

New forms of employment Casual work, The Netherlands

Case study 64: Policy analysis

On-call work is a type of casual work that provides great flexibility for the employer but considerable insecurity for the worker. It is becoming increasingly common especially in the care sector, which faces harsh budget cuts, and is thus a focus for attention in labour agreements and labour law

Introduction

In the Netherlands, in an on-call contract the employee and employer agree that (at certain times) the employee is available to be called in to work. This may, depending on the agreement, be some time in advance, or at the last moment. In general this type of labour agreement is characterised by a great deal of insecurity for the employees as they may or may not be called in.

The focus in this case study is on collective labour agreements in the healthcare sector, in particular childcare and medical care, both sectors with a high share of on-call workers. On-call work is contested terrain on the Dutch labour market, in labour relations, labour agreements and labour law. Therefore, to give a good picture of the various opinions, representatives of different parties were interviewed for the study:

- a representative of the sector organisation of the childcare sector who represents the employers' side in the negotiations about the sector's collective labour agreements;
- a trade union representative who negotiates for the workers' side in the collective agreement negotiations;
- a policy consultant of the sector fund in the health and care sector funded by both employers' organisations and trade unions, secretary of the policy office that prepares and coordinates social partner negotiations in the social, youth and childcare sectors;
- a medical care trade union representative, involved in the preparation and development of policy proposals and agreements regarding labour contracts;
- a trainer of work councils in the childcare and medical care sectors with many years of experience in training and consultancy regarding organisational and contractual issues.

Together these views reflect the continuing process of balancing the demands for flexibility on the employers' side with the requirements of decent work, as demanded by the workers and trade unions. This is a difficult process which is under added pressure in times of financial crises when care budgets are cut, resulting in staff cuts.

Background and objectives of on-call contracts

Since the financial crisis in the 1980s the Netherlands has seen explosive growth in the use of several types of flexible labour. This can be attributed to companies wanting more flexibility to

adjust the workforce to the amount of work available in the company and to limit the number of permanent contracts. Since 1999 on-call contracts in the Netherlands have been regulated by the Flexibility and Security Act. This law was aimed mainly at protecting employees by harmonising the need for flexibility on the part of the employers and need for security on the part of the employees (Knegt et al, 2007). The law was introduced at a time when flexible labour was becoming more common and more socially accepted (Van den Toren et al, 2002).

Because the law regulates flexible labour, it also includes regulations on on-call contracts. These regulations cover the number of consecutive temporary contracts that are allowed and regulations concerning the right to work, payment and a more secure labour agreement for on-call employees. The Flexibility and Security Act distinguishes three different types of on-call contracts. These are contract by agreement, zero-hours contract and min-max contract (see below). However, the Flexibility and Security Act is a kind of ‘framework act’. It leaves room for social partners to specify, and in some cases alter, certain components for a specific sector in a collective labour agreement. Certain regulations may therefore differ across sectors. However, when the collective agreement does not alter or specify any of the regulations concerning on-call contracts, the regulations in the Flexibility and Security Act stand.

Collective agreement in the childcare sector

Decision-making process, perspectives and negotiations

The sector agreement currently in place in the childcare sector was signed in October 2013 by three trade unions representing employees working in childcare and the sector organisation of the childcare sector, representing the mainly private employers. The collective agreement is (where possible) retrospectively in force from January 2012 until the end of 2014. This sector agreement was supposed to be agreed on before January 2012, but was delayed for over 18 months due to challenging negotiations.

The process of reaching the collective agreement was challenging because of the financial crisis and reduced government allowances to parents with children in childcare. Fewer parents were willing and able to hire childcare, leading to around a 20% drop in childcare staff causing a dramatic loss of employment in the sector. The discussions centred on wages rather than disagreement about regulations regarding on-call contracts. The employers felt it was counter-intuitive to have to fire a lot of employees on the one hand, while at the same time increasing the pay of the employees who stayed. Because of the disputes about wages, employers declined the sector agreement twice before it was approved. Disputes about wages are currently a general problem that arises in many sectors in the Netherlands, which is why only very few collective agreements have been signed in the past few years.

Even though on-call contracts did not play a part in the delay on reaching a collective agreement, on-call contracts are an important issue for the representatives of both the employers’ organisation and the trade union who were interviewed for this study. The reason employers in the childcare sector want to work with on-call contracts results from two sector characteristics. The first relates to the rules childcare centres have to adhere to. Because of past occurrences of child abuse in childcare centres, it is no longer allowed for a childcare employee to be alone with the children (‘four eyes principle’). On top of that, there is a quota for the number of children allowed per employee, in part depending on the children’s age. This quota dictates that there must be a minimum of one employee per five children under one year old, whereas one employee can watch over eight children aged between three and four. Because of this, when an employee is absent, they must be replaced at all times. The second characteristic has to do with the existence of peak days – days when more parents than usual bring their children to the childcare centre, meaning most staff will have to be present. As a result there are very few colleagues who can be called in on peak days in case of unforeseen circumstances, such as sickness, which according to

the representative of the employers on average happens more often in the childcare sector than in other sectors. If one or more of the employees are on leave on peak days, which to an extent can be predicted based on parents' work schedules, there is not much of a buffer left in the workforce. Therefore, as workforce availability is difficult to predict, it is especially difficult to exclusively use regular employees in the childcare sector. According to the employers' organisation representative, it is therefore crucial to have on-call employees available.

