



PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector - VS/2018/0041



POLICY PAPER: GERMANY

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The country report on employment rights in the domestic service sector in Germany (see separate document) deals with both *housekeeping* tasks, such as cleaning or cooking, and *interactive* work, in particular caring for children, elderly or disabled people. There is a substantial overlap with regard to provider structures, labour supply and demand for these two types of services. This is most evident in the case of households with elderly people as they often depend on support in both areas. This overlap not only poses difficulties for the precise empirical recording of these areas of activity, it also poses challenges for the regulation of working conditions in this sector – for example, when it comes to determining which collective agreements should be applied or, more generally, which remuneration is appropriate for these activities. The challenges and (potential and realised) measures to address them will be summarised more in detail in this policy report.

1 Employment forms: From informal work arrangements to a ‘formalisation light’

From the mid-1990s politics at the regional and national level in Germany started to develop policies targeting the domestic service sector. These policies were motivated by a multitude of trends and goals. In an effort to respond to an increase in demand for both housekeeping tasks and caring tasks, they were aimed at increasing labour supply in various ways: by incentivising the aid of family members and neighbours in the provision of care for the elderly; by supporting the transformation of undeclared jobs into formal jobs; and by supporting the professionalization of household services. At the same time, the policies were also meant to support more general political goals, most importantly combating high rates of unemployment and increasing the employment rate of women.

Accordingly, this mix of policy goals also meant that policy initiatives at regional and national level did not only contribute to the creation of regular jobs covered by social security contributions. In parallel, they also supported other ‘atypical’ forms of employment, in particular ‘Mini-jobs’, as well as hybrid forms of work between paid formal and unpaid informal work (‘paid voluntary work’). Moreover, they tacitly tolerated the growth of the

group of ‘Live-Ins’, thus migrant domestic care workers mostly from Eastern European Countries. The most recent type of atypical work in the household service sector has emerged with specialized platforms which broker contracts between private households and solo-self-employed domestic workers, such as helping.de. As a result, work in the domestic service sector is more often paid formal work than it was 20 years ago. However, in terms of size, the different forms of informal and unpaid work continue to be much more important than jobs in the formal economy, at least in the area of housekeeping services (see section 2.2 of the country report). Moreover, the formalisation of jobs in the domestic service sector has often been a ‘formalisation light’ – in the sense that these jobs deviate in various ways from standard forms of employment.

2 Protective gaps and recent measures addressing them

Three sources of these deviations or ‘exit options’ can be distinguished:

- Firstly, they are partly rooted in *general* regulative exemptions and regulative gaps that also exist in other segments of the economy, such as ‘Mini-Jobs’. The European legislation on the posting of workers has also provided numerous ‘exit options’ from the regular framework, as well as legislation and jurisdiction on solo self-employment. These exit options allow households and intermediaries to circumvent German labour laws by resorting to posted work or to self-employment and other freelancers, as in the case of platform-based work and Live-Ins. It is necessary to keep in mind, though, that some of the circumvention strategies are consensual, thus correspond to domestic workers’ preferences to avoid having to pay taxes and social security contributions; this seems particularly to be the case for Mini-Jobbers.
- Secondly, other exemptions and gaps are justified with the *specific* characteristics of domestic work – for instance the alleged difficulties to distinguish between working and leisure time in the case of ‘Live-Ins’ that are referred to in order to justify deviations from the law on working time. Or they may be justified by specific characteristics of the employment relationship – e.g. between family relatives in the case of paid voluntary work.
- Thirdly and finally, measures that were introduced in order to increase the labour supply for domestic work have unintendedly facilitated the growth of new forms of atypical employment. This is the case for the financial scheme used to compensate family relatives or neighbours (‘paid voluntary work’), as the scheme can also be used to pay Live-Ins and other allegedly solo self-employed workers working for platforms.

These exemptions often translate into important protective gaps for employees. Several policy measures and other initiatives over the past 10-15 years have sought to close some of these

protective gaps. This is most evident with regard to wages. Several legal regulations have diminished the protective gap resulting from a low coverage rate by collective agreements: by declaring some of the relevant CAs legally binding; by introducing the national minimum wage in 2015, and, most recently, by increasing the minimum wage for care workers and setting incentives for social partners to agree on a CA to be declared generally binding for the whole sector (see section 4.1 of the country report).

Considerable efforts have also been made in order to transform informal jobs into Mini-Jobs and Mini-Jobs into regular jobs covered by social security. This was done mostly through subsidies to professional service providers, tax subsidies to households, and tax and social security exemptions for employees (Mini-jobs) (see section 4.5 of the country report). The latter type of subsidy – while being attractive for many employees in the short run – however also bears the risk of material precariousness in the longer run.

