

**HIGH LEVEL OF TEMPORARY CONTRACTS
OF EMPLOYMENT IN SPANISH LABOUR MARKET:
CAUSES AND REMEDIES**

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Key words: spanish labour market, rate of temporary contracts, efficiency of labour market, segmentation of labour force, employment stability.

Abstract

The purpose of this paper is to highlight figures of the situation of Spanish labour market regarding the high rate of temporary contracts and reflect on its causes as well as on the legal measures taken to change the situation, drawing some conclusions about the poor results of legal measures implemented for changing this situation during almost two decades.

**WYSOKI POZIOM TYMCZASOWYCH UMÓW ZATRUDNIENIA NA HISZPAŃSKIM
RYNKU PRACY: PRZYCZYNY I SPOSOBY POPRAWY SYTUACJI**

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Słowa kluczowe: hiszpański rynek pracy, wskaźnik umów tymczasowych, sprawność rynku pracy, segmentacja siły roboczej, stabilność zatrudnienia.

Abstrakt

Celem artykułu jest zwrócenie uwagi na dane z hiszpańskiego rynku pracy dotyczące wysokiego wskaźnika umów czasowych oraz pokazanie przyczyn tego zjawiska. Przedstawiono także środki prawne podejmowane w celu zmiany tej sytuacji oraz sformułowano pewne wnioski dotyczące słabych wyników funkcjonowania środków prawnych wprowadzonych w celu zmiany tej sytuacji w okresie dwóch dekad.

Introduction

One constant problem of Spanish labour market is related to the high percentage of temporary workers existing since the mid-1980's when new labour law rules were settled in order to increase employment levels. In fact, it could be said that the high level of temporary contracts existing nowadays in Spain is the result of the policies adopted then for combating another crucial problem of Spanish labour market: the unemployment level.

Whenever this policy helped in the past to reduce the unemployment, it has had non-desired effects which have determined different Spanish Governments to reduce the rate of fixed-term contracts in employment statistics. But this aim has found several difficulties mainly related to the apparition of an employers' culture. According this weak links are prevalent because they are seen more efficient and less troublemaker and the absence of an effective legislation for promoting indefinite contracts of employment and reducing temporary ones.

In order to draw some conclusions, the paper is divided into five parts. The first one is dedicated to put in evidence the excessive presence of temporary contracts in Spanish labour market and its connection with high unemployment levels. Part two tries to analyze key factors that explain high percentage of temporary employment contracts. In the third one it the legal framework of temporary employment contracts is presented. The fourth part deals with the different legal measures taken to reintroduce employment stability. Finally, part five contains the conclusions drawn.

The important presence of temporary employment contracts in Spanish labour market

Spanish labour market shows some significant data which reveals its main problems. Those are related, on one hand, to the constant high percentage of temporary contracts of employment and, on the other, to the level of unemployment.

The high presence of temporary contracts of employment in Spanish labour market has repeatedly been pointed out as one of its main problems¹, despite

¹ That is the case, for example, of the successive Council Recommendations on the implementation of Member States' employment policies laid out in the context of the European Employment Strategy: Council Recommendation of 14 February 2000 (O.J. 25 February 2000, L 52); 19 January 2001 (O.J. 24.1.2001, L 22); 18 February 2002 (O.J. 1.3.2002, L 60); 22 July 2003 (O.J. 5.8.2003, L 197) 14 October 2004 (O.J. 29.10.2004, L 326) or 25 June 2009 (O.J. 15 July 2009, L. 183) where high levels of employment under fixed term contracts is shown as one of the main serious challenges of Spanish employment performance and therefore it is asked to Spain to revise the regulatory

successive measures adopted throughout the years by the Spanish Parliament and different Governments in order to reduce this percentage and the negative effects it has on workers, economical growth, companies running, and social protection system².