A new development in the childcare sector is the increased demand for flexibility from parents using childcare centres. Whereas before parents had to adhere to strict arrangements governing when children could be brought to the day care centre, more flexible arrangements are emerging. As there are strict rules about the number of children allowed per employee this development may in the future increase the need for flexibility in the workforce of childcare centres.

The representative of the trade union agrees that some form of flexibility is necessary in the childcare sector. Consequently, the trade union allowed some flexible contracts in the collective labour agreement despite opposing them in general because of the lack of security for employees. In the negotiations the trade union therefore aimed for the lowest possible difference between the minimum and the maximum amount of hours that are allowed in min-max contracts.

Alternatives to on-call contracts in the childcare sector

Because the trade union is against on-call contracts they have argued for an alternative to on-call contracts to be added to the latest collective labour agreement. This system (year-hour) adds more flexibility to regular contracts with a fixed amount of hours by allowing employers to compensate for scheduling in an employee for fewer hours than those dictated by the contract in one month, by scheduling them for more hours another month. This system therefore provides employees with the security of a fixed monthly wage while still offering employers their desired flexibility. The trade unions approved this measure only because it managed to negotiate certain limitations on the flexibility of working hours, to ensure that employees not only have a stable income, but also better possibilities for life-work balance.

Working with the year-hour system is optional for childcare companies. However, if they do choose to use this system, they are no longer allowed to give any employees working in their organisation a min-max contract. The trade unions would have preferred to get rid of the option of min-max contracts entirely, but were not able to negotiate this with the employers' organisation.

It is important to note that there are also other options to increase flexibility in childcare. According to the secretary of the collective agreement table for the childcare sector, besides on-call contracts and the year-hour system, employers can also use fixed-term contracts to increase flexibility in meeting the demand for childcare staff. Group sizes in childcare centres, despite variation from year to year will usually remain similar over a certain period, allowing employers to hire employees for this time on a temporary contract and not extending it if the group size diminishes. Part-time work is another way of creating flexibility. Employees working in the childcare sector in 2012 worked on average 22.3 hours per week. This indicates that even regular employees usually do not work full-time. This may be explained by opening hours of childcare centres. For instance, out-of-school childcare does not start until 15.00 because of children's regular school hours. This results in a maximum work week of 28 hours for employees working in out-of-school childcare.

According to the representative of the trade union, part-time work has gained importance in recent years in line with the decrease in the number of children in childcare. In this light employers have been asking to reduce staff work hours. The reasoning behind this is related to the child-employee quota, which requires employers to have a certain number of employees available, although for fewer hours than before. The trade union has raised objections to this plan,

because they feel the employees will lose these hours permanently and not get them back if the amount of work increases again.

Nonetheless the Unemployment Security Agency (UWV), which is responsible for approving staff layoffs, and the Ministry of Social Affairs, have decided that childcare sector employers can partially reduce the hours of their employees. The representative of the employers' organisation explained that this was decided because it was agreed that circumstances in the childcare sector justify reducing the working hours of two people instead of firing one person completely, as would be the usual course of action. Furthermore, he added that it was also decided that when following certain criteria it is possible for employers to fire employees with permanent contracts while retaining some of the flexible employees. This is not usually allowed, but the UWV made an exception for the childcare sector as they acknowledge that flexible employees are necessary for this sector.

According to the representative of the trade union employers have handled employees with permanent contracts with fixed hours by scheduling them for part of their hours and requiring them to be available on-call for the remaining hours of their contract.

Collective agreement in the medical care sector

The sector agreement for medical care was signed in August 2013 by three trade unions representing the employees and one employers' organisation representing the mostly private employers. The sector agreement was applicable from 1 September 2013 until 1 September 2014. The medical sector trade union interviewed has been involved with this collective agreement since 2009. However, they did not sign the last two collective agreements that ran from 2011 through 2012 and from 2013 through 2014 because they could not agree with the employers' organisation on issues like quality of work, the workload, the permissible degree of flexibility and wages. Because the employers' organisation represents 95% of all employers they can pick whatever trade union they like to agree on a collective agreement. And some of the smaller trade unions, according to the trade union representative interviewed, are more inclined to agree with the employers' organisation proposals. This has resulted in a collective agreement that mainly caters for the employers' needs. Even though this specific trade union did not sign the collective agreement, it applies to all the employees who work for the companies that are represented by the employers' organisation.

