



NEWEFIN

Project

New Employment
Forms and Challenges
to Industrial Relations:
The Spanish Case

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New employment forms or new forms of traditional employment?

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- Digital platforms.
- Temporary and part-time employment.
- Subcontracting: fighting against precarious and low-paid work.

I. DIGITAL PLATFORMS

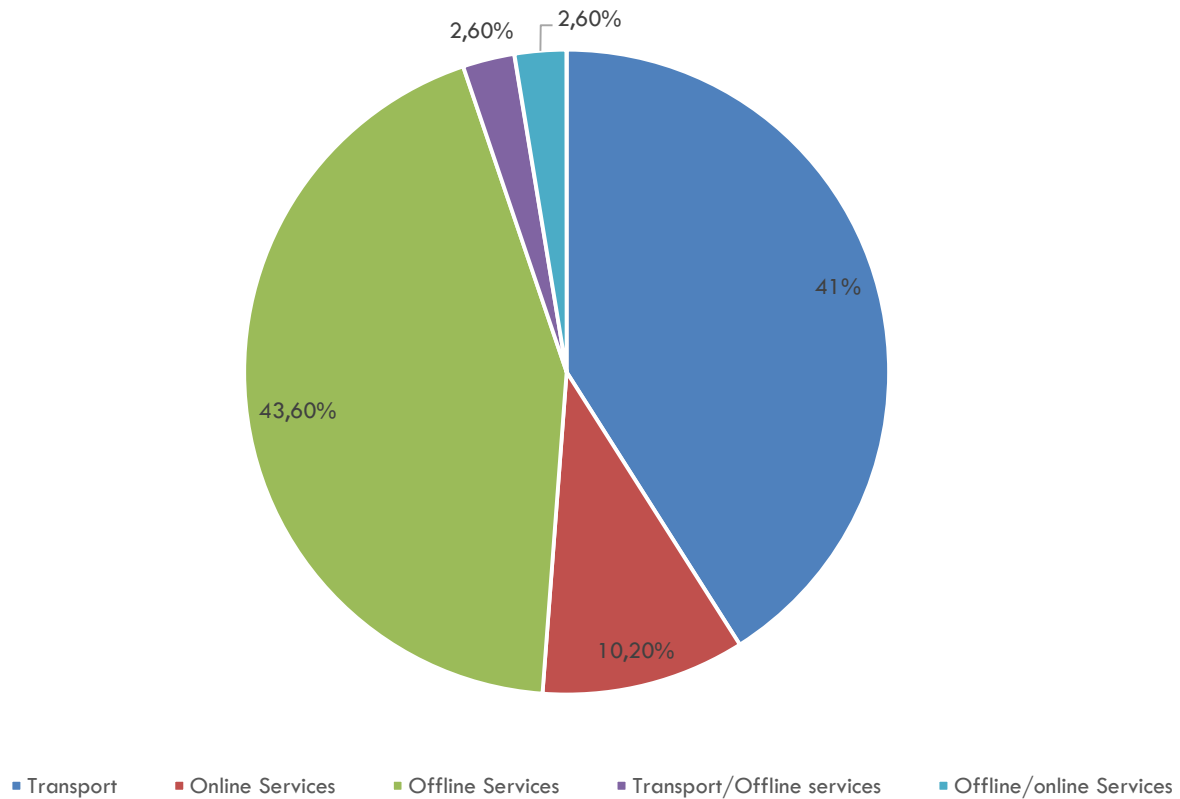
Introduction – background

- Spain is the second country in Europe with the highest number of platforms workers.
- In particular, more than two millions of workers in Spain obtain from digital platforms a significant amount of their incomes (25%) and digital platforms are the main job for around 700.000 workers in Spain.