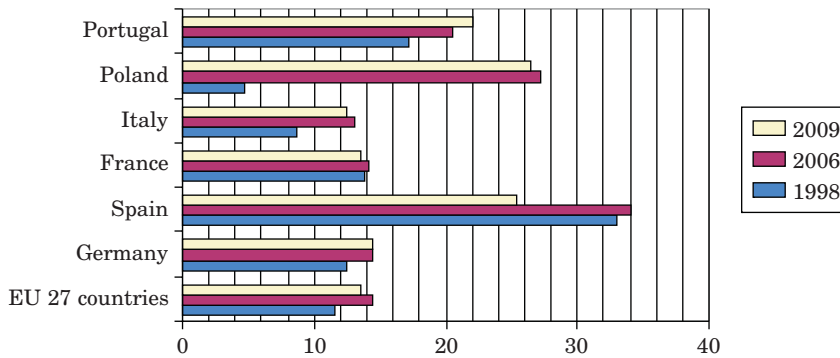


Fig. 1. Employees with a contract of limited duration (annual average) (% of total number of employees)

Source: EUROSTAT

Despite this situation has recently suffered some variations – the percentage of temporary contracts is reduced, according to Eurostat data, from 34% in 2006 to 25.4% in 2009 – it seems not to be due to the policies adopted but mainly because of the economical crisis that started to show its effects in Spanish economy in mid – 2008. In fact, the easiest and cheapest way of

framework to make permanent contracts more attractive for employers and to discourage the use of fixed-term contracts so as to counter the segmentation of the labour market.

² Since 1984, several legislative measures have been adopted with this aim with no much success. That is the case, among others, of Ley 22/1992, 30 July, which intended to increase active employment policies for promoting the engagement with indefinite employment contracts of certain collectives with especial problems for entering into the labour market; Ley 63/1997, 26 December, which claimed to strength Spanish capability for creating employment in order to fight against high rate of unemployment (22%), labour precariousness (34% of employment contracts were then temporary) and high rotation in employment contracts; Ley 12/2001, 9 July, which introduces measures directed to given strength the principle of stability in employment adding new limits and additional guarantees in temporary contracts; Ley 43/2006, 29 December, that acknowledges as Spanish's labour market main problems the reduced occupational rate and activity of women, the unemployment rate (still above EU average) the persistence of segmentation between temporary and indefinite contracts and, above all, the high rate of temporary contracts (twice as EU average); or finally Ley 35/2010, 17 September, that points out the relevant proportion of workers with temporary contracts as one of the weakness of Spanish model of industrial relations and therefore aims to promote employment stability by means of reducing the unjustified use of temporary contracts and promote a wider use of indefinite contracts.

reducing the plaintiff and fixing it to the new necessities, when the enterprises – mainly in Construction sector – started to suffer the effects of the current crisis, was to extinguish temporary employment contracts.

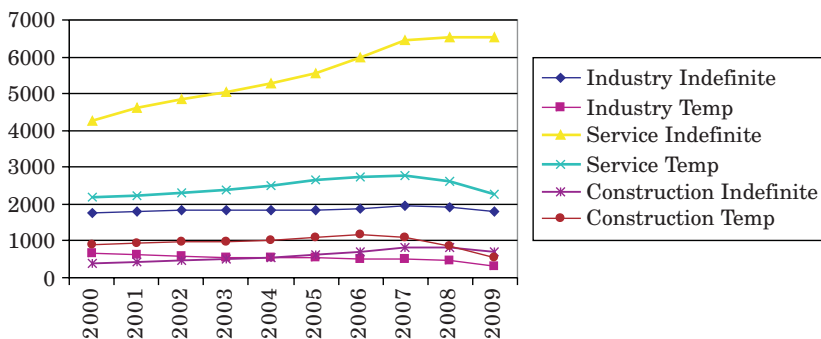


Fig. 2. Number of workers in Construction Sector (in thousands)

Source: Anuario de Estadísticas del Ministerio de Trabajo e Inmigración

On the other hand, as it regards to unemployment figures, they have traditionally been among the highest within the European Union, except for those years in which Spain was experiencing an important economical and employment growth mainly because of the activity in Construction sector. In any case, even in those years, according to Eurostat data, the Spanish unemployment rate (8.5) was above the average in the European Union (8.2 as far it regards EU 27 countries; 8.4 for Euro Area 16 countries).

Key factors for explaining the high percentage of temporary employment contracts in Spanish labour market

Probably the first factor for the persistent high rate of temporary contracts in the Spanish labour market is related with the impact of Construction and Services sectors in Spanish economy and employment levels³, as these sectors concentrate the higher levels of temporary work.

However, it is possible to individualize several factors related to the labour market agents that can help to explain the present situation of temporary work in Spain.

³ According to *Anuario de Estadísticas del Ministerio de Trabajo e Inmigración*, in 2009 72,38% of global number of workers were employed in Service sector (34,90% of them with temporary contracts); 10,32% in Construction (81,61 with temporary contracts) and 17,30 in Industry sector (17,91 with temporary contracts). Considering global data, in 2009, Service sector represented 72,05% of all workers with temporary contracts; Construction sector 17,84% and 10,11% Industry sector.

