

# **Non-standard forms of employment in Germany. Development, patterns and regulation in a comparative perspective**

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## **THE ISSUE**

In recent decades there has been a significant increase in non-standard forms of employment in Germany, and the significance of this development for the employment system needs to be examined. This paper looks at the development, extent and patterns of this type of employment and also at regulation problems. It starts by differentiating between standard and atypical employment and then examines the development of the various forms during the relatively long period since German reunification in 1990. On the basis of explicitly indicated social criteria it then compares the differences between atypical and standard employment. The paper ends by drawing a number of conclusions on regulation problems regarding atypical employment including the question of improving various dimensions of social security. Inasmuch as the available data allows, developments in Germany are compared with those of other EU member states.

## **STANDARD EMPLOYMENT AND FORMS OF ATYPICAL EMPLOYMENT**

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

- Full-time employment with an income sufficient for subsistence,
- Permanent employment contract,
- Integration into the social security system (particularly unemployment, health and pension insurance),
- Work relationship and employment relationship identical,
- Employees subject to direction by the employer.

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

Atypical forms of employment deviate from NE in terms of at least one of the above criteria:<sup>1</sup>

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

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

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

## **DEVELOPMENT AND EXTENT OF ATYPICAL EMPLOYMENT**

Since the early 1990s<sup>4</sup> all forms of atypical employment have been on the increase, albeit at differing rates and starting from different levels<sup>5</sup>.

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<sup>2</sup> Deviations are possible. The duration can be extended up to four years by collective agreements.

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

<sup>4</sup> This date offers itself as a point of reference because of German reunification.

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

**Table 1: Forms of atypical employment**

Year	Total employees	Part time work <sup>1)</sup>		Marginal employment <sup>2)</sup>				Agency work <sup>2)</sup>		Total employees (without trainees)	Fixed-term employment (without traineeships)	
		in 1,000	Percentage	Total in 1,000	Percentage	Only on marginal wages in 1,000	Percentage	in 1,000	Percentage		in 1,000	Percentage
1991	33.887	4.736	14,0					134	0,4	32.323	2.431	5
1992	33.320	4.763	14,3					136	0,4	31.891	2.495	7,8
1993	32.722	4.901	15,0					121	0,4	31.151	2.221	7,1
1994	32.300	5.122	15,9					139	0,4	30.958	2.322	7,5
1995	32.230	5.261	16,3					176	0,5	30.797	2.388	7,8
1996	32.188	5.340	16,6					178	0,6	30.732	2.356	7,7
1997	31.917	5.659	17,7					213	0,7	30.436	2.453	8,1
1998	31.878	5.884	18,5					253	0,8	30.357	2.536	8,4
1999	32.497	6.323	19,5			3.658	11,3	286	0,9	30.907	2.842	9,2
2000	32.638	6.478	19,8			4.052	12,4	339	1,0	31.014	2.744	8,8
2001	32.743	6.798	20,8			4.132	12,6	357	1,1	31.176	2.740	8,8
2002	32.469	6.934	21,4	4.100	12,6	4.169	12,8	336	1,0	30.904	2.543	8,2
2003	32.043	7.168	22,4	5.533	17,3	4.375	13,7	327	1,0	30.513	2.603	8,5
2004	31.405	7.168	22,8	6.466	20,6	4.803	15,3	400	1,3	29.822	2.478	8,3
2005	32.066	7.851	24,5	6.492	20,2	4.747	14,8	453	1,4	30.470	3.075	10,1
2006	32.830	8.594	26,2	6.751	20,6	4.854	14,8	598	1,8	31.371	3.389	10,8
2007	33.606	8.841	26,3	6.918	20,6	4.882	14,5	731	2,2	31.906	3.291	10,3
2008	34.241	9.008	26,3	6.792	19,8	4.882	14,3	794	2,3	32.232	3.106	9,6

1) April in each case

2) End of June in each case

3) Minijobs on basis of €400

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

- As in other EU member states, part-time work is by far the most widespread form (more than 26% of all employees). Its long-term steady increase, whatever the stage of the economic cycle, is closely related to the growing number of working women, who still account for more than 80% of all part-time employees. In addition to those opting voluntarily for part-time work, there are also individuals who would prefer to work longer hours if they were offered appropriate options (for international comparative data see Sengenberger 2009).
- About 20% of all employees fall into the “marginal employment” category. There was initially a marked increase in this form of employment following the amendments to the Hartz laws<sup>6</sup> and it then stabilised at a high-level. An explicit differentiation has to be made between mini-jobs as an individual’s exclusive work and mini-jobs as a sideline in addition to non-marginal employment. The former, which in terms of social policy are definitely more problematic, predominate, accounting for some three-quarters of all mini-jobs. However only 14% have this as their sole employment<sup>7</sup> – the rest combine it with full-time or part-time employment. The importance of midi-jobs is (at about 700.000) relatively slight compared with mini-jobs.
- Fixed-term employment, despite the wave of deregulation since the mid-1980s, has only grown by about 10% – a modest increase compared with other forms. Original fears that that would be a massive expansion of fixed-term employment have proved unfounded. What is crucial is the question of whether individuals manage to achieve the transition to permanent employment.
- Agency work continues to account for only a relatively small segment of the labour market and, in quantitative terms, is the least important form of atypical employment. However in the long term, especially since the deregulation of the Hartz laws, it has undergone an unusually strong expansion (to more than 2% of total employment), and its high growth rate (with a duplication within the last decade) has triggered a disproportionate level of public interest in this type of employment. However, with the onset of the economic crisis of 2008/2009 this development was abruptly reversed, and the sharp increase was followed by an equally sharp decline<sup>8</sup>. This illustrates the extreme degree to which agency work is affected by the state of the economy – it is one of the first forms of employment that will experience an upturn when recovery kicks in.