The trade union has in the past been able to put certain limitations on the use of zero-hours contracts and min-max contracts. However, they would prefer on-call contracts to be ruled out completely in the collective sector agreement as they feel that there really is not enough fluctuation in the available work to justify the use of on-call contracts. The trade union would like to see more internal flexibility with employees who are part of the regular workforce and have secure fixed-hour contracts, as opposed to what they call external flexibility with employees on on-call contracts. The trade union sees zero-hours contracts and all worked hours above the minimum in min-max contracts as external flexibility.

Internal flexibility through a year-hour system is a possible alternative to external flexibility. Even more so, the trade union would in future prefer a system that would not spread working hours out over a year, as in the year-hour system, but over a quarter of a year, as a more even distribution of working hours provides a better balance between work and private life.

The trade union representative realises there is always some need for flexible labour. According to him this could be organised by creating an internal 'Flexpool' with employees working in a contract with a fixed amount of hours, that offers slightly fewer rights concerning flexibility and security in the schedule than a regular labour contract would offer.

Characteristics of on-call contracts

There are three different types of on-call contracts. The first type of contract is an on-call contract by agreement. With this type of contract an agreement comes into effect when the employee decides to accept the work. Under such a contract, the employee is paid per hours worked and can refuse work without any consequences. A new labour agreement is formed at the start of every new agreed-upon working period. After receiving three of these fixed-term contracts with the same employer, a fourth contract must become a permanent contract if there were less than three months between fixed-term contracts. For the fourth contract the employer needs to pay the hours that were agreed upon, even if there is no work available for these hours. Collective labour agreements are allowed to deviate from this.

The second type of on-call contract is a zero-hours contract. This type of contract can be either for a fixed-term or a permanent contract. However, there is no guarantee of a minimum amount of hours. This means that the worker may not be called in at all. However, when the worker is called in they are expected to come to work. The repercussions for denying work are decided informally. In the first six months of the working relationship the employer only has to pay for worked hours. After the first six months the employer is obliged to pay for the average hours the employee worked in the last three months for as long as the contract is active, even if the worker is never called in. This regulation only applies when an on-call employee has either worked at least once a week or has worked a minimum of 20 hours a month. Consecutive labour agreements count as an ongoing working relationship, thus only during the first six months of the first temporary labour agreement does the employer have the right to pay on-call employees only for hours worked. However, collective sector agreements can extend this six-month period indefinitely.

Finally, on-call employees can be hired on min-max contracts. This contract, which can be for a fixed term or permanent, is for a minimum amount of hours work within a week, month or year. These are the guaranteed hours. The employer has to pay for these hours, even if there is no work available. The contract also states the maximum number of worked hours. The employee has to be available to work until the maximum amount of hours stated in the contract is reached. Above the guaranteed hours the employer pays for the extra hours worked. If an employee continuously works more than the guaranteed hours they can request a larger amount of minimum hours in their contract. The average amount of hours worked in the last three months determines how many minimum hours an employee can request in the contract.

For all of the different on-call contracts, employees with contracts for less than 15 hours, including zero-hours contracts, have to be offered a minimum of three hours every time they are called in. This clause is meant to protect on-call employees from being called in for only an hour of work at the last moment, resulting in low cost–benefit for the employees given commuting time and costs. Every temporary contract, including temporary on-call contracts, can only be renewed three times, after which (except in cases when there are more than three months between the fixed-term contracts) the affected employees have to be transitioned to permanent contracts. Furthermore, employees may only work on temporary contracts for a maximum of three consecutive years. After this the labour agreement becomes permanent.

Collective agreement in the childcare sector

As can be seen in Table 1, the collective agreement for the childcare sector only adds regulation to the Flexibility and Security Act concerning min-max contracts. This means that zero-hours contracts and contracts by agreement for employees are solely regulated by the general law. Regulations concerning zero-hour contracts used to be integrated in the collective agreement but disappeared in 2009 when the collective agreements for welfare-oriented childcare and private childcare were integrated.

When it comes to min-max contracts, all the regulations from the Flexibility and Security Act apply, except that the collective agreement determines that the difference between the minimum and maximum amount of hours in a min-max contract cannot exceed 60 hours per month. The 2010–2011 collective agreement allowed a maximum of 10 hours per week difference in min-max contracts. This in effect brought about two changes. Firstly it increased the minimum and maximum allowed hours. Secondly, as the difference in min-max contracts changed from 10 hours a week to 60 hours a month there has been a shift from an orientation on weeks to an orientation on months. These changes were meant to provide more flexibility for the employer because now hours can be divided over a month instead of a week.