The legislative role. The role played by Spanish employment legislation must be highlighted. Despite the general rule that employment contracts are for an indefinite period of time, so that it is necessary some objective factor for a contract of a limited period of time (which is been called *causality principle* in temporary contracts of employment)⁴ the legal exceptions to this rule have historically contributed to increase the level of temporary employment. In fact, some exceptions were soon foreseen in such principle, introducing a kind of temporary contract possible even if no objective enterprise's need or factor existed, and whose main goal was to promote employment. But the main attack to the causality principle in employment's contract was introduced in 1984. When the Spanish unemployment situation was dramatic after the economical crisis of the seventies, new labour rules were implemented in order to promote job creation and these rules where based on the idea of rendering easier temporary contracts for enterprises.

The legal option to promote temporary contracts of employment had its results in terms of reducing unemployment, but after some time it revealed its negative effects, that is to say, the segmentation of labour market. Some years after this new legislation was implemented, it could be possible to distinguish between two different groups of workers. On one hand, those with permanent contracts offering certain standards of job protection (normally older workers) and, on the other, those with temporary contracts with almost no restriction on hiring and firing (normally young people) who entered in a rotation cycle of temporary contracts and temporary jobs even if for carrying out permanent activities. Of course great doses of management flexibility among new workers were reached thanks to this legislation, allowing the enterprise to adopt its dimensions in term of employees to the economic and productivity conditions. But it had negative impact on other important aspects as human capital investment (i.e. investment on training) and the consume potential of these workers who were often poorly paid and with not stability in their jobs.

The collective bargaining role. Collective agreements played its role in promoting beyond any reasonability temporary employment contracts when many of them allowed this kind of contacts out of legal limits or using all its potential, contributing in that way to render more precarious these contracts. That was the case, as for example, of the temporary contract related to production needs (*contrato eventual*) in relation with collective agreements used the legal possibility of extending its maximum duration in an abusive way, recognising the possibility of signing temporary contracts with a maximum duration of six years (ESCUDERO RODRÍGUEZ 1997, p. 226, LÓPEZ GANDÍA 1997, p. 42).

⁴ Art. 15 *Estatuto de los Trabajadores*.

The attitude of tribunals before the existing abuse in temporary contracts. Spanish tribunals have played their role in the present situation, providing too flexible interpretation of labour law regarding temporary contract. That was the case, as for example, when was considered according to the law the excessive clauses about temporary limits of “*contrato eventual*” settled by collective agreements (ESCUADERO RODRÍGUEZ 1997 p. 238) or the flexible requirements that some collective agreements recognized for the “*contrato de obra o servicio*” (contract for the performance of a specific task or service) admitting the possibility than collective bargaining could regulate new forms of this temporary contract beyond the law requirements⁵; or considering as non permanent activity those who were linked to specific financial support for its realization⁶.

Finally, **the employers’ attitude**, installed in what has been called “culture of precariousness” not only because of the fluctuant economical cycles and the fear that this brings to the agreement for indefinite contracts (OLLO LURI, GOMARA HERNÁNDEZ 1999, p. 1053), but for multiple factors such as the bigger subordination and dependence of workers with temporary contracts than those with indefinite contracts, the fact that workers with temporary contracts are less likely to join trade unions, or because of easier termination of contract in that case (ESCUADERO RODRÍGUEZ 1997, p. 214).

According to this “culture of precariousness”, employers have been taking advantage not only of the legal possibilities of engaging under fixed-term contracts but they have used them beyond the legal framework, using such contracts in circumstances the law doesn’t allow them.

Legal framework for temporary contracts in Spanish employment legislation

In Spanish labour legislation there are three main kinds of temporary contracts: a) Temporary causal contracts: contracts directed to attend certain temporary organizational and productive circumstances in the enterprise. These contracts can only be arranged for attending temporary activities. b) Temporary non-causal contracts: contracts directed to promote employment of certain groups of people, so not related with any need of temporary activities. c) Training contracts: contracts directed to enhance certain workers

⁵ SSTSJ Cataluna 7 December 2002 (JUR 2003/33175); 25 July 2002 (RJ 2894); STSJ Madrid 28 May 1998 (RJ 5318).