Introduction – background

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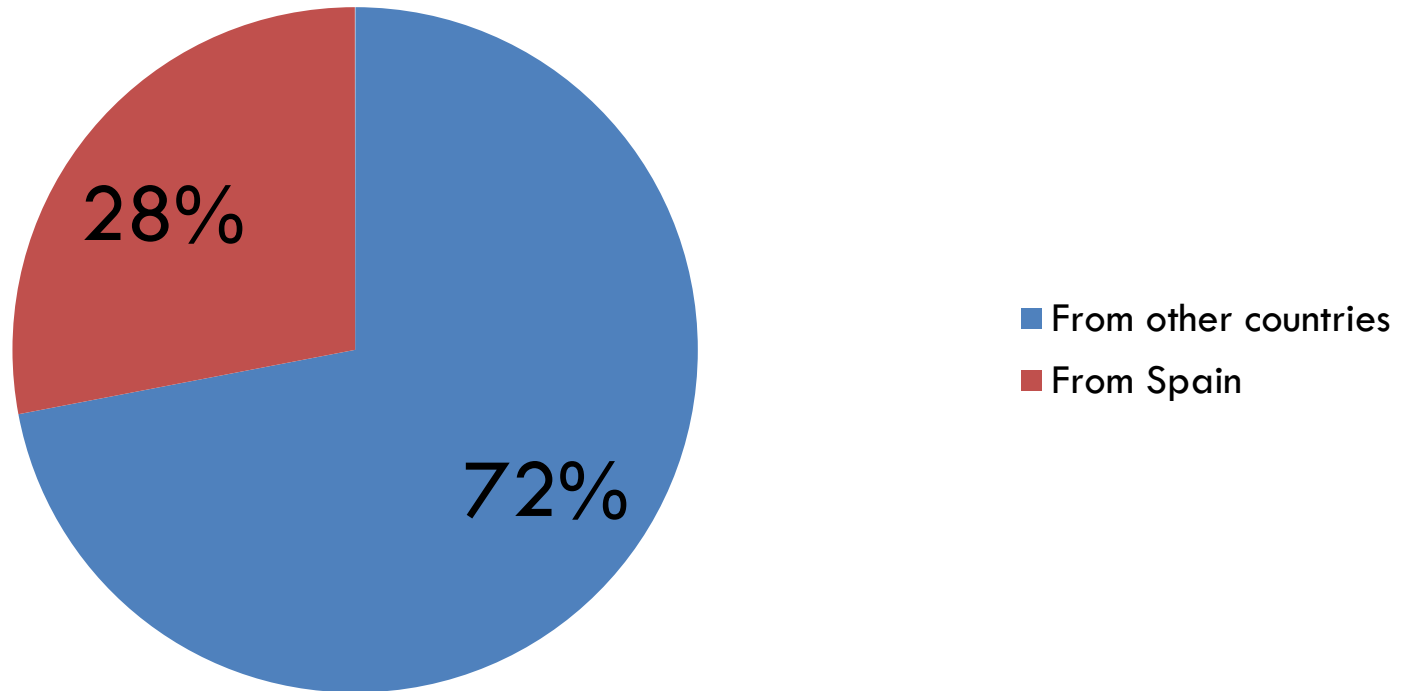
Digital platforms by sectors in Spain



Introduction – background

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The origin of digital platforms



Legal framework

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- The Spanish labour law based on a binary model:
 - 15.505.871 employees.
 - 2.006.785 self-contractors.
 - 9.874 TRADES.

Legal framework

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	Self-employed	Self employed without employees		TRADE	% in relation to total self employed without employees
		Total	% in relation to total self		
2018	2.006.785	1,559,636	78	9,874	0.6
2017	1,973,028	1,539,803	78	10,530	0.7
2016	1.984.268	1,549,871	78	10,250	0.7
2015	1.977.277	1,555,602	79	9,725	0.6
2014	1.945.572	1,531,305	79	8,274	0.5
2013	1.920.387	1,509,869	79	7,153	0.5
2012	1.945.371	1,537,022	79	6,263	0.4
2011	1.978.131	1,575,297	80	4,935	0.3
2010	2.011.986	1,605,629	80	3,729	0.2
2009	2.076.600	1,666,113	80	2,461	0.1
2008	2.221.166	1772,700	80	1,136	0,1

Table 1: Number of self-employed in Spain. Social Security. Self- Employed Workers 'RETA scheme. Data 2nd quarter. Updated data from European Commission, Case study-gaps in access to social protection for economically dependent self-employed in Spain, 2018.

Legal framework

- So far there are some judgments that have been pronounced on the work of the collaborators of these professional platforms in 2018.
- The first one concluded that Deliveroo's riders should be considered such as employees (the Spanish court in Valencia, June 2018).
- However, the second one took the opposite view regarding the situation of Glovo's riders (the Spanish court in Madrid, September 2018).