The current collective agreement has seen another addition to offer more flexibility to employers while still offering security to their employees. Even though this new regulation is only meant for employees with a contract for a fixed number of hours and therefore falls outside the scope of this report, it is important to mention here as a new alternative to on-call contracts. In what they call a year-hour system employers are allowed to adjust the employees' working hours by 20% either upwards or downwards on a monthly basis. At the end of the year, the balance of hours has to be zero, meaning that when an employee works more than the regular hours in a given month, they have to be compensated by fewer hours of work in another month. In the exceptional case that an employee worked less than the hours in the contract, the employer still needs to pay the hours agreed upon in the contract. If the employee worked more, the hours can be compensated for either with money or paid vacation hours. These last two rules are designed to ensure that employers plan their employee hours responsibly and to provide a sort of protection to the workers.

The collective agreement also states that workers who work according to rosters, which therefore excludes some on-call employees, have to be notified a minimum of 10 days in advance. This rule could for instance apply to workers working under min-max contracts. This clause does not need to be followed in situations that could not be foreseen, such as replacing a sick colleague, when an employer might need to call in an employee at very short notice. Therefore on-call employees whose role is to replace sick colleagues or help out in other unforeseen situations have no legal protection from being called in at the last moment.

The collective agreement does not specify different wage levels, notice periods or severance pay for on-call employees. These will thus be the same for on-call employees as for regular employees. However, on-call employees on zero-hours contracts do not have to be fired as they do not have a guaranteed right to work. The employer may therefore decide to simply no longer call in an employee on a zero-hours contract instead of having to lay them off.

Collective agreement in the medical care sector

The collective agreement for the medical care sector states that the maximum amount of hours arranged in a min-max contract cannot exceed 200% of the minimum amount of hours unless the employee concerned agrees to it. In the latter case an employee has the right to lower the maximum hours to 200% of the minimum annually. An employee also has the right to ask the employer to reevaluate the minimum amount of hours based on the hours actually worked. Although in reality this is probably applied in other sectors as well, the medical sector agreement explicitly states that employees have the right to notify the employer of the days and times they are available for work.

Concerning zero-hours contracts, the sector agreement states that employees have the right to request annually a contract with an average amount of hours per week. If the employee feels that because of the hours actually worked it can no longer be assumed that he or she has a zero-hours contract and the employer cannot prove otherwise, the request has to be granted. When a zero-hours contract is in fact no longer a zero-hours contract is not specified in the collective agreement. Therefore this is in fact an expression of what is already regulated in the Flexibility

and Security Act. That is, that employees on zero-hours contracts who work regularly, every week or a minimum of 20 hours a month, should receive a fixed-hour contract.

The sector agreement also announced a few amendments as of 1 July 2014. The first is that zero-hours contracts can only be used in unforeseen circumstances that cannot be planned for, such as an unforeseen increase in clients or unforeseen employee absences. Even in the said circumstances, the use of zero-hours contracts is only allowed when filling the shifts with regular employees would mean an unacceptable change to employees' rosters or when the shifts cannot be filled by employees on other types of contracts than zero-hours contracts.

The sector agreement also requires employers, to the extent possible, to offer employees on zero-hours contracts a contract with a fixed amount of working hours per week between 1 July and 31 December 2014. Furthermore, on-call contracts by agreement are forbidden from 1 July 2014. These amendments have been made as a precautionary measure prior to changes to the Flexibility and Security Act that were expected at the time of negotiations about this sector agreement. These changes have now been passed in a new law called the Work and Security Act, which is discussed in greater detail below. Finally, the collective sector agreement has a section specifically concerning employees working in maternity care. These employees, after working on a zero-hours contract for six months, do not acquire any right to payment if they are not called in. The collective agreement does not specify different wage levels, notice periods or severance pay for on-call employees.

Table 1: Comparative table on regulation of on-call contracts in the Netherlands

Regulations for on-call contracts in the Flexibility and Security Act	Regulations for on-call contracts in the collective agreement in the childcare sector	Regulations for on-call contracts in the collective agreement in the medical care sector
On-call contract by agreement		
<ul style="list-style-type: none"> • Fixed term • Labour agreement commences when worker accepts work • Paid per hours worked • Worker may refuse the work offered 	No added regulations	<ul style="list-style-type: none"> • Forbidden from 1 July 2014
Zero-hours contract		
<ul style="list-style-type: none"> • Fixed term or permanent • No guarantee on working hours • Paid per hours worked • Must accept work when called in • After six months the employee must receive pay for the average worked hours in the last three months, even if there is no work available 	No added regulations	<ul style="list-style-type: none"> • Employees on zero-hours contracts may annually request a larger contract when worked hours justify this • Zero-hours contracts may only be used in unforeseen circumstances and when regular employees cannot be expected to work these hours • Employees on zero-hours

