

STABILITY AND SECURITY IN EMPLOYMENT AND DECENT WORK

Jorge F. Perez-Lopez¹

The ILO defines decent work as “opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity.”² The basic principles of decent work are universal – they apply to men and women everywhere, irrespective of occupation, industry, or setting.

ILO promotion of decent work is being carried out through a variety of ways and means, which the ILO calls a “Decent Work Agenda.” One of the specific ways in which the ILO has been promoting the Decent Work Agenda is by define measures of decent work that would permit assessment of progress over time at the national level and cross-country comparisons.

Decent Work Measures

According to the ILO, the characteristics of decent work most commonly selected by workers are:³

1. Employment opportunities
2. Acceptable work
3. Adequate earnings and productive work
4. Decent hours
5. Stability and security of work
6. Fair treatment in employment and at work
7. Safe work environment
8. Social protection
9. Combining work and family life
10. Social dialogue and workplace relations

For the purpose of this forum, point number 5 above, “Stability and security of work” is most relevant.

¹ Executive Director, Fair Labor Association (FLA), Washington, D.C. Prepared for presentation at the Multi-Stakeholder International Forum, “Decent Work in the Textile & Garment Sector in Peru: Opportunities & Challenges,” Lima, Peru, March 20-21, 2012.

² *Decent Work: Report of the Director General, International Labor Conference, 87th Session, 1999.*

³ Richard Anker, et al., *Measuring Decent Work with Statistical Indicators*, Statistical Development and Analysis Unit, Policy Integration Department, ILO, 24 July 2002, p. 11.
<http://www.ila.org.pe/proyectos/observatorio/maerial/anker.pdf>.

Thus, an ILO report states:

Losing one's job or work is a serious event for most people, and there is little doubt that job security is seen by most people as an important aspect of decent work. Job loss involves economic costs beyond loss of pay, even if a new job is found quickly. Changing jobs disrupts the process of human capital accumulation, potentially making worthless the knowledge and skills specific to the lost job. Changing jobs also frequently disrupts access to benefits, particularly pensions. Finally, job change disrupts other parts of the individual's life. For example the entire household may be forced to relocate to find or accommodate new work. In addition, the threat of job loss causes stress.⁴

Temporary jobs are less stable and secure than permanent or indefinite jobs and, everything else being the same, they are less beneficial to workers.

Precarious Employment

A very challenging feature of the global economy is the rise of precarious employment.

Precarious work refers to “forms of work characterized by atypical employment contracts, limited or no social benefits, and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease. From a worker's point of view, precarious work is related to uncertain, unpredictable and risky employment.”⁵

The growth of precarious work has severe costs for workers, according to Evans and Gibb. These costs include the loss of protection and increase in employment insecurity and the loss of individual and collective influence over working conditions, the pace of work and wages. Evans and Gibb also argue that the shift away from the standard employment relationship affects men and women differently, with the kinds of jobs held by women -- still disproportionately precarious -- carrying a higher risk of short hours, low pay and limited access to benefits. In their view, precarious work makes a major contribution to the persistent pay gap between men and women.⁶

The FLA and Precarious Employment

From 2009 to 2011, the Fair Labor Association (FLA) undertook a major revision of its Workplace Code of Conduct and Compliance Benchmarks. The resulting Code of Conduct is much enhanced, and includes numerous features that strengthen protections of workers' rights.

A significant change to the Workplace Code of Conduct was the addition of a new code element called Employment Relationship.⁷ This new code element states: “Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum,

⁴ Anker, et al., p. 38.

⁵ John Evans and Euan Gibb, *Moving from Precarious Employment to Decent Work*, Global Union Research Network, Geneva, ILO, 2009, p. 2.

⁶ Evans and Euan, p. 5.

⁷ The FLA Workplace Code of Conduct and Compliance Benchmarks are at <http://www.fairlabor.org/our-work/labor-standards>.

safeguard their rights under national and international labor and social security laws and regulations.” New compliance benchmarks under this code element:

- Require workplaces to have in place policies and procedures related to general human resource management and to specific management functions organized along the employment lifecycle, including recruitment and hiring, terms and conditions of employment, administration of compensation, fringe benefits and hours of work, industrial relations, work rules and discipline, skills development, health, safety and environmental management, and termination and retrenchment.
- Place greater emphasis on recruitment and hiring processes, including when employment agencies are used, to ensure better protections for workers.
- Emphasize employment and workplace protections for precarious workers, particularly migrant, contract, and contingent workers.