The current protective gaps for domestic workers in terms of wages and other working conditions are however not only due to *regulatory gaps* resulting from a lack of collective agreements or legal regulations ('employment protection and social protection gaps') but at least as much due to a lack of mechanisms securing the *enforcement* of minimum rights ('enforcement gaps'). Mini-jobbers for instance are entitled to holiday and sick pay, but according to surveys a large majority of them doesn't benefit from these rights in practice. Enforcement gaps are also particularly severe in the case of migrant domestic workers. Their vulnerability is due to the specific status of Diplomats (in the case of migrant domestic workers working in Diplomats' households), the decentralized nature of service provision and thus their isolated work situation and higher barriers (due to language and knowledge gaps) to use available options for self-enforcement (trade unions, labour courts). While the ratification and implementation of the ILO Conventions 189 in Germany has done little to change the legal situation of migrant domestic workers, it has arguably supported – although not initiated in the first place – a number of initiatives aimed at improving the enforcement of labour standards for domestic workers. This includes efforts of the Federal Foreign Office to inform Diplomats and their prospective domestic workers about their minimum rights (see section 4.1 of the country report). Moreover, a very important organizational infrastructure for domestic workers are counselling services provided by Trade Unions, NGOs and charitable organisations and partly financially supported by the government. These aim to help domestic workers to claim their individual rights and to exit situations of severe labour exploitation (see sections 4.2 and 4.3 of the country report). Another example of good practice are non-profit intermediary agencies set up by charities as an alternative to for-profit intermediaries that match supply and demand of 'Live-Ins' (see section 4.3 of the country report).

The following table gives an overview of the most important protective gaps for the different forms of domestic work.

Table 1: Overview: Protective gaps for domestic workers and recent measures addressing them

important protective gaps	Recent policies + other measures addressing the gaps
Migrant domestic worker working for diplomats	
<u>Enforcement gaps</u> , due to diplomatic immunity + limited awareness about employment rights	Various measures of government, mostly to enforce rights <i>ex-ante</i> , by informing employers and employees about statutory empl. rights Counselling infrastructure set up by trade unions + NGOs, partly financed by government
Migrant Domestic Workers ('live-ins')	
<u>Employment protection gaps</u> : Working time issues (max. working hours, rest period); low remuneration; in case of solo-selfemployed: no entitlements for sick pay + paid holidays <u>Social protection gaps</u> : solo self-employment → no or lower health insurance, pension entitlements <u>Enforcement gaps</u> ; <u>Representation gaps</u>	(No change with ILO 189 convention, due to use of exemption) charity-run alternative intermediaries matching supply and demand based on regular employment contracts Counselling infrastructure set up by trade unions + NGOs, partly financed by government
Mini-Jobs	
<u>Social protection gaps</u> : very limited pension entitlements <u>Enforcement gaps</u> (sick pay, paid holidays)	possibility to opt-in pension insurance (but at a higher than regular rate (15% of wage) + resulting in very low entitlements)
Platform based work	
<u>Employment protection + social protection gaps</u> : (bogus) solo self-employment; no entitlements for sick pay and paid holidays, health insurance, pension entitlements <u>Representation gaps</u> : difficulties to organize solo self-employed workers	
Employees of professional service companies	
<u>Employment protection gaps</u> : Low wages	national minimum wage (2015); CA and legal provisions securing the extension of the CA
Employees of outpatient elderly care providers	

<u>Employment protection gaps</u> : Low wages; involuntary part-time work	national minimum wage (2015); legal provisions establishing industry specific minimum wages
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2.1 Policy recommendations: Closing protective gaps and beyond

The report has identified important protective gaps for the various groups of domestic workers. Efforts to combat these gaps and to ultimately align employment rights and social protection of domestic workers with the rules that apply to regular employment in other sectors of the economy continue to be important and should remain on the agenda of politics, social partners, NGOs and, not least, customer households. It seems worth reflecting, however, whether a (not at all) ‘simple’ alignment of rights with other segments of the economy will be sufficient in order to effectively achieve a satisfying job quality and thereby also respond to the growing difficulties in recruiting and retaining qualified staff. Several findings raise doubts in this regard:

Firstly, the fact that despite massive efforts to formalise employment in this area, a large group of employees seems to prefer informal over formal work arrangements (see section 2.2). Against the background of the ‘formalisation light’, as well as problems with enforcement of the rights that come along with formalised employment, a possible explanation could be that employees feel they don’t gain much if they agree to formalise their job. Moreover, they might feel (and partly rightfully so) that they even risk to lose in terms of immediate material welfare, as the income they can generate through informal work is de facto exempt from taxes and other deductions, and the persistent labour shortages in this segment might allow them to bargain a decent remuneration.

