we have begun to use at Allen & Overy through our Peerpoint contract lawyer scheme. This allows lawyers, often Allen & Overy alumni, to complete high-level work for the firm or directly for clients, at times that suit them. It’s a model also being tested by the global consultancy group, Accenture (see page 15).

Such innovation unfortunately remains the exception rather than the rule in many sectors, says Sarah Henchoz. Employers tend to be timid – unwilling to go too far from the norm or to change too fast.

Clients who do come to us looking for advice in drawing up more flexible work contracts often have set ideas and need help to navigate through current regulations.

Inge Vanderreken again: “We ask clients very carefully what exactly they want to achieve in gaining more flexibility and very often we can find ways to use alternatives. Even with the legislation where it is, you can still be creative and come up with a solution that really works for the company.”

Suzanne Sikkink senses a shift among companies. The focus, particularly during the crisis, was very firmly on costs and that often led to firms focusing on flexible arrangements that left some of their workforce in a position of insecurity, she says. “Now there’s a growing recognition that if you want to grow, if you want to be relevant, you have to innovate. And to do that you need people who feel safe, even if they are working in more flexible ways.”

Some of the new forms of employment, like crowd employment, have the potential to revolutionise work, says Claire Toumieux.

“Yet many people working in human resources are relatively unaware of how they can put them to use, particularly in highly regulated markets like France. Companies working across borders will increasingly see what is working in different jurisdictions and want to try to test them out in other markets. As they move towards implementation, we need to be increasingly creative in helping them move forward.”

And she makes a prediction: “I think we will see more and more requests from clients to implement these new practices in the years ahead. But companies need to get ready now.

“If they move quickly they will be amongst the first to take advantage of more flexible work arrangements and that will give them a clear competitive edge.”

Accenture tests *new structures*

As a global management consultancy, technology services and outsourcing company, Accenture is confronting many of the hurdles standing in the way of more flexible forms of employment.

Accenture is increasingly experimenting with an ‘Associates’ model to resource client projects, says Clare Ranson, Accenture’s Director of Employment Law, Global Support to Contracting Ventures and Acquisitions.

“We’re creating a network of high-performing individuals who have left the company and who are looking to contract with us on a project basis,” says Clare. “They are usually quite senior people, working with us through a third-party vendor arrangement, usually on a piecemeal basis.”

That system is working well in markets like the UK – offering both Accenture and these contractors a high degree of much sought after independence.

But there are problems to overcome in more regulated markets like Germany and France. Indeed, Germany is actively pushing legislation that works against the contractor model, Clare notes.

“We navigate around this in a number of ways, but mostly it means looking closely at the scope of services being performed and the duration of the project and what is legitimate – this requires careful scrutiny.”

In some markets, though, even that is not possible and Accenture deliberately looks at ways to minimize reliance on contractors where risk of co-employment liability is enhanced, and enforcement activity is increasing also, especially around tax and social security provisions.

Accenture now employs more people in India than in the U.S. and in India, the majority of staff are all on permanent contracts and working in more traditional ways.

“Work is predominantly done, at scale, in 24-hour delivery centres, often sited in economic development zones. As well as fostering close collaboration on client engagements, such onsite working is often a key component of managing client data security. Being sited in such zones, means we need our people, technology and equipment to be physically present there too to meet zone conditions. This has knock-on logistical issues, such as the huge fleet of buses which Accenture needs to bring people to work” says Clare.

It’s a world away from the type of flexible arrangements Accenture employees in other parts of the world are increasingly working to, powered by technology. That trend will increasingly challenge more protectionist work regulations in the years ahead.

“Whether people in more developed markets really want this level of protection is a question that will really come to the fore in the next ten years as more people become digitally connected and start actively demanding that level of flexibility,” she says.

“Restrictive regulation is a pretty blunt instrument for highly skilled individuals who want the freedom to contract, move around and increase their skill bases.”

Working both sides of the *Tech frontier*

King Digital Entertainment, the company behind popular games franchises including Candy Crush, Farm Heroes and Bubble Witch, looks like the sort of high-tech enterprise – full of highly creative individuals – that would be ideally suited to new forms of flexible working.

But Deirdre Knox, global head of employment for King, says that's not necessarily true. With 1,800 employees in 11 jurisdictions as of Q4 2015, the company is basically organised into a series of studios, staffed by artists, developers, data scientists and producers. The studios act as creative hubs for each of King's increasingly popular interactive games.

While King offers flexible working, and engages some contractors, almost all staff are employees – and whether they are in Sweden, the UK, Germany, Romania, Korea, Singapore, China or Spain – they opt to be permanent, full-timers.

"The games aren't just launched and that's it," says Deirdre. "They are organic; constantly being created and improved. It's very much about teamwork, collaboration, people being together and sharing ideas.