Regulations for on-call contracts in the Flexibility and Security Act	Regulations for on-call contracts in the collective agreement in the childcare sector	Regulations for on-call contracts in the collective agreement in the medical care sector
		contracts must, when possible, be offered a fixed-hour contract between July and December 2014 <ul style="list-style-type: none"> • Employees in maternity care do not acquire a right to payment if they are not called in after six months
Min-max contract		
<ul style="list-style-type: none"> • Fixed term or permanent • Contract dictates minimum and maximum working hours • Guaranteed payment for minimum hours in contract • Above minimum additional payment for worked hours • Right to higher minimum hours when worked hours continuously exceed the minimum 	<ul style="list-style-type: none"> • The difference in min-max contracts may not exceed 60 hours per month 	<ul style="list-style-type: none"> • The maximum in a min-max contract may not exceed 200% of the minimum, unless an affected employee agrees to this • The employee may ask to change this back to a maximum of 200% annually

Source: Authors

Working procedures

In childcare, on-call employees work on standard work contracts, and are thus subject to the same collective agreement as other childcare staff. Aside from the flexibility and freedom to call employees in only when needed there are no extra benefits for employers hiring employees on on-call contracts. On-call employees will therefore, like regular employees, receive continued payment in case of sickness and are eligible for unemployment benefits. Actual hours worked by on-call employees count towards the build-up of benefits such as holiday pay and pensions. When on-call employees have enough work to acquire a decent income they will also accumulate enough benefits. However, this remains a matter of actual practice. They have no real rights to work and, accordingly, no real rights to benefits.

Many care organisations work with an internal Flexpool. This is a pool of flexible employees who have an on-call labour agreement with the company and can be called in to work at short notice. Some organisations guarantee their Flexpool employees a minimum number of hours; however, this is neither required nor frequent as most employees in these Flexpools work on zero-hours contracts. The layoffs in childcare mentioned above meant that some employers rehired their fired staff on zero-hours contracts to include them in the said Flexpools. Employers usually have a preference for this scenario because they get to keep experienced and well-qualified workers under a flexible arrangement.

Employees in the Flexpool usually have to be available to work five days a week but will in practice work less than that. If an employee is needed they receive a call in the morning. Employees are allowed to decline the offer of work. However, declining too often may mean they

are no longer called on. Broken shifts may also be offered, in which an employee is called in for different hours at different times on the same day. For employees, availability issues and broken shifts can make planning their time more complicated because of unclear and/or fragmented working hours. According to a representative of the national training institute of works councils, there should be an alternative to the five-day availability arrangement, such as a reduced availability of, for instance, three fixed days a week, so that the on-call worker could be off-duty for two days a week and plan their time accordingly. In her experience, these kinds of alternatives are rarely on the agenda of decision-makers in care organisations.

Monitoring on-call contracts

There is no organisation in charge of centralised monitoring of on-call contracts. There are, however, several organisations that play or may play a role in monitoring such contracts. The first is the labour inspectorate, which is led by the Ministry of Social Affairs and Employment Opportunities. This is the official organisation responsible for checking that working conditions are fair, healthy and safe. This includes monitoring compliance with the law and collective labour agreements. This organisation takes the initiative in monitoring and responds to signals from employees, works councils or trade unions. However, the care sector is not a great priority for them, as they are usually more concerned with employees working in physically more challenging or dangerous jobs. Thus even though the labour inspectorate may play an important role in monitoring on-call contracts, they did not at the time of the case study (May 2014).

Another organisation that may play a part in the monitoring of on-call contracts is a company's works council. According to the Works Councils Act, the works council officially has a right of consent on in-company policies and rules regarding the contracts used for hiring new employees, including those on on-call contracts. However, in reality organisations hardly ever consult with works councils before introducing new policies on hiring on-call employees. Employers typically introduce such policies with the message that flexible employees, including on-call contracts, are crucial to the company. Works councils members usually tend to focus on the interests of fixed-term staff, and less on temporary staff. This is because on-call employees are not usually represented on the works council because of the insecure position these employees have in the organisation and the need to maintain continuity within the business of the works council. Because of this insecure position of on-call employees in works councils, trade unions try to inform them about developments regarding flexible labour to keep the works councils up to date on flexible contracts and to put this subject on their list of priorities.

The trade union representatives for both the childcare sector and the medical care sector say that they put a lot of effort into ensuring that companies comply with regulations regarding on-call contracts. Besides gathering relevant information they also represent on-call employee rights in discussions with political parties and employers, communicate about employee rights through the media and directly to their own members and their networks, and, if all else fails, help employees with legal steps against employers that do not follow the law. However, the latter line of action depends on the proactivity of employees and works councils.