Legal framework

- In addition, since the end of 2017 there have been actions by the **Labor Inspectorate** (specifically, Valencia and Madrid) who have concluded that Deliveroo riders are employed workers.
- The Labour Inspectorate has prepared an strategic plan (2018-2020) what includes specific measures for digital platforms: i) To draft a procedure for digital platforms; ii) To provide training for Inspectors on digital platforms; iii) To implement pilot programmes in different Autonomous Communities.

Legal framework

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- The platform unilaterally determines, as has been proven, the way of working, the days, zones, and schedules and sets the prices.
- Deliveroo does not offer, therefore, any possibility for the service provider to choose their clients or to charge them directly, and establish their own prices for the service they perform.
- The company imposes style rules, such as removing helmets and backpacks when entering restaurants or going to a home, and gives advice on the way to address a client.

Legal framework

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- The company knows at all times where each rider is, the time that each delivery takes and notifies the rider and sends them instructions on the matter, especially in case of delay, controlling at all times through geolocation where each rider happens to be.
- In fact, the true means of production are the technological ones.

Position and role of the social partners on new forms of employment

- According to one of the most representative Union in Spain (CCOO), the regulation of TRADE not give an adequate answer to needs of this specific collective nor to the needs of employers.

Position and role of the social partners on new forms of employment

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Trade Unions	Type of measures		
	To provide services (information, etc.)	To create specific trade union structures into the platforms	To promote administrative and judicial actions against the platforms
UGT	X	X	X
CCOO	X	X	X

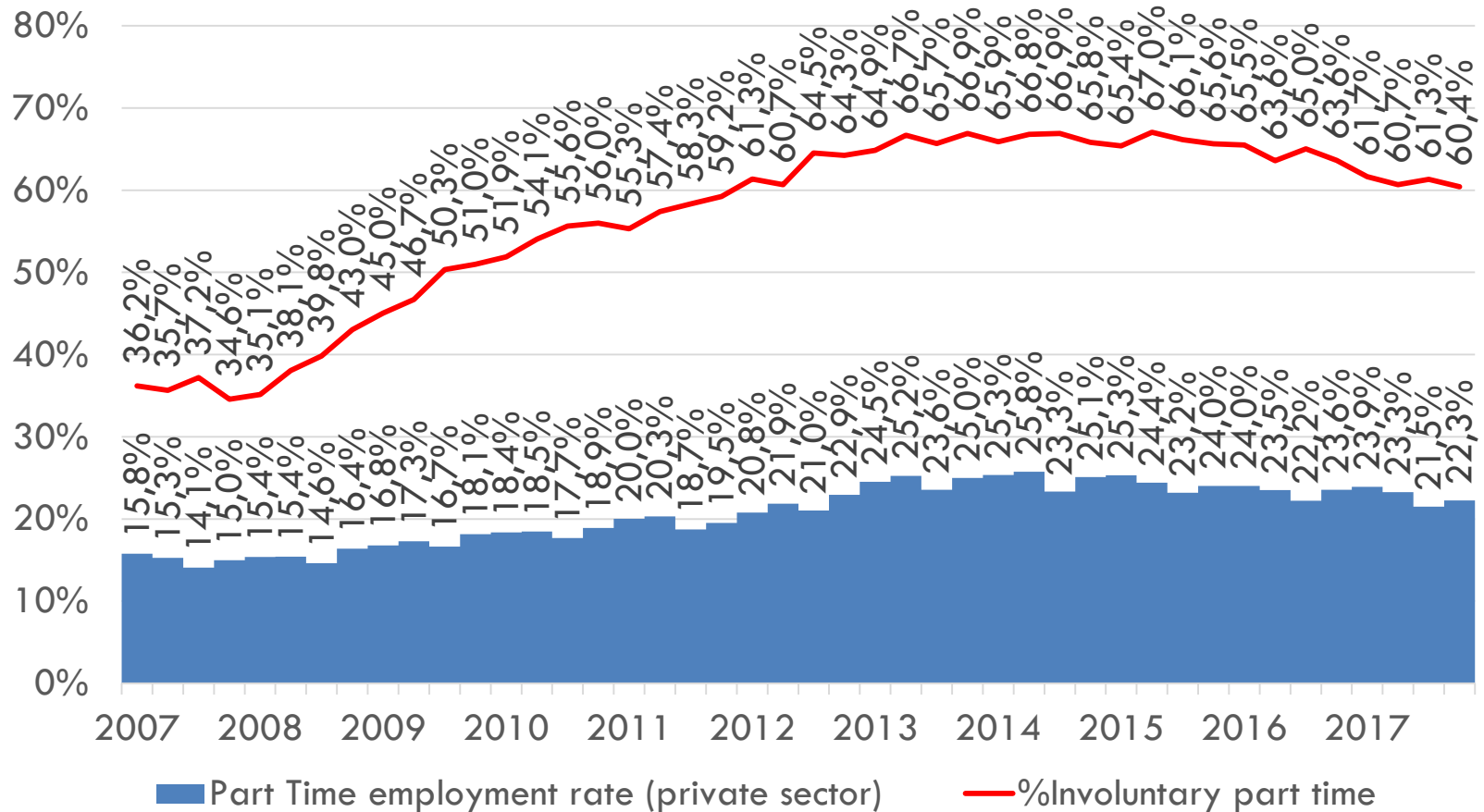
Position and role of the social partners on new forms of employment

