

Covid-19 crisis makes clear a new concept of 'worker' is overdue

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The crisis has highlighted the vulnerability of those outside conventional employment. A broader concept of 'worker' is needed to protect them equally.

The Covid-19 crisis has found the western world, and Europe, at its most vulnerable. Years of austerity-inspired macroeconomic policies and cuts in public spending have stripped essential social services, including our health services, to the bone.

Nicola Countouris

Decades of deindustrialisation and reliance upon global networks of production and trade have depleted our capacity to produce or commandeer at short notice essential goods, from food to protective equipment—even basic pharmaceutical and medical supplies. And half a century of financial, fiscal and labour-market deregulation has generated the most unequal and fragile of economic systems, with wide economic disparities profoundly embedded in the fabric of European societies.

There will be testing times ahead but this can be an opportunity to rebuild our economic, productive and social systems in a way that will make them more resilient. As far as labour-law reforms are concerned, the precarious position of millions of workers trapped in a variety of contractual arrangements of self-employment—bogus or otherwise—is quickly emerging as the most visible injustice afflicting the workforce.

Valerio De Stefano

"Social Europe publishes thought-provoking articles on the big political and economic issues of our time analysed from a European viewpoint. Indispensable reading!"

While governments are rushing to support employees with income-replacement schemes and businesses with interruption loan facilities, millions of self-employed on zero-hours contracts—working through personal-service companies, digital platforms or other intermediaries—are caught in a limbo of helplessness and face poverty and destitution, in spite of the belated introduction of government schemes seemingly targeted at their needs. Reports are now emerging of large swaths of self-employed missing out on these schemes just as, over the years, they missed out on a broad range of statutory and collective labour rights, while also failing to achieve the economic security and market autonomy typically enjoyed by successful businesses.

Keith Ewing

Mark Freedland

Weakest link

It is well known that these workers are the weakest link. But out of convenience, self-delusion or mistaken belief, little has been done to protect them. They were prevented from bargaining collectively to improve their conditions of work. They were told that, for the purposes of defining their employment status, contractual form would often prevail over the reality of the work they did. Self-employment was sold by many policy-makers as the new philosophers' stone—capable of curing unemployment, stagnation and lacklustre economic performance.

This is despite clear evidence that millions of self-employed (actual or nominal), whether gig workers or not, were trapped in low-paid and essentially insecure jobs, often against their will. For millions of these so-called self-employed workers, the Covid-19 crisis lays bare the vulnerabilities inherent in their under-protected, underpaid and undervalued work and corresponding status. Yet many of them are the cleaners, couriers and information-technology staff on which our safety, well-being and infrastructure greatly depend.

There is a growing awareness that something needs to be done to assist them at this critical time, but supposedly it is operationally hard to protect their incomes and livelihoods—it isn't. We know, and have known for a long time, that a large number of self-employed earn their livelihoods and put food on the table merely by selling their personal work and services. They don't employ staff to perform a service, and they most certainly don't rely on any substantial assets, tangible or intangible, to provide their labour. We need a new 'worker' definition which recognises this reality.

This new definition needs to encompass not only traditional employees but also all those self-employed who do not comprise 'undertakings' (they do not employ staff and do not rely on substantial amount of assets to perform what is clearly personal work). They should all be placed by legislation under the same protective scope for the purposes of labour and social-security law and, of course, the various income-replacement measures explored in the context of the Covid-19 crisis.

'Personal work relation'

To find this new 'worker' definition, one need look no further than the 'personal work relation' concept endorsed by the European Trade Union Confederation at its last congress in Vienna, now part of its 2019-23 policy priorities (paragraph 398). The concept of 'personal work' has been explored at length academically and in policy terms, in the United Kingdom and the wider Europe. It is clearly designed to expand the personal scope of legislation. Unsurprisingly, it is the concept on which tax law traditionally relies in the UK when it seeks to expand the reach of National Insurance contributions beyond employees to forestall tax avoidance.

It is time for all labour and social-security rights to apply to '*every worker who provides work or services in a predominantly personal capacity and is not genuinely operating a business undertaking on his or her own account*'. This definition should be accompanied by

strong, if rebuttable, worker-status presumptions—and by a new concept of employer, defined broadly so as to include any employing entity which ‘substantially determines the terms on which the worker worked’, as is already the case for limited purposes in UK law.

Overcoming the Covid-19 crisis will require unprecedented social cohesion and solidarity. It will also require more cohesive and solidaristic working arrangements, the abandonment of ‘labour markets’ and the rediscovery of timeless principles, most notably that ‘labour is not a commodity’. Accepting that all those who earn their livelihoods through their personal labour ought to be recognised as workers, and protected accordingly, should be a key, and urgent, policy priority.