When a trade union is informed that a company is not following the law, they start off by informing the company in writing of the employees' rights. If this line of action is insufficient, the trade union will take legal action to enforce the law, which can lead to an employee receiving the proper contract or payment. The trade union can only do this for its members, so non-members will first have to become a member before they can be assisted. All in all, these ways of enforcing the law are very ad-hoc in nature and based on efforts by employees or members of the works council. There have been calls for the establishment of a more official compliance commission, but such a body had not been set up at the time of the case study. In 2013 the trade union also played a role in the social agreement between political parties and social partners. In these negotiations the trade union argued for more rights for employees on on-call contracts. The

result of this was a social agreement that aimed at replacing the existing Flexibility and Security Act with the new Work and Security Act, thereby outlawing long-term insecure zero-hours contracts. In this context the trade union FNV in the same year adopted an action plan to improve the position of on-call employees. Towards this end they conducted research on situations where on-call employees are being exploited and established a central institution where on-call employees can report cases of exploitation to help union workers improve the position of such employees.

Future plans

As mentioned above, the Flexibility and Security Act will be replaced with the Work and Security Act. This new law is aimed at better protecting flexible workers and will influence regulations regarding on-call contracts. The official plan was that the act would come into effect in mid-2014. However because of some delays caused by criticism of the council of state, the central planning bureau, the organisation of labour law counsellors (Vereniging Arbeidsrecht Advocaten Nederland, VAAN) and the Senage (Eerste kamer, 2014), this has been postponed to July 2015. The law was approved by the Senate on 10 June 2014. Firstly, the plan is to reduce the amount of temporary chain contracts allowed before an employee receives a permanent contract from a period of up to three years to a maximum of two years. The rule that employers have to transition employees who have had three consecutive temporary contracts to a permanent one still applies.

Another change is that contracts will be considered chain contracts if they are signed within six months of each other instead of the current three months. The reason for this is that many employers wait three months after a temporary contract ends, only to hire the employee back after that time to prevent having to give the employee a permanent contract. It is hoped that with these new rules employers will feel waiting for six months is too long and therefore be motivated to keep the employee without a break, giving the temporary employee more job security in both the short and the long run as it should more quickly lead to a permanent contract.

The new law will also explicitly forbid indefinitely prolonging the first six months where employees do not have to be paid for average hours worked even if they are not called in. The reason for this is that too many employers keep employees on zero-hours contracts, even though these employees work for the company regularly. This amendment aims to provide more income security for zero-hours contract employees working on a regular basis.

Moreover, zero-hours contracts will be banned altogether for all staff (regular or irregular hours) in the healthcare sector. This clause prompted a lot of questions amongst employers in childcare because they are afraid that they too will lose the opportunity to apply zero-hours contracts, which, especially for smaller companies, is central to being able to fill the gaps in scheduling regular employees. According to an employers' organisation representative, companies will come up with other alternatives such as using freelancers. Results from an employer survey in the healthcare sector commissioned by the Ministry of Public Health suggest, however, that if zero-hours contracts are banned many employers plan to use more temporary contracts for fewer hours, use min-max contracts, or give out contracts for one or two hours (AZW, 2013). This suggests that employers already plan to find ways around the law and that it will not change the situation of on-call staff.

A change that will specifically affect medical care institutions is the transfer of healthcare responsibilities from the government to municipalities from the start of 2015. This will introduce a new system of outsourcing healthcare, in which the municipality will decide which institutions get tenders for specific services. These future plans are part of healthcare budget cuts and are creating considerable insecurity in the medical care sector, as institutions do not know how much work they will have in future and what their budgets will be. This insecurity is being passed on to the employees who instead of more permanent contracts end up with zero-hours contracts.

According to the representative of the trade union in the medical care sector the healthcare outsourcing scenario is not fair as he states that if one company loses work, the work will go to another company, meaning that there will still be the same amount of work that will need to be done by a certain amount of people. The plans therefore also determine that employers will have to communicate about possibly taking over employees from other institutions that have lost work. This is a process that the trade unions will have to be part of.

Outcomes

Macro level

According to data of the Central Statistical Bureau, in 2013 there were 378,000 Dutch employees with an on-call contract who worked at least 12 hours a week. Considering this was a time where unemployment was increasing rapidly, it is a large number in comparison to 2003, when there were 193,000 employees with an on-call contract. When the people with an on-call contract of fewer than 12 hours a week are included, there were a total of 777,000 on-call employees in 2013 as opposed to 560,000 in 2003 (FNV, 2013). Of all jobs, including those offering fewer than 12 hours, 5.5% are on-call contracts. Another 3.6% have a contract without a fixed amount of hours, making the total of contracts that could be considered an on-call contract 9.1%. Not including jobs of fewer than 12 hours a week, 4.9% of contracts could be considered as on-call contracts (Flexbarometer.nl, 2014).