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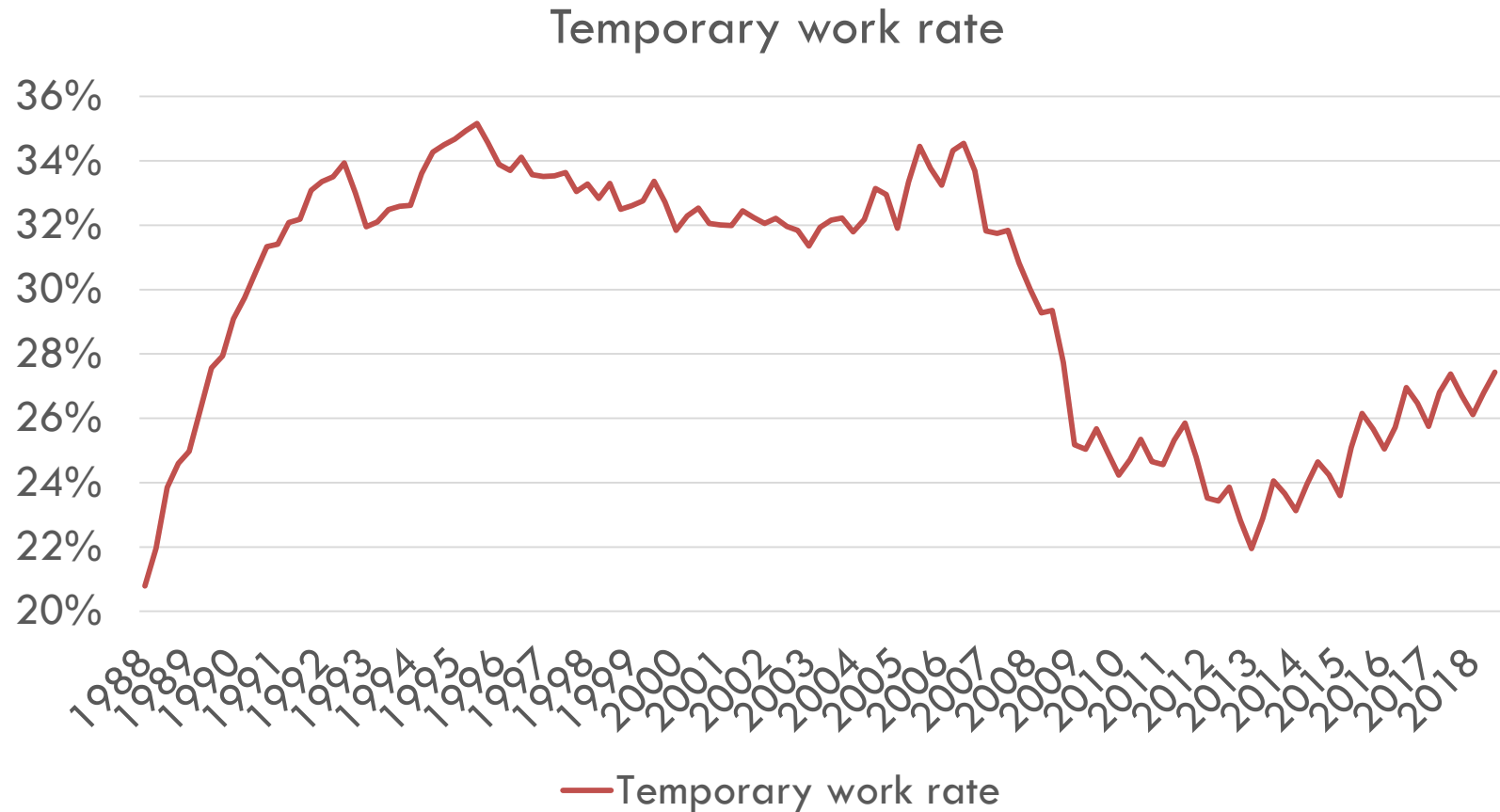
- In July 2018 it was entered in force the Agreement negotiated between Deliveroo and TRADES (riders).
- It has been created a new professional association very connected with the Digital Economy. It has been called “Asociación Española de la Economía Digital” (BOE n° 96, 21 April 2010). More than 500 companies are member of the association such as El Corte Inglés, Campofrío, Telepizza, Google, Venca, Telefónica, Buyvip, Vodafone, Coca Cola, Nokia, Cepsa, Repsol and Seat.

