Living on the edge

Summary of the TUC submission to the Taylor Review on the future of work
Introduction

This document summarises the TUC’s submission to the Taylor Review on the future of work. The full submission will be published on 26 June 2017.

Over three million people – one in ten of the UK workforce – now face insecurity at work. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, or the right to sick pay when they cannot work. This insecurity is sometimes described as an inevitable feature of a modern economy, fuelled by new technology and a desire for more flexible ways of working. But the so called ‘flexibility’ we outline in this report has been one-way.

Employers have sought to manage the financial risk that comes from the inability to guarantee a constant demand for a product or service by employing workers on contracts that offer flexibility for the employer, at the expense of pay and certainty for the employee. And, because these contracts often come with lower pay and fewer rights and protections, the risk of being unable to work due to sickness or caring responsibilities is also transferred to working people.

Technology has played a role in these developments, with online platforms offering a way for employers to break up work into smaller tasks and contract out work on a piece-rate basis. But the change in the balance of risks between workers and employers cannot simply be attributed to new technology. The jobs in which insecurity has grown most swiftly are those that have been around for centuries, such as teaching, caring or providing hospitality.

And while some of today’s insecure workers may work for ‘platform’ companies like Uber or Deliveroo, many of them work in areas that use little technology. What unites the agency worker at ASOS, the care worker missing out on the minimum wage and the lecturer employed on a zero-hours contract is not an app, but the lack of rights, protection and power they experience at work.

This report summarises the evidence on the extent and impact of insecurity at work today and sets out the policy changes that the TUC believes could help ensure that everyone gets the chance of a decent job. Throughout the report, we quote workers who responded to an online survey carried out by the TUC in February 2016, enabling these workers to talk about the impact of insecurity in their own words.

There should be nothing inevitable about insecure work, and other countries have shown that a downgrade in rights and protections is not an inevitable flipside of healthy employment growth. But policy-makers need to act to ensure that insecure work becomes a thing of the past – rather than a permanent feature of the modern labour market.

The report covers five broad themes.

Firstly, the report summarises evidence on the extent and impact of insecure work in the UK:
There are 3.2 million people experiencing insecurity at work, and this number has risen sharply (by 27 per cent) in the last five years. This includes those on zero-hours contracts, in agency and other insecure temporary work, and in low-paid self-employment.

Insecurity is concentrated among those groups that already face labour market disadvantage: women, black and minority ethnic workers and those in poorer regions of the UK are all more likely to face insecurity at work.

Insecurity at work often means insecurity about working hours, short-notice cancellation of shifts and worries about pay. But it also comes with a significant loss of rights; we estimate that 1.5 million workers are employed, but risk missing out on key rights including maternity, the right to return to paid work after maternity leave, and rights to union representation.

The lower pay experienced by those in insecure work not only affects their living standards but also has a significant impact on public finances. Research for the TUC estimates that the rise in insecure work in the last decade has led to a net loss of revenue of over £5bn a year.

Moreover, research suggests a correlation between insecure work and productivity, which means that the rise in insecurity could help to explain why the British economy is consistently failing to deliver higher wages and more sustainable growth.

Secondly, the report turns to the measures that are needed to address the growth of insecurity, focusing on the importance of voice at work.

A key feature of the rise of insecurity at work has been the shift in risk from employers to workers. Collective voice and power in the workplace is the most effective way for working people to ensure that, rather than this one-way shift, the burden of managing risks at work is fairly shared between employers and employees. Trade unions have been at the forefront of tackling insecurity at work – whether challenging Uber in the courts, or winning new rights and pay for workers at Sports Direct.

But a new framework of legal rights is needed to ensure that everyone can have their voice heard at work on the issues that matter to them most. This should include measures to give unions the right to access workplaces to tell individuals about the benefits of joining a union, new rules to strengthen collective and independent consultation rights, a requirement to have workers represented on company boards, and new sectoral arrangements to bring together unions and business to negotiate on pay, progression, training and conditions.

Thirdly the report sets out how the current framework of rights fails to guarantee decent work for too many people, and how changes in the world of work have left our current framework of employment rights looking significantly out of date. It shows how current definitions of employment status, which determine the rights to which individuals are entitled, too often act as a hurdle rather than a gateway to establishing rights, and have failed to keep up with changes in the nature of work.

Employment law should be strengthened in three areas. First, ensuring that all working people benefit from the same floor of decent employment rights and employers cannot contract out of their employment responsibilities or misclassify staff as self-employed.
Second, adding to the existing framework of rights to ensure that flexibility in the workplace cuts both ways. Third, policy should aim to end to the pay penalty experienced by those in insecure work. Individuals who are expected to work variable hours should be financially rewarded for the flexibility they provide to employers, and the loopholes that allow agency workers to be paid less than regular employees should be closed.

Rights are worthwhile only if they can be effectively enforced. Fourthly, the report focuses on the difficulties people in insecure employment face when trying to enforce employment rights. Since the introduction of employment tribunal fees many workers cannot afford to go to an employment tribunal to enforce their rights. And too many workers are intimidated by their employers and afraid that they will lose their jobs if they try to ensure that their rights are respected.

The first step to ensuring that rights are a reality is abolishing employment tribunal fees. But we think that more innovative forms of enforcement could also help tackle insecurity. Making companies responsible for abuses of rights along their supply chains could change the incentives to employ people on insecure contracts. And an extension of licensing, where employers must meet a set of standards before operating within a sector, could help tackle some of the worst abuses of labour market rights.