There are more women working under on-call contracts (56.3%) than men (43.7%). Most on-call employees are between 15 and 24 years old (65.6%). Another 19% are between 25 and 44, and 15.3% are 45 years or older. Since 15–24-year-olds only make up 15.5% of the total working population, it can be said that young employees have a far greater chance of working under on-call contracts than older employees. Most on-call employees have an average education (EQF 4 or 5) (43.4%), whereas 40.9% are educated to a lower level (EQF 1 to 3) and 15.7% to a higher level (EQF 6 to 8). The percentage of people with an average education in an on-call contract is comparable to the percentage in the entire working population. However, the lower educated have a far greater than average chance of working under an on-call contract, whereas the higher educated have a lower chance. These observed trends hold true across different sectors (Flexbarometer.nl, 2014).

The most recent evaluation of the Flexibility and Security Act was commissioned by the lower house in 2006. But since then the number of on-call employees has increased while the total number of jobs has decreased, meaning that the results from the last evaluation cannot provide accurate information on how it is currently used. These changes, however, are a sign that employers turn to on-call contracts in times of insecurity, when they are afraid or unable to give employees fixed-hour contracts.

Employers feel that the use of on-call contracts, especially in a time of crisis, is essential to be able to run their business properly and be able to make a profit. Even though the childcare sector had to let go 20% of their staff in regular contracts, they have been able to keep some of their qualified staff attached to their company in on-call contracts. This way they are guaranteed qualified staff right now, without having to bear the financial responsibility of having too many staff on hand. Furthermore, when work increases again companies will still have qualified staff available to them.

The use of on-call contracts may have created more jobs, even though they are not full-time jobs. This, however, is an assumption that cannot be confirmed beyond doubt. It is possible that without on-call contracts employers would have had no other choice but to hire employees on regular contracts to keep their business running.

The introduction of the year-hour system may also affect the use of on-call contracts. However because the year-hour system was only introduced recently in the childcare sector, none of the interviewees currently have any idea about its effects. Not many employers have yet introduced the new system. At the time of the case study there was much discussion about it in works councils, so it may be introduced in more companies in the near future. However, this system will most likely never fully replace on-call contracts, because the employer is only allowed a relatively small margin in which they can operate within the year-hour system that will not fully satisfy their need for flexibility.

Micro level

From the employee's point of view, on-call contracts offer very little security. This insecurity is expressed mostly through uncertainty about working hours and income. Insecurity about working hours is most vivid in harsh forms of on-call work. Examples of these are availability services, when workers have to be available for five days a week without any guarantee that they will be called for work, and broken services, when workers can be called in for different hours at different times on the same day (for instance, 08.00–10.00 and 16.00–18.00). These kinds of on-call work demand considerable availability from employees without offering them any security of work and income in return.

The Flexibility and Security Act dictates more security for on-call employees as opposed to the situation before the introduction of this law. However, there is very little control over whether or not employers follow the law. According to interviewees, employers are known to violate the regulation. One example is employers not paying the minimum three hours in cases when employees are called in for shorter shifts. Another example is employers not signing contracts with on-call staff for the number of hours they regularly work. This is either because of lack of knowledge on the part of the employer or because the employer does not want to give anything more than a zero-hours contract. Moreover, on-call employees themselves do not typically report such violations because they are not always aware of their right to request a contract for more hours. And if they are, they are afraid to lose the few hours they do have for requesting a different contract. Because on-call employees tend to not be organised in trade unions as much as regular employees, it can be harder to reach them.

On-call employees on zero-hours contracts are not usually offered any training as employers tend to want to avoid the cost. This not affects the quality of the current staff but may also influence the future employability of on-call employees, as they cannot develop their skills in the same way that regular employees can. This does not apply to min-max contracts. Employees in min-max contracts are offered training because they have a certain number of fixed hours in their contract. In the case of the childcare sector this means they will usually have their own group of children and work according to a roster that is known well in advance. Training days or training hours can be included in the rosters. Employees on zero-hours contracts, however, might work at different locations with different children, and are more likely to be called in at the last moment. And when they are called in to work, usually it is not for attending training.

In general, and specifically in cases of on-call work, trade unions speak of flexibility gone overboard. They feel that the employees' position has become too weak against the powerful position of employers. The plan to pass a new law to protect flexible workers is a sign that the government agrees that the situation is undesirable and requires addressing.

Nonetheless, while zero-hours working arrangements are not ideal, many employees working under these contracts are in fact happy to have a job. For people working in insecure sectors where many people have lost their jobs, a zero-hours contract is better than not having a job at all. These way on-call employees can keep working in their preferred job. And although on-call work usually offers very little training, employees can keep up their skills by practising them. This may help them get a more secure job in the future when work picks up.