⁶ SSTS 10 April 1995 (RJ 3038); 23 April 1996 (RJ 3398); 23 September 1997 (RJ 7296); 7 May 1998 (RJ 4585); 11 November 1998 (RJ 9623); 18 December 1998 (RJ 1999/307); 28 December 1998 (RJ 1999/387), 10 December 1999 (RJ 9729) or 30 April 2001 (RJ 4613).

to enter into the labour market and, at the same time, to give additional training to them.

Within the first category (causal temporary contracts) there are three different contracts: 1º. – Contract for the performance of a specific task or service (*contrato de obra o servicio*) where the term of the contract is the period required for the performance of the work or services to be rendered, provided that the work or services are specific, so that they have a substantial difference with the companies' normal activity. 2º – Contract due to production needs (*contrato eventual*). This contract covers the excess market demand for products or services. This type of contract normally is limited to a maximum duration of 6 months within a 12-month reference period, but collective agreements may modify the maximum duration within certain limits. 3º – Interim contract. This contract covers the situation in which an employee has a right to reserve a job pursuant to any legal provision, collective bargaining agreement, or individual agreement, or where it is necessary to fill a job temporarily during the process of selection or promotion to a permanent position. The duration of an interim contract is the same as that granted to the employee to reserve the job, or that of the selection or promotion process with the general limit in this second case of three months.

Within the second category (non causal temporary contracts) there are two contracts that pretend to promote employment of two different categories of people who show bigger difficulties to get into the labour market: handicapped and, since 2007, people in situation of social exclusion. In both cases the contract has a maximum duration of three years and the enterprise can employ under these contracts even if workers are going to cover permanent activity.

Two different contracts exist as well under the third category of temporary contracts (training contracts) They are, on one hand, apprenticeship contract (*contrato para la formación*) which is basically thought to give an opportunity of employment and learning a profession to young and non qualified people. On the other, work-practice contract (*contrato en prácticas*) which aim is to offer an opportunity of a first employment to people who have “recently” finish their studies⁷, so that a practical work can give experience and complement to their theoretical knowledge. In both cases the maximum duration of the contract is of two years, even if collective bargaining can fix a maximum limit of three years (four if the person to be employed has the condition of handicapped) in case of apprenticeship.

What is necessary to underline is that from all these possibilities of temporary work, Spanish employers prefers *contrato de obra o servicio* and

⁷ The current regulation requires that the studies have been finished within a period of five years before the contract is to be done, or seven years if the person to be engaged has the condition of handicapped.

contrato eventual. These two contracts represent the vast majority of contracts done even if they belong to the category of causal temporary contracts.

Table 1

Registered temporary contracts by Sector and modality in 2009

| Specification | Total | Agriculture | Construction | Industry | Services |
|---|------------|-------------|--------------|-----------|-----------|
| Temporary contracts | 12 709 423 | 1 720 631 | 701 900 | 1 527 577 | 8 759 315 |
| <i>Obra o servicio</i> | 5 469 156 | 849 287 | 277 004 | 1 259 626 | 3 083 239 |
| <i>Eventuales</i> | 5 465 298 | 852 896 | 316 911 | 245 069 | 4 050 422 |
| Interim | 1 502 009 | 3 450 | 70 842 | 6 351 | 1 421 366 |
| Work-practice (<i>prácticas</i>) | 43 289 | 100 | 4 454 | 3 549 | 35 186 |
| Apprenticeship (<i>para la formación</i>) | 61 527 | 247 | 3 683 | 6 525 | 51 072 |
| Handicapped | 13 135 | 101 | 1 084 | 684 | 11 266 |
| Sustitution for retirement at age of 64 | 2 120 | 9 | 316 | 167 | 1 628 |
| Replacement (<i>relevo</i>) | 34 162 | 105 | 12 223 | 2 065 | 19 769 |
| Partial retirement | 36 518 | 111 | 13 945 | 2 096 | 20 366 |
| Others | 82 209 | 14 325 | 1 438 | 1 445 | 65 001 |

Source: Anuario de Estadísticas del Ministerio de Trabajo e Inmigración. 2009.

Measures taken to promote indefinite contracts of employment and reduce temporary ones

As the high rates of temporary contracts have been considered as negative and ineffective for the labour market, many measures have been adopted in order to promote indefinite contracts trying to make them more attractive for employers in comparison to temporary contracts. For doing so Spanish legislation has taken action in both indefinite and temporary contracts.