II. TEMPORARY AND PART-TIME EMPLOYMENT

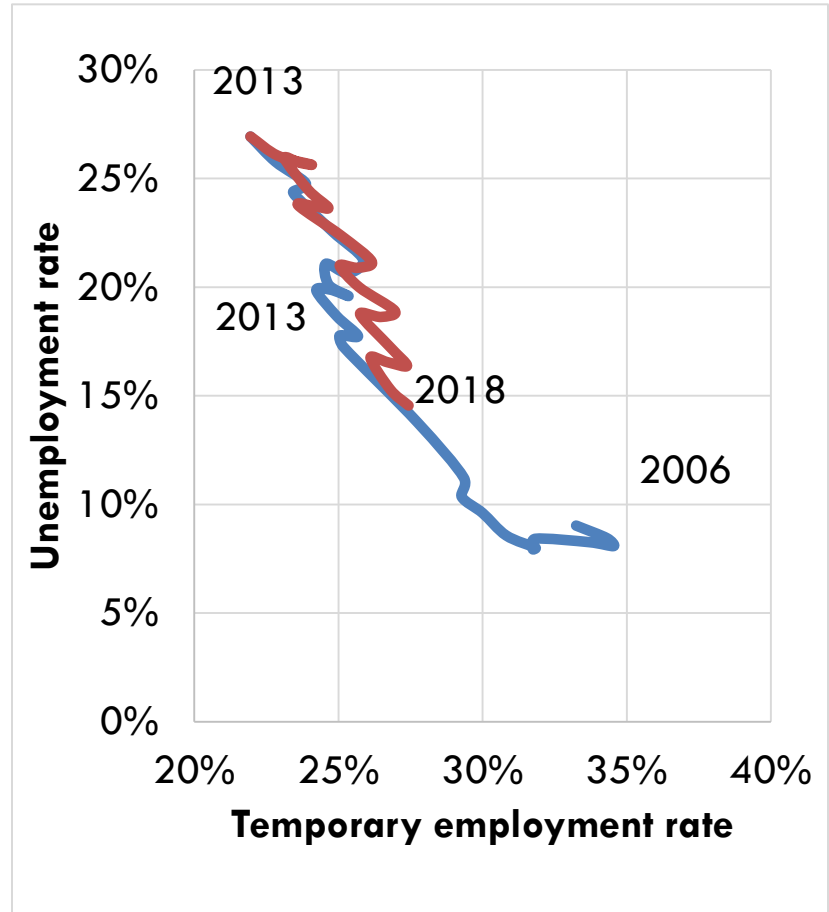
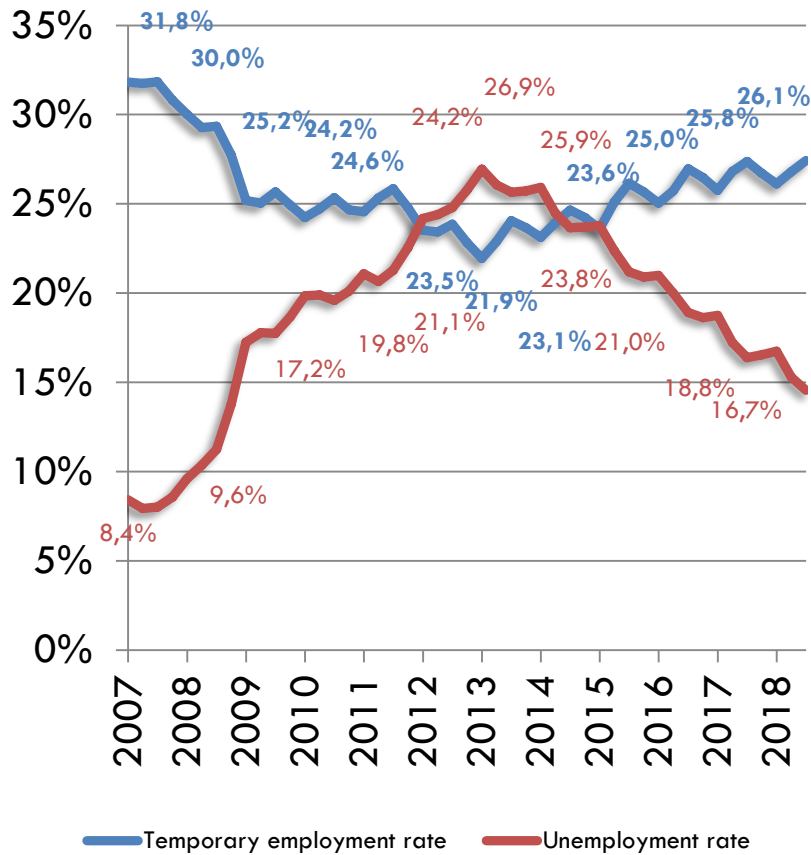
Evolution of part-time work