Strengths and weakness of on-call contracts

For the employer

For employers the strengths of on-call work lie in the flexibility it gives them. They can adapt easily to staff shortages caused by sickness, leave or other unforeseen circumstances without having to hire staff on fixed-hour contracts that may be redundant at times, making them a risk to business sustainability. The flexibility of on-call employees therefore results in a more secure conduct of business for employers. This also extends to the future as being able to keep qualified staff as on-call employees will guarantee the availability of qualified staff in the future. A weakness for employers has to do with the way legislation is explained. Not all employers seem to know the rights of on-call employees. They are therefore sometimes surprised when an on-call employee on a zero-hours contract, who works for them regularly, requests a bigger contract, as they were not aware on-call employees had the right to do this. There was some confusion among employers about whether or not employees on zero-hours contracts also have a right to certain benefits such as paid leave or the one-time payment all childcare employees were to receive earlier in 2014, as agreed upon in the latest collective agreement. The answer is yes, because on-call staff also have a work contract, but not all employers were aware of this. Some employers also have difficulty calculating the number of days' leave on-call employees are entitled to.

A more practical obstacle relating to work in a childcare centre is the fact that employers in this sector have a policy of having the same people working at the same location as much as possible. This is because it is better for the children if they can get used to the people working in the childcare centre. This probably limits the use of zero-hours contracts, while it does not have much effect on min-max contracts.

For the employees

An important strength for on-call employees is that they are protected by the Flexibility and Security Act. This law gives on-call employees certain rights and determines that on-call employees acquire a right to a more stable contract when their on-call work is frequent and more regular. Furthermore, on-call employees fall under the same collective agreement as regular employees, entitling them to exactly the same benefits as regular employees such as paid leave, sick leave and building up a pension. However, the representative for the employers' organisation says that zero-hours contracts are often not used for their actual purpose, which is replacing employees in unforeseen situations. This for instance results in on-call employees remaining on zero-hours contracts when they in fact work regularly and should receive a larger contract, or on-call employees not being paid for a minimum of three hours when they are called in.

For the trade union or employers' organisation to help address problems with companies not obeying the law, these organisations depend on employees signalling that there are problems. This means employees also have to know what their rights are and be willing to take action. Despite trade union efforts, this is currently not always the case. From this it can be concluded that, even after all these years, it is highly important that knowledge about employees' rights becomes more widespread amongst both employers and employees.

Transferability

On-call work as described in this analysis offers no real opportunities for transferability. On the contrary, what would be transferable is not this type of work, but rather the measures aimed at reducing it and to limiting its negative effects for employees. Three initiatives can be mentioned as examples of good practice.

First, companies can introduce internal Flexpools of on-call workers. In fact, this implies a shift from purely external to more internal flexibility, which gives workers more security by making

them part of the (flexible) organisation's staff – thus making them more likely to get called in more, work more hours, work more regular hours and to exchange hours with other workers within the organisation. They might also gain greater access to benefits. There are examples in childcare of organisations that work with systems of guaranteed payment for internal on-call Flexpool workers.

Second, based on the new collective labour agreement for the childcare sector companies can apply the year-hour system for flexible hiring. This is also an instrument for limiting external flexibility by enhancing opportunities for internal flexibility. For employers, deploying their own workers (fixed, temporary, min-max) can be a better way of meeting staffing demands over longer periods of time. It can be expected that with the year-hour system the need for casual on-call work will be reduced. Thus far, however, there is little experience with this new system, and it is therefore difficult to gauge its effects in practice.

A third initiative is the monitoring of on-call work. The trade unions are particularly active in this field. They have set up special institutions where employees can report misuse of on-call contracts, non-compliance with regulations, underpayment, situations of exploitation and so on. However, as noted by several interviewees, this kind of monitoring is not an easy job. Usually, on-call workers are not organised, they are not acquainted with union practices and not informed about their rights as workers. Moreover, by reporting their employers, on-call staff run the risk of not being called in any longer and losing their jobs.

Commentary

This analysis has shown that on-call work is a harsh type of work, which is highly controversial in the Netherlands. Although there are various types of on-call work with various degrees of flexibility, on-call work in general is an insecure form of work which principally expresses a very unequal relationship between employers and employees. On-call workers occupy very precarious positions in organisations and the labour market as a whole, being almost fully dependent on casual circumstances and casual preferences of employers to obtain work. The types of on-call work that include availability services have an especially exploitative character – workers must be 'at hand' and put their private time at the disposal of employers without any guarantee of work and payment.

Despite efforts by the trade unions and the government to design and implement rules and regulations to reduce these kinds of flexibility and protect these flexible workers, the number of on-call workers has been increasing over the past 10 years. Apparently, on-call work is a welcome tool for employers to generate more flexibility in staff capacity at times of crisis and budgetary cuts. At the same time, amid high unemployment workers are inclined to accept these unfavourable conditions as their choice is limited between no work and on-call work. The trade union denounces these developments as 'flexibility gone mad'. New plans of the government, designed at the request of the unions and agreed with the employers' federations at the central level, aim to reduce this over-the-top flexibility. It is doubtful for various reasons, however, that these measures will provide a better balance between flexibility and security in this harsh segment of the Dutch labour market.

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