Secondly, as the example of professional service providers for housekeeping services and outpatient care providers illustrates, or the example of the platform ‘Book a Tiger’, offering domestic workers a standard employment contract neither seems to be sufficient in order to attract and retain enough employees willing to work in the sector. In these cases, it would seem that the benefits of a standard employment contract are not perceived as sufficient by employees to offset the physical and mental strains that come along with the tasks to be performed and the specific work environment (e.g. isolated work, work on several sites). Given the general labour shortages even for low skilled occupations, employees currently seem to face less problems than ever if they prefer to switch to jobs in other sectors (e.g. hotels and restaurants) that don’t come along with these strains, as the experiences of model projects and professional service providers suggests (see section 4.5). The modest wages level are not likely to exert a strong binding effect either. Compared to solo self-employment and other forms of formal or informal freelance work, employees might also feel (again, probably partly rightfully so), that they lose in terms of their autonomy with regard to the scheduling

of work and the selection of customers. The working time autonomy, thus the possibility to flexibly align job offers with other commitments (e.g. education, family), was highlighted as positive aspect for instance by the solo self-employed Helping worker interviewed as part of the project, despite her overall critical stance with regard to working conditions offered by the platform.

These observations are not meant to discard claims to legally establish and enforce equal rights for domestic workers – core claims of the ILO Convention 189. As stated above, these remain important. Instead, they are meant to expand the agenda and to draw attention to important aspects of working conditions that need to be taken into consideration in order to achieve *not just equal, but good working conditions*. This is partly needed because there are features that are specific to the work in this segment (although they may also apply to some other occupations) and require more than ‘just’ equal rights. Another implication of these observations is to less exclusively focus on regular dependent employment as a vanishing point for all attempts to improve working conditions in the sector, and instead reflect on possibilities to improve working conditions in other forms of work as well.

These general considerations form the basis for the following policy recommendations.

- A rather straightforward implication of the analysis above is that in order to increase the attractiveness of formal employment it is necessary to raise pay levels in formal jobs in this sector *above* those in the informal economy, as well as *above* (not equal to) those in other occupations with similar skill requirements. Given that hourly minimum wages for both housekeeping and caring tasks are currently at € 10 to € 11 (as of January 2019), this would mean to substantially increase the current wage levels for domestic workers. At the same time, it is reasonable to expect a rather high price elasticity, at least for households with low to medium income. Hence demand for these services is likely to decrease and to be limited to a rather small group of high-income households – or else, it will strongly depend on the availability and design of service vouchers subsidising demand. In order to allow for substantial wage increases, these subsidies would have to be substantial in size (€ per hour). Since public budgets are not infinite and service vouchers compete with other public services to be financed, it is therefore advisable to target these public subsidies to households most in need of the services and of most in need of financial subsidies.
- Next to wage levels, another lever to increase the financial attractiveness of these jobs are tax and social security deductions. Compared to Belgium, it is worth mentioning that the deductions for taxes and social security contributions for low-paid jobs in Germany are much higher. A study by Eurofound (2019) revealed that the deductions from the gross wage of a full-time worker paid on the basis of the German minimum wage (currently 9.35 €) reach an amount of 26.09% of the annual earnings while in Belgium, the deductions

reach only 4.25% of the gross annual earnings. Accordingly, full-time employees being paid on the level of the minimum wage in Belgium (9.65 € per hour) receive 375 € per month more than in Germany.

- It can also be assumed that a broad information and image campaign is needed in order to support both: an increase in demand for professionally organized PHS-services on the one hand and – probably even more important – the recruitment of people interested in taking up a job with more than a couple of working hours per week in this area.
- In the case of platform-based work, an option would be to support the foundation of platforms owned and run by worker cooperatives, modelled after examples like ‘Up and Go’ (<https://www.upandgo.coop/>) (see Alinotti 2017; Haas 2019 for more detailed reports about the worker cooperative ‘up and go’). This could offer domestic workers a sustainable alternative to commercial platforms if they prefer the freedoms and autonomy associated with solo self-employment over the benefits and duties associated with dependent employment.
- Another measure improving the situation of solo-self-employed – both those working for platforms and ‘Live-ins’ – would be to introduce statutory minimum professional fees (see Bayreuther 2018; Heuschmid/Hlava 2018) for these (and other) occupations – a demand also supported by part of the German trade unions and political parties.
- With regard to migrant domestic workers, a continued public support of the counselling infrastructure run by trade unions, NGOs and charities (see sections 4.2 and 4.3) appears to be an important lever in order to address enforcement problems for this group of workers. Moreover, allowing domestic workers working for Diplomats to change their employer without losing their residence and working permit would grant them more bargaining power to enforce their rights on their own and exit an exploitative labour situation.

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