improper places, such as toilets or dining areas. Employers should inform employees of their surveillance methods and restrict them to work hours. Employees must be notified in writing of all web or email monitoring, and the code of conduct should include a description of inappropriate and appropriate behaviour.

A tendency in certain companies is to avoid employees feeling that they are under continuous surveillance, and achieve security using internal training to create the awareness of the consequences of irresponsible behaviour at work and reasonable use of social networks, together with courses about compliance and ethics at work. These measures will help employers to monitor employees, respecting their privacy and achieving, through good faith, a collaborative atmosphere for both employees and employers.

Non-standard or atypical forms of work

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Introduction

Rapid technological progress, globalisation and the infamous financial crisis have fundamentally changed labour markets worldwide and created space for the growth of atypical or non-standard forms of work that come in all shapes and sizes. The growing emergence of so-called 'more flexible forms of work' within the labour market, which deviate from 'standard' employment contracts, is considered necessary to ensure economic growth through the adaptation of business strategies, and increase productivity in globalised markets and economies. Flexibility is also a key consideration for these types of work.

Therefore, balancing flexibility and security has become a prominent issue in the evolution of work forms. This issue involves: (1) the need to look more closely at the regulation of new forms of work; (2) the need to combat an informal economy; (3) the need to improve the interface between labour markets and social security regulation; and (4) the need to clarify the rights and responsibilities of the parties involved in order to ensure that employees are not deprived of their employment rights.

On the one hand, several work arrangements, such as telecommuting and teleworking, compressed work schedules, flexible working hours, part-time work, desk and job sharing and zero hours, are rapidly making their way to employers' hearts and convincing even multinational companies that more flexible forms of work are the future. On the other hand, avoiding high employment costs and using disguised forms of employment are still practices that companies are using in an effort to grow or simply try to overcome the deep marks left by the financial crisis ten years ago. In any case, flexible working arrangements and non-standard forms of work are growing realities nowadays, and some of them are giving rise to concerns among governments and policy-makers for the not-so-positive impacts they have on an economy and, most of all, employees' basic rights.

We have chosen to address the most recent or common non-standard forms of work, evidencing that these new ways of working need to function under a properly conceived regulatory framework, when it does not exist.

Telecommuting and telework

More than a type of flexible working arrangement or an atypical form of work, telecommuting is increasingly becoming a way of life. Whether or not we highlight the difference between telecommuting – where the work is exclusively done remotely through the assistance of technology, such as virtual private network (VPNs) or video conferencing instead of having to (physically) commute to an office everyday – and teleworking – where the work is only partly done remotely as a complement to the work done in the office – the truth is that working remotely has become a successful form of work for those jobs that do not require the employee's presence at the workplace.

This form of work, along with other types of flexible work arrangement, is becoming well

known for increasing employees' productivity and motivation, as well as expanding the hours of operation or customer service, and reducing companies' facilities costs. By using telecommuting and teleworking systems, companies are allowing employees the possibility to create a better work-life balance, which is likely to contribute to less absenteeism and increased employee retention. On the companies' side, this kind of flexibility may not only be a cost saving but also the key to solving some institutional issues, such as the lack of office space in small or micro-sized businesses, or the work distribution problem when facing peaks and troughs of activity.

However, working remotely also comes with disadvantages. If it is used by employees who are unwilling or unable to put in a full day's work when faced with the non-work temptations of the place in which they are working remotely, notably if we are talking about homeworking, telecommuting and teleworking could be disastrous, or a productivity drain, to say the least. Another disadvantage of this flexible form of work is the fact that managers must be extra attentive and control the work performed by these employees in order to avoid abuses and lack of organisation that may injure customer service, notably when no one is available for work before 0930 or after 1700. These problems call for much more organised telecommuting systems, where employees ought to, at least, be available at certain hours of the day, possibly complementing the scheme with a shift rotation.

Human cloud

In the past decade, we have seen cloud computing deeply change the way work is done. Now, the so-called 'human cloud' is likely to become a trendsetter for the years that follow. The 'human cloud' is a tool that assembles a global pool of freelancers who are available to work on demand from remote locations in a wide range of digital tasks. Since 2010, several online platforms have been created, looking to match employers with freelancers (task workers), where the latter bid for each task hoping to get the job. Although this form of atypical work does not typically go under an employment agreement – promoting self-employment and freelancing – it is likely to compete with other growing forms of employment and thus is worth mentioning.

