

6. The future of work

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Introduction

The central theme of the 'Future of work' project is to find an optimal mix of autonomy and market forces versus safeguarding of fundamental principles, in particular with regard to the labour market and the players acting in this. An altered playing field in the labour market increases the importance of the question of which public interests (such as sustainable development and the inclusiveness of and in the labour market, safeguarding the principles referred to in the European Pillar of Social Rights) can and should be protected by private actors, and in which way, and which should remain with the government.

The interplay of major economic transformations through globalisation, the application of new technologies (robotisation/digitisation/platformisation), demographic shifts (ageing and greater diversity of the labour force) and sustainability of production processes and service provision have a major impact on our economy and labour market.¹ Although these transformations can have a positive effect on our welfare, they also face us with new challenges in the labour market.

The labour market increasingly shows signs of 'job polarisation'; work is being pushed to the two outermost extremes of the training spectrum – highly qualified or low-skilled - with the centre being squeezed out. This division of the labour market leads to a group of *insiders* with strong protection and a growing group of *outsiders* with little or no protection.² The deployment of cheaper forms of labour with fewer or no risks leads to the displacement of insiders. Overall, this trend is not favourable for companies and institutions either. If increased flexibility is realised in a low-value manner, this has negative consequences for productivity and the innovative capacity of labour organisations and consequently, for our (knowledge) economy as a whole. Furthermore, the level playing field between companies is disrupted through 'working conditions competition'. Finally, the diminishing percentage of 'employees' leads to issues in the field of (financing of) social security: a growing group no longer contributes to the system and remains uninsured. This reinforces the already polarised labour market. It also shows that the classical government steering mechanism (imposing obligations on employers in relation to employees) is outdated. All these developments raise the question of whether current labour law regulations, which are based on (permanent) employment contracts between an employer and an employee, on which a large part of social insurance is based, are due for reform.³

¹ *Work for a brighter future - Global Commission on the Future of Work*, ILO 2019 (online, public).

² E. Verhulp, *De arbeidsovereenkomst voor onbepaalde tijd als onbereikbaar statussymbool na inwerkingtreding Wetsvoorstel Werk en Zekerheid?* ('The permanent employment contract as an unattainable status symbol after the Work and Security Bill comes into force?'), TRA 2014/24, Issue 3, pgs. 21-29

³ See e.g. F.G. Laagland & J. Kloostera, *De Engelse tussencategorie als oplossing voor platformwerk: mythe of werkelijkheid?* ('The British intermediate category as a solution for platform work: myth or reality?'), *Ondernemingsrecht* 2019/7, Issue 1, pg. 41, J.M. van Slooten, *Het arbeidsrecht moet op de schop* ('Labour law needs an overhaul'), *Ondernemingsrecht* 2018/43, Issue 6, pgs. 261-262 and P.T. Sick, *Haastige spoed...* ('More haste ...'), TRA 2018/69, Issue 9/10, pg. 14.

This reform has national and international (European) components. Protection of the Dutch labour market will naturally take shape via national actors such as the government, the social partners and other national stakeholders. But national solutions must not conflict with European law, such as freedom of movement and service provision and free competition. Given the open borders in the EU, employees and service providers from other member states also have an impact on the Dutch labour market. Furthermore, some solutions can be reached more effectively at the EU level than on a national level.

PhD project

The PhD study will relate to 'contract form-free regulation of work'. If the object, the worker, is the focus with regard to international labour law protection, protection must be offered separately from the type of employment contract. Where safe and healthy working conditions are concerned, it should make no difference whether a person works on the basis of an employment contract or as a self-employed person. But in that case, what will the regulation of the legal position of such workers comprise? Who does the term 'worker' cover? Does it mean small businesses as well as conventional employees? How does the regulation of the worker relate to contract freedom, EU freedoms and competition law? Which tasks are vested in the government, and why? Which tasks could better be performed by private actors, and why?

Further concretisation of the PhD study could relate to (two examples):

- Disability and reintegration: who and what is involved, how and with which powers, responsibilities and obligations, if a worker is absent due to disability? In the event of the absence of a worker due to illness, the employer, the employee and the Employment Insurance Agency (UWV) (government) are currently involved and financial incentives work very well for reintegration in the labour market. Which incentives could facilitate the same effect in working relationships that do not qualify as employment contracts (e.g. self-employment relationships), in which the employer and the UWV are lacking as (co-)responsible actors?
- Sustainable development (life-long learning): who and what is involved, how, with which powers, responsibilities and obligations, with regard to sustainable development of workers? Does the government have a task in this regard, and if so, which? What is the most effective steering mechanism to encourage non-employees (e.g. the self-employed) to invest in their own training and development? Only fiscal incentives, and are the fiscal instruments intended for/adequate for this?

Empirical research

The chosen research object always concerns two questions (a) who has which responsibilities relating to the research object and the sub-theme and (b) what works best?

Part 'b., What works?' refers to which steering mechanisms the government/public sector has and also the private actors involved, to promote desirable behaviour of the worker. Insight into the behaviour of the actors involved is of major importance in this part. In order to gain this insight (further) empirical research could and should hold a serious place in this part.

An example. In the case of occupational disability, it is first necessary to define how the existing group of workers deals with this risk/is even aware of it. Which numbers are involved? (How) Do these workers insure themselves against loss of income? Does a work-provider behave differently (with greater or fewer risks) if it is not co-responsible for income provision

during the worker's illness? Why is this? Which instruments work best under the current regulations? Why? Etc.

The candidate will not avoid ELS, either because he/she will actively perform ELS himself/herself, or because he/she will use existing ELS work, which he/she must be able to assess in terms of its value. The optimal mix of personal performance and analysis of ELS is naturally the desired outcome.