"We need talented people and we want to keep them. It's a friendly, fun, embracing place to be. We work hard to build that culture of teamworking and that's not a short-term thing," she says.

As such it is a very different emphasis from another tech company, Amazon – where Deirdre served as head of employment for the UK and Ireland for five years before joining King. A larger and more diverse enterprise, Amazon embraced a range of different approaches to flexible working to suit different parts of the business, from corporate through to hourly-paid employees, agency workers during the peak Christmas selling season and the home-owned delivery service.

"It's the sort of business that lent itself to thinking outside the box in employment terms and finding people that were prepared and wanted to work in flexible ways. So, yes, I've seen an enormous amount of change from both sides in the last five to six years," she says.

"It's clear a lot of people want a lot more flexibility these days allowing them to work remotely, or different kinds of hours for example, or under different regimes for tax purposes. Many companies need greater flexibility too,

especially at times of financial insecurity. They want or need to be able to flex and react quickly in the services they are providing to customers. They are embracing that and finding alternative ways to operate."

That means the full gamut of more standard flexible models, from zero hours through to agency working, as well as new approaches, have come to the fore. She cites the franchise model, adopted by parcel delivery group, DPD, where self-employed drivers buy a franchise to operate for the company. Independent contractor relationships like those used by Uber and private taxi group, Addison Lee, are becoming more widespread, while crowdsourcing, like Amazon's Mechanical Turk, is on the increase too.

The hurdles in the way of such practices can be about employment laws and regulations, but these are often less difficult to overcome than sometimes seems the case. More commonly these days, it's the growing efforts by authorities to close tax and social security loopholes that are challenging new self-employment methods. She points to the new onshore intermediary

rules, efforts by the UK government to reform IR35 regulations, and UK tax authorities mounting a vigorous, if ultimately unsuccessful, challenge against Addison Lee.

But for the future, Deirdre believes the scene is set for far more virtual and flexible working models, especially as technology continues to challenge national borders. The demand for flexibility will come from both companies and their employees.

"We'll see much more flexible working but not necessarily in the way we currently think of flexibility. People will be less likely to stay in one job and may not necessarily have only one job at a time," she predicts.

"I just don't think the traditional 9 to 5 office job is going to satisfy the kids that are graduating now. The economic climate has made things tough for them. They understand that they are going to have to be more flexible. But, they have been brought up in a digital and virtual online world, and they also understand and are in a position to demand more of the flexibility they want for themselves."

New work patterns in a world of social traditions: *the SNCF way*

SNCF (Société Nationale des Chemins de Fer Français; “French National Railway Company”) is France’s national state-owned railway company, managing rail traffic in France and in the Principality of Monaco. SNCF operates in a highly regulated environment, explains Marie-Pierre Philipps, HR, Employment and Diversity Studies Manager, which explains why, as a state-owned economic and commercial enterprise, the new working arrangements do not apply to SNCF in the same way as to other private sector companies.

“There is occasionally some mobility between group companies or SNCF partner companies. However, outsourcing remains exceptional,” she says. “Work is contracted out only in ad hoc situations with very specific problem scenarios requiring special technical knowledge. It is often preferable to mobilise in-house resources with a thorough knowledge of SNCF’s specific circumstances.”

Some areas of the business do make fairly frequent use of agency staff and the current trend in Infrastructure (track maintenance and upgrading) is towards an increased reliance on contractor services, she adds.

The new rail transport environment means SNCF does need to take a fresh look at traditional ways of organising work. Michel Bernat, Careers and Mobility Manager, says that the company needs to pursue flexibility but give due consideration to the particularities of SNCF staff employment status.

Implementation of the Railways Reform Act of 4 August 2014 will throw up new staff allocation and mobility challenges. The Act created three separate state-owned commercial and industrial enterprises to act as a vehicle for the triple aspects of SNCF’s business (SNCF (strategy), SNCF Mobilités (rolling stock) and SNCF Réseau (track).

Michel Bernat is convinced of the need to explore new ways of working so that no-one is left by the wayside and we can meet individual aspirations. “This will mean increased professional support for employees and a rethink of some aspects of management,” he says.

In some circumstances and in some work fields, a corporate policy document allows staff to work from home for a few days a week. This system may develop in the future alongside other practices such as dual workplace, or “third location”, work, where staff are neither at the company nor at home but in a special location close to where employees live, such as a disused train station adapted to suit their purposes by the employees themselves.

Embracing new work practices may prove to be an important challenge in the opening up of the market to competition because new operators entering the rail transport industry may seize on this opportunity and enjoy a competitive advantage from doing so.

“Employment alternatives already exist in some European countries,” explains Barbara Grau, European Affairs Manager. “But where they use some self-employed drivers, this raises a plethora of potential issues around training, work oversight and skills assessment.”

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