A historical problem



Highly correlated with unemployment rate



...just a round trip

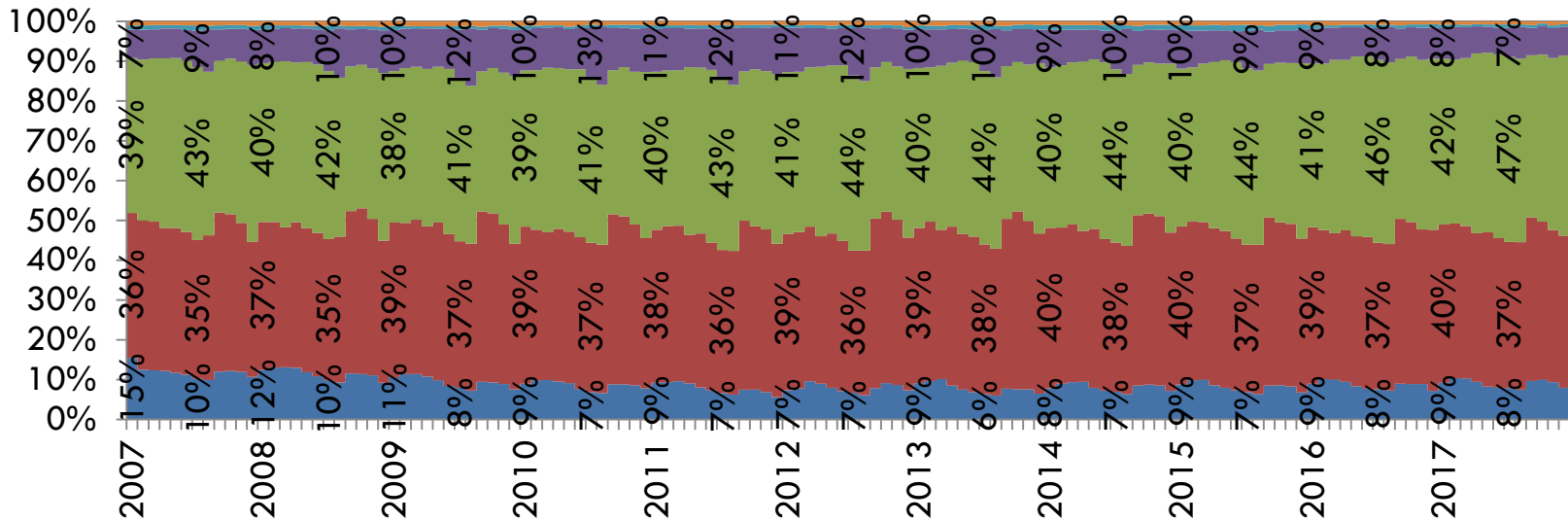
Legal framework

- Temporary work has to be funded on:
 - A project or service (max 3 years since 2010 reform)
 - Production circumstances (max 12 months)
 - Provisional contract (substituting another worker while he or she returns)
 - Formative contracts (max 2 years)
 - Other contracts barely used