On the companies' side, the benefits are very straightforward, notably, instant access to a wide pool of enthusiastic, talented people, with low 'salaries' and without entering into employment relationships that determine the need to pay holiday and Christmas allowances (in certain jurisdictions), and respect other employee rights. On the 'taskers' side, the main benefit is, as with any freelance job, flexible work. However, the human cloud means lower wages, particularly for people who use human clouds for a living, and inequality between economies. A 2015 article published by *The Guardian* stated that 'by inviting people to bid for work, sites such as Upwork inevitably trigger a 'race to the bottom', with workers in Mumbai or Manila able to undercut their peers in Geneva or London thanks to their lower living costs'. Critics also point out that the human cloud contributes to an increase of workers with no financial security, job stability or career progression.

Nevertheless, human clouds are still a very useful tool to match companies and workers in the modern age. With the startup market growing exponentially, these sites make it easier for these companies to hire freelancers for certain tasks, testing them to see if they are valuable assets to the newly founded team before offering them a permanent position.

Regulating this type of work will be closely linked to tackling ambiguous employment relationships, for which many jurisdictions have put in place legal remedies to deal with the issue of misclassified self-employment by establishing a 'primacy of facts' rule, whereby the determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of work and not by how the parties describe the relationship.

Zero-hours contracts

Unlike the two types of working mentioned above, zero-hours contracts have been a growing concern in some European Union countries. These contracts, also known as casual work contracts, do not specify the number of working hours, but request that employees are available in case the company needs them, and are usually designed for 'piece/task work' or 'on-call work'. Bringing more benefits to employers to the detriment of employees, these contracts are built to respond to particular workload and work organisation demands of employers, and do

not offer employees any possibility to plan ahead, namely regarding the amount of income expected at the end of the month. On the other hand, casual work can present itself as easy access to the labour market and short working hours, particularly for students and recent graduates.

On-call working is sometimes regulated by law, even though, in many countries, it is not a legal form of work. In other countries, on-call working is widely practised, despite the fact that there is no specific legislation covering it. In the United Kingdom, although there is widespread use of on-call working, employers are not under any legal obligation to offer a preset number of hours to employees on these types of contracts.

All in all, at least until this atypical form of work is regulated, the disadvantages seem to be outweighing the benefits. In fact, although employers can get the job done whenever there is an unexpected increase in business activity, the limited integration of employees with respect to the company's philosophy and values results in unmotivated staff, and the ensuing work dissatisfaction is likely to result in a lower quality of work.

Some EU countries have been looking at zero-hours contracts as a problem, which is a substantial contributor to undeclared work, job instability and precarious employment. The disadvantages of this type of work for employees are, to summarise, a huge setback for its implementation. Although recognising the inexistence of reliable data because most of this arrangement is outside national legal frameworks, the International Labour Organization has been drawing attention to zero-hours contracts and the need to ensure minimum protection rights for employees working under such a regime.

Final notes: legal framework of atypical forms of work

While some countries have already regulated atypical forms of work, others have not yet been confronted with the urgent need to do so. Therefore, these emerging forms of work are either functioning through an adaptation of existing provisions of standard employment agreements or being implemented totally outside regulatory frameworks. Taking Portugal as an example, zero-hours contracts are not yet an acknowledged reality and our still very conservative employment legislation is likely to pose a big obstacle to the introduction of these types of contracts, requiring the adjustment of the Portuguese Labour Code, which will be quite a Herculean task for employers looking to embrace this new form of work.

In EU countries, the creation of a legal framework to regulate these new forms of work, for those who have not yet regulated the matter, may come in the form of EU directives, similar to what happened in the past for those who were previously considered to be non-standard work forms, such as part-time and fixed-term employment agreements. These two types of employment agreements, although currently settled in EU countries, were also an issue of concern back in the day, giving rise to important EU legislation providing a range of rights to workers under these types of contracts (eg, Council Directive 97/81/EC of 15 December 1997 on part-time work and Council Directive 99/70/EC of 28 June 1999 on fixed-term employment). However, if the past is to serve as an example, should there be any EU legislation on the new forms of atypical work, the directives are more likely to be focused on addressing non-discrimination principles and equal treatment rather than disciplining mandatory minimum provisions of employment in these forms of work.

Aside from EU legislation, a legal framework on atypical forms of employment may depend on national employment policies. In fact, government policies looking to tackle precarious work are not likely to govern the issue. On the contrary, countries looking to stimulate economic growth, while wanting to ensure that employees' rights are still respected, will most certainly engage in the creation of an adequate legal framework.

In any case, legal frameworks on atypical forms of work should focus not only on the equal treatment of atypical and standard workers in matters such as salary policy, health and safety, dismissal and collective representation, but also on giving the employer the necessary discretion to organise its workforce. Only this balance will enable these atypical forms of work to be successful.