The Glossary of Terms accompanying the Compliance Benchmarks defines precarious employment as: “Work arrangement where employment security, which is considered one of the principal elements of the labor contract, is lacking. This term encompasses temporary and fixed-term labor contracts, home workers, contract workers, and contingent workers.”

FLA Compliance Benchmarks Addressing Precarious Workers

Three of the FLA’s new compliance benchmarks are particularly relevant to precarious employment and excessive/abusive use of short-term contracts.⁸

Employment Relationship Compliance Benchmark No. 5 (ER.5), titled “Recruitment and Hiring/Employment Agency Recruitment Practices,” states that FLA suppliers should not use employment agencies that engage in a number of questionable practices, including providing precarious employment. Thus, the benchmark states (emphasis in italics added):

ER.5 Recruitment and Hiring/Employment Agency Recruitment Practices

Employers shall not use employment agencies that rely on practices such as:

ER.5.1 using false information to recruit workers;

ER.5.2 restricting workers’ freedom of movement;

ER.5.3 requiring workers to pay recruitment and/or employment fees;

ER.5.4 providing inadequate housing;

ER.5.5 restricting transit of workers;

ER.5.6 providing precarious employment;

ER.5.7 withholding from workers a copy of their employment contract in their native language that sets forth the general terms and conditions of engagement and employment;

ER.5.7.1 for migrant workers, a copy should be provided prior to departure from their home town;

⁸ This is not an exhaustive list of Compliance Benchmarks addressing issues related to precarious employment, but the three selected here are particularly relevant to the agenda of this forum.

ER.5.8 retaining possession or control of workers identification and other documents like passports, identity papers, work permits, and other personal legal documents;

ER.5.9 providing for financial penalties; and

ER.5.10 punishing workers for terminating employment.

Taken together, Employment Relationship Compliance Benchmark No. 8 (ER.8), titled “Recruitment and Hiring/Conditions of Hiring Contract or Temporary Workers,” and No. 9 (ER.9), titled “Recruitment and Hiring/Invalid Use of Contract, Contingent or Temporary Workers,” set important limits to the excessive/abusive use of short-term contracts.

ER.8 Recruitment and Hiring/Conditions of Hiring Contract or Temporary Workers

Employers may hire contract or temporary workers only when contract or temporary employment is allowed by national law and one of the following conditions is met:

ER.8.1 the permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders;

ER.8.2 exceptional circumstances may result in great financial loss to the supplier if delivery of goods cannot be met on time; or

ER.8.3 work that needs to be done and is outside the professional expertise of the permanent workforce.

ER.9 Recruitment and Hiring/Invalid Use of Contract, Contingent or Temporary Workers

Employers shall not:

ER.9.1 use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms;

ER.9.2 hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice; or

ER.9.3 make excessive use of fixed-term contracts or schemes where there is no real intent to impart skills or provide regular employment.

That is, Compliance Benchmark ER.8 sets objective conditions an employer would have to meet in order to be able to hire contract or temporary workers, while ER.9 sets objective criteria an employer would have to meet to justify employment of contract, contingent or temporary workers, or the renewal of short-term contracts.

The Preamble of the FLA Workplace Code of Conduct is clear on the obligations of affiliates:

Companies affiliated with the FLA are expected to comply with all relevant and applicable laws and regulations of the country in which workers are employed and to implement the Workplace Code in their applicable facilities. When differences or conflicts in standards arise, affiliated companies are expected to apply the highest standard.

Concluding Remarks

Stability and security of employment is very important for long-term sustainability throughout the supply chain and is essential to ensuring that workers are treated fairly. Regular or indefinite employment contracts, with suitable benefits, is the preferred employment relationship, which FLA promotes among its affiliates. There are circumstances where other forms of employment are necessary to meet short-term needs or gaps, but it is essential that these instances be limited and controlled in order to prevent their misuse to the detriment of workers.