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

In view of this development, the term “pluralisation/differentiation of forms of employment” is a more appropriate description of the changes in the employment system than the frequently used reference to a “crisis” or even “erosion” of standard

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

<sup>7</sup> This percentage includes an unknown share of students and pensioners.

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

employment (for others Kommission für Zukunftsfragen 1996). As the employment landscape continues to change, we can expect – whatever the stage in the economic cycle and the overall employment trends – a further increase in atypical forms of employment, even though this does not mean that standard employment will become obsolete. In that regard, Germany does not constitute an exception. Whatever the type of welfare state involved (especially social democratic, conservative, or liberal) an increase in atypical forms of employment can be observed in the EU (above all in the old member states) (cf. Schmidt and Protsch 2009).

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

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

## **SOCIAL RISKS OF ATYPICAL EMPLOYMENT**

### **Are atypical forms of employment precarious?**

The increase in atypical employment implies an increase in social risks. These risks occur during and after the end of an individual’s working life. The question therefore arises of the link between atypical and precarious employment (Rodgers and Rodgers 1989). In political and academic discussion, atypical is often regarded as synonymous with precarious employment (for others Dörre 2006). This commonly held position based, amongst other things, on concepts developed by Bourdieu and Castel, tries to put labour market trends into a broader social context – i.e. to create a bridge to research on social inequality.<sup>9</sup> However, in terms of this investigation, such an approach remains rather unfocussed, because it does not differentiate between the objective dimensions of precarity detailed below and fails to take various contextual factors into consideration.<sup>10</sup>

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

- A subsistence income – usually internationally defined as two thirds of the median wage, although one has to explicitly differentiate between individual and household income,
- Integration into the social security system, above all pension insurance,

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<sup>9</sup> Cf. “Abstieg – Prekarität – Ausgrenzung”, in: *Aus Politik und Zeitgeschichte* 33-34/2008, 11th August 2008.

<sup>10</sup> A freely chosen, part-time job of unlimited duration can be unproblematic in both the short and medium term if, for example, it makes family and work more compatible and the family’s material needs are covered by the income from standard employment.

- Employment stability (in terms of continuity of employment and not just a specific workplace),
- Employability (as the individual, life-long ability to adjust to structural changes).

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

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

There are also significant differences when it comes to employment stability. Agency work is categorised as particularly unstable<sup>11</sup> compared with standard employment (cf. Brehmer and Seifert 2009, Brenke 2008, Kvasnicka 2008), and a higher level of volatility is also diagnosed in the case of fixed-term employment (cf. Boockmann and Hagen 2006, Giesecke and Gross 2007). In the case of part-time employment, recent studies (cf. Brehmer and Seifert 2009) have identified a greater degree of employment stability compared with all other forms and attribute this to the fact that part-time work in particular enables women starting a family to remain employed. Without the possibility of changing from full-time to part-time work as their family situation evolves, they would probably often have to interrupt their working lives.

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

The significance of the precarity risks described above can be relativised if atypical employment merely serves as a way of getting access to the labour market and

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<sup>11</sup> The majority is employed for a period of less than three months.

constitutes a short-term transition to standard employment. However, upward mobility is extremely limited. When it comes to changing workplace, it is much less frequent and more difficult for individuals to move from atypical employment to standard employment than for those with a permanent full-time job. When fixed-term and agency workers lose their jobs and do not remain unemployed then, as often as not, they return to similarly precarious forms of employment (cf. Giesecke and Gross 2007, Gensicke et al. forthcoming; see also Promberger et al. 2006).

### **Long-term consequences**

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

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

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

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

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

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

on public budgets and bring with them the risk of gradual erosion of the basis for contributions<sup>15</sup>.

## OUTLOOK

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

In view of this conclusion, the question arises as to how these forms of atypical employment should be dealt with in the future. Should faith continue to be put in market mechanisms – and indeed, should these be promoted by further deregulation<sup>16</sup> - or should they be subject to stricter forms of political regulation? The latter option would require mitigation – or in a best-case scenario, elimination – of the social risks described above through (re-)regulation. As forms of atypical employment are quite heterogeneous, any measures taken would have to be highly differentiated, which would necessarily result in a new complexity of regulatory instruments.

Nevertheless the general regulations and design principles described in what follows would help to reduce the analysed precarity risks. These include realising – i.e. implementing in practice – the principle of equal pay, thereby bridging the significant wage differentials between identical jobs in atypical and standard employment. Indeed, if market mechanisms operated properly, then one could even expect a risk premium as a result of the higher employment risks involved in atypical employment. Germany is one of the few EU member states that do not have any statutory minimum wage. A collectively agreed wage can, on application, be declared generally binding for the sector concerned, but in reality this seldom happens. A disproportionate number of those in atypical employment receive “poverty wages“, i.e. less than two thirds of the median wage. Introduction of a general statutory minimum wage would improve their prospects of being able to subsist on the wage they receive.

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

The high level of employment instability to be found especially in the case of fixed-term and agency workers justifies the introduction of a type of precarity premium that can be found in some EU states, in order to balance out the unequal burden of risks. A third general area for future reforms concerns pensions. One alternative that would fit into the current system would be a transition to a three-part solution consisting of an element funded from general taxation, an element based on contributions paid

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

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

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

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

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