Fifthly, the report looks at the changes needed to tax, social security and pensions policy in order to ensure that employers do not experience a financial incentive to employ people on insecure contracts; that workers, whatever their employment status or earnings, are protected when they need to take time off work due to sickness or during periods of parental leave, and that everyone has the chance of a decent retirement.

Due to the myriad of ways in which the current tax system incentivises insecure employment, we recommend a comprehensive review of how the tax system could support the creation of more secure jobs. Meanwhile, changes should be made to the social security system to provide more people with access to sick pay, to stop universal credit cuts that will particularly disadvantage those in insecure jobs, and to give self-employed fathers and adoptive parents’ access to financial support. Finally, the system of auto-enrolment into pensions needs further reform to enable more low-paid people to save, and to encourage the self-employed into the system.

**Summary of recommendations**

The following sets out the TUC’s detailed recommendations and a comprehensive agenda for policy-makers who wish to tackle insecure work. There should be nothing inevitable about insecurity at work in the twenty-first century but we need to act now to ensure that everyone has a decent job.

**The extent and impact of insecurity at work**

Insecure work has grown in the UK, further exacerbating poor pay and a lack of rights for those who already face labour market disadvantage. The sectors in which insecure work has grown fastest are those where people do traditional jobs such as waiting, caring and teaching.
International evidence suggests that there is nothing inevitable about insecurity in the modern world of work. We can tackle insecurity by:

- increasing workers’ ability to negotiate better terms and conditions in their workplace
- updating the framework of employment rights to protect everyone
- improving the enforcement of those rights
- ensuring that our tax and social security systems both incentivise secure jobs, and protect those currently facing insecurity.

**Voice at work**

- Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.
- All workers should a right to be represented by unions in the workplace.
- Employers should be required to agree collective and independent consultation arrangements when requested by a recognised union or by five workers in non-union workplaces.
- Companies should be required to include elected worker representatives on boards.
- The government should also strengthen economy-wide mechanisms for worker voice. This should include:
  - introducing new sectoral bodies that bring together unions and business, to negotiate pay, progression, training and conditions. These should be piloted in the low-paid sectors where the need to improve conditions is greatest.
- Restoring Acas’ duty to promote collective bargaining.

**The gig economy and the future of employment rights**

- All workers, including zero-hours contracts workers, agency workers and those in casual work, should benefit from the same decent floor of rights currently enjoyed by employees.

- A new ‘worker’ definition should be devised that covers all existing employees and workers, including zero-hours contact workers, agency workers and dependent contractors. The definition should extend to individuals who are employed via an agency or a personal service company. The government will need to draw on legal expertise and consult extensively with unions and employers when developing a definition.

- While work on a new ‘worker’ definition is carried out, the government should extend existing ‘employee’ rights to all ‘workers’. This should include rights:
  - to statutory redundancy pay
  - for working parents to return to their substantive job following maternity, paternity or adoption leave
  - to paid time off for union reps.
• Employers should not be able to avoid or contract out of their employment law responsibilities. Self-employment should be a choice for individuals, not something that is imposed.
  
  – There should be a statutory presumption that individuals have ‘employee’ status unless the employer can demonstrate otherwise. This would go some way to giving working people greater security about their rights.
  
  – Employers who use contract terms designed to prevent or deter individuals from enforcing their rights should be fined.

• The rules on continuity of employment should be reformed to ensure that those on insecure contracts who work intermittently do not lose out on key employment rights. One way to achieve this would be to amend the law to state that - if an individual does not work during any given week - that week should not count towards their length of service. However, continuity of employment would not be broken.

• Online platforms are increasingly used by employers to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job-match services. As such, online platforms are effectively operating as employment businesses and agencies and in the TUC’s view should be regulated accordingly.

• All workers should have a day-one right to a written statement on pay and conditions, including expected hours of work.

• Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours.

• Workers employed on zero- or short-hours contracts should have a right to be paid a premium for any non-contractual hours worked and compensation for shifts cancelled at short notice.

• End the Swedish derogation, which allows agency workers to be paid less than regular employees doing the same job.

• Companies and public bodies should be required to report on the use of zero-hours contracts, short-hours contracts and agency work in annual reports, including throughout their supply chains, and explain why they are using these types of contract.

**Effective and innovative enforcement**

• Employment tribunal fees should be abolished so that all workers can afford to enforce their rights.

• The government should move towards a joint and several liability approach to enforcement, so that companies are held responsible for compliance throughout their supply chain. This could be piloted in one area of employment – for example, payment of the minimum wage – before being expanded to a wider scope of employment rights.
• The government should develop a public procurement strategy with public sector bodies, ensuring that employers throughout their supply chain are paying the National Minimum Wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.

• The approach taken by the Gangmasters Labour Abuse Authority (GLAA) to licensing sectors has proved effective and should be extended to types of occupation where exploitation is rife, including construction.

• The resources given to enforcement agencies should be reviewed and measures taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration officers.

Tax, social security and pensions

• The government should carry out a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.

• It’s not right that you can be considered too low paid to fall ill. Low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.

• New fathers and adoptive parents in low-paid work or self-employment should be able to take paid time off for a new baby. The government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.

• Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance for the first six weeks at a rate equivalent to earnings-related Statutory Maternity Pay.

• Cuts to Universal Credit will have a significant impact on the low paid, particularly those in insecure work. The next government should cancel cuts in the work allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six-week waiting period for payment of benefit.

• Auto-enrolment into a workplace pension has been a success, but has left out too many of those facing low pay and insecurity at work. To address this, the government should:
  – abolish the earnings trigger for employer contributions
  – apply the successful principle of auto-enrolment to the self-employed. The tax return should be used to automatically enrol self-employed workers into pension provision, unless they choose to opt out.
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