Measures taken on temporary contracts. Even if not always with the same determination, and sometimes trying to react against the collateral effects produced by themselves, since 1994 many legal acts have been adopted in order to reach the reinstatement of the *causality principle* and overturn the existing situation with temporary contracts of employment. This various legislation has focused in:

- Reducing the possibility of engagement under non causal temporary contracts by reducing, in several steps, the collectives to be engaged under this contract, so that since 1997 this contract has only been possible with handicapped people, even if in 2007 another collective has been added: people in situation of social exclusion, but only if engaged under certain conditions⁸.

⁸ This actuation partially explains the increasing number of causal temporary contracts beyond legal provisions and the role displayed by collective agreements making more flexible temporary contracts. ESCUDERO (1997) p. 223, 224 and 241.

– Limiting reductions on social security contributions paid by an employer, in order to promote employment, mainly to indefinite contracts of employment. Nowadays, temporary contracts of employment can benefit of this reductions only if celebrated with certain collectives: handicapped; women with the condition of victims of gender or domestic violence and people in situation of social exclusion.

– Establishing limits to the possibilities of collective bargaining related to the duration of causal temporary contracts.

– Recognising the principle of equal treatment between workers with temporary contracts and those with indefinite ones⁹, what supposed to banned certain clauses of collective bargaining less favourable to employees with temporary contracts and not always declared illegal by Spanish employment tribunals¹⁰.

– Making causal temporary contracts (except interim) more expensive by means of rising the cost of its social contributions¹¹ and fixing an indemnity at the termination of the causal temporary contract¹², even if collective bargains can establish any other quantity.

– Regulating measures in order to prevent abuse arising from the successive fixed-term employment contracts¹³. In that sense, in 2006 appeared a measure¹⁴ trying to avoid the same person to be continuously occupying the same position in the same enterprise by several temporary contracts, appealing to collective bargaining to stop the abuse of temporary contracts with different employees for occupying the same position job. By means of Ley 35/2010 this mechanism has been modified so that now is not relevant if the position job occupied by the worker has been the same or not, and not only in the same enterprise but also in the same group of enterprises¹⁵.

⁹ What became compulsory after Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work, which in its clause 4 stands that fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

¹⁰ i.e. STS 31 October 1997 (RJ 7687)

¹¹ Since Ley 49/1998, 30 December, percentage for calculating employers contribution for unemployment was rose by law from 7.8 to 8.3 (9.3 if part-time) and with Ley 12/2001, 9 July, and increase of 36% in the percentage for calculating contributions for non professional accident or illness was established for temporary contracts with a duration of less of seven days.

¹² This indemnity was equivalent to 8 days of salary per year of service since Law 12/2001 and has been recently, by Lay 35/2010, 17 September, risen to 12 days of salary per year of service (even if this measure is going to be gradually implemented, so that will be effective since 1-1-2015)

¹³ Such measure has a strong connection with Council Directive 1999/70/EC of 28 June 1999, which in its clause 1 states that its purpose is to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

¹⁴ Like previous measure this is only applicable to *contrato de obra* and *contrato eventual* which are, as shown before, those to be much more spread in Spanish labour market.

¹⁵ Whenever a person had been employed under temporary contracts (*obra o servicio* or *eventual*) for 24 months within a period of 30 months in such circumstances, the condition of indefinite contact is going to be recognized.

– A new measure introduced with Law 35/2010 consists of establishing a maximum duration of *contrato de obra o servicio* of three years (collectives agreements can rise this limit till four years)¹⁶.

Measures taken on indefinite contracts. Nevertheless, the actions taken in order to reduce the rate of temporary contracts have reached indefinite ones, so that the willingness of bigger employment stability in Spanish labour market has been pursued not only by trying to render a bit more expensive and less easier temporary contracts, but also trying to introduce more flexibility in indefinite contracts.

It is a constant claim made by Spanish employers and their associations that termination of indefinite contracts is expensive, and this is said to be the main reason to prevent employers to engage under indefinite employment contracts. Somehow Spanish labour law has taken notice of this claim and so has implemented some actions in employment protection legislation for permanent workers, in order to make cheaper the termination of indefinite contracts.