Legal reforms (2007-2017)

- Higher payments on contract termination:
 - ▣ No payment until 2001 (8 salary days per year worked)
 - ▣ From 2011 to 2015 progressively increased to 12 salary days per year worked) (2010 reform)
- Maximum duration of some contracts (specific project or service) (Law 35/2010)
- New permanent contract (“entrepreneurship enhancement”) (Law 3/2012)
 - ▣ Some tax and social security incentives
 - ▣ One year of trial period
 - ▣ 12,4% of all new permanent contracts (2012-2017)
 - ▣ Automatically revoked if unemployment rate is under 15% (Third quarter of 2018: **14.8%**)

New employment contracts registered



- Other temporary
- Formative
- Provisional
- Production circumstances
- Project or service
- Permanent contracts (transformation form temporary contracts included)

Position and role of the social partners on new forms of employment

- Trade Union claim for more intense supervision by Labour Inspection.

EFEE Agencia EFE

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Última hora PETRÓLEO TEXAS - El petróleo de Texas abre con un descenso del 0,68 % hasta los 51,21 dólares

Edición España Economía

TRABAJO DIGNO
Valerio valora la conversión en fijos de 52.000 empleos temporales fraudulentos

EFE | Madrid | 26 nov. 2018



La ministra de Trabajo, Migraciones y Seguridad Social, Magdalena Valerio, poco antes de su intervención en un desayuno informativo, hoy en un hotel de Madrid. EFE

Labour ministry estimates (bogus) temporary employees have been converted in permanent workers due to shock plan started last august

Position and role of the social partners on new forms of employment

- Trade Union claim for more intense supervision by Labour Inspectorate.
- Business organizations push for deregulation and more flexibility both to the individuals & collective bargaining.

New reforms?

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- To establish the obligation to record the ordinary working-time by the companies.

III. SUBCONTRACTING IN THE CONTEXT OF NEW FORMS OF EMPLOYMENT: FIGHTING AGAINST PRECARIOUS AND LOW-PAID WORK

Subcontracting in the context of new forms of employment: fighting against precarious and low-paid work

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- Subcontracting is a widespread practice in Spain.
- The rate of subcontracting within the transportation and logistics sector is 34.4%, higher than in France (29.1%) and much higher than in United Kingdom (23.7%).
- Subcontracting is a rampant practice in both manufacturing and service industries (“Las Kelly” in the hotels).

Subcontracting in the context of new forms of employment: fighting against precarious and low-paid work

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- One of the main drivers of the usage of fixed-term employment contracts is subcontracting.
- The fixed-term contract for a specific task with a limited duration (“contrato de obra o servicio determinado”) has a maximum duration of three years.

Subcontracting in the context of new forms of employment: fighting against precarious and low-paid work

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- The worsening of working conditions has been accelerated in many instances as a result of the 2012 Labour Reform decentralizing collective bargaining.

Legal changes ahead?

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- The new Socialist Government intends to introduce a labor reform affecting subcontracting, fixed term contracts and collective bargaining.
- The reform is supported by trade unions.

Legal changes ahead?

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- i) The company contracting out work or services might be held liable for any employment or labor debt (not only wages).
- ii) The fact that the work or service contracted out relates to the core activity of the contracting company will not be a prerequisite for holding it liable.

Legal changes ahead?

iii) Where the work or service contracted out relates to the contracting company's core activity, the employees assigned to such work or service will be entitled to the same basic conditions of employment as those applicable to the contracting company's own employees.

iv) The proposed legislation strengthens the role of employee representatives by emphasizing their information rights. Of particular importance is the provision establishing a presumption of illegal loan of employees if the companies sharing the same workplace do not fulfill their obligations of information towards the employee representatives. An illegal loan of employees entails a monetary sanction by the Labor Authority.

THANK YOU VERY MUCH FOR
YOUR ATTENTION

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