Even if Spanish labour law establishes a causal principle for termination of contracts¹⁷, the consequences of a dismissal not founded on a causal basis let us draw a different conclusion. This is because only when dismissal implies violations of fundamental rights or affects workers in certain circumstances (i.e. after applying for a maternity leave) the consequence is that of obligatory reinstatement of worker in his/her job¹⁸. In all other cases, even if the cause alleged for dismissing is completely false, the employer's decision is going to be qualified as wrongful dismissal (*despido improcedente*) whose effects are:

– Employer's option¹⁹ between either reinstatement or termination of contract with the obligation, in that case, of paying an indemnity calculated on grounds of workers' years of service (45 days of wage for each year of service, with a maximum of 42 months of salary).

– Whatever the employers' option, the obligation of paying salaries relating to the period of legal proceedings as *lucrum cessans* (*salarios de tramitación*).

In case of legitimate dismissal, only when it is based on an objective cause there is the employers' obligation for paying an indemnity (20 days of wage for each year of service, with a maximum of 12 months of salary) which obviously is not to be paid to the employee in case of a disciplinary dismissal.

¹⁶ Whereas this measure is going to help to limit the number of non causal temporary contracts is quite controversial, considering that it could be understood as a legalization of this temporary contracts (*obra o servicio*) even if not for temporary needs of work, a condition its duration doesn't exceed of the legal limits.

¹⁷ According to this principle, only if there is a real cause (subjective – related to workers behaviour and failure to fulfil his/her duties: disciplinary dismissal; or objective – such as, i.e., economical, technical, organizational or productive causes) the contract can be extinguished.

¹⁸ This is the consequence, as well, in case of collective redundancy without following the legal procedure.

¹⁹ This option belongs to the worker only in case of workers' representatives or if otherwise established in collective or individual agreement.

Considering what is said about consequences of dismissal according to Spanish Employment Law, measures adopted for reducing the cost of terminations of indefinite contracts of employment consist of:

- Excluding employers obligation of paying “*salarios de tramitación*” whenever the condition of wrongful dismissal is accepted by the employer within a period not longer than 48 hours after the dismissal and only if the legal indemnity is consigned to the dismissed worker.

- Establishing a new indefinite contract with inferior legal indemnities in case of wrongful dismissal (“*contrato para el fomento de la contratación indefinida*”). In such contracts, if the employer decides an objective dismissal (excluding collective redundancies), the indemnity in case of wrongful dismissal is reduced to 33 days of wage for each year of service, with a maximum of 24 months of salary. This contract, introduced in 1997, is aimed to increase employment level of certain collectives of unemployed people and to promote transformation of temporary contracts into indefinite ones, and since Ley 35/2010 the collectives to be hired using this contract have been broadened.

- Reducing the cost of objective dismissals (including collective redundancies) for indefinite contracts of employment which duration was longer than one year at the moment of their termination. This measure, introduced by Ley 35/2010, allows the employer to recover part of the amount of money paid as indemnity, so that the equivalent of 8 days of wage for each year of service out of the 20 in which the indemnity consist in these cases, will be refund by the Wages Guarantee Fund (FOGASA).

Conclusions

Despite the fact that all Spanish Governments in almost the last two decades have officially declared their intention of reducing the high rates of temporary contracts, measures adopted have not had great impact on it. When questioning about the main problems for the efficiency of measures trying to reach higher rates of stability several aspects must be mentioned:

1. Some measures have little impact on employers’ behaviour related to engagement. In such category measures directed to increase the cost of temporary work can be included. In fact, even if since 2001 there have been two measures of that kind, they do not really contribute to render temporary work much more expensive because, on one hand, the increase of social contributions only affects contracts lasting less than seven days; and, on the other, the indemnity to be paid do not seem to be a real barrier considering the average duration of temporary contacts and that indemnity is calculated on grounds of employment duration of service, so that only if it arrives to one year the employee would have the right for 8 days of salary.

Table 2

Registered temporary contracts by duration and modality in 2009

| Specification | Total | Till 1 month | From 1 to 3 months | From 3 to 6 months | From 6 to 12 months | More than 12 months | Non determined |
|---|------------|--------------|--------------------|--------------------|---------------------|---------------------|----------------|
| <i>Obra o servicio</i> | 12 709 423 | 4 453 274 | 1 539 184 | 1 009 906 | 308 375 | 94 796 | 5 303 888 |
| <i>Eventuales</i> | 5 469 156 | 577 785 | 140 998 | 128 485 | 119 381 | 16 676 | 4 485 831 |
| Interim | 5 465 298 | 3 267 229 | 1 308 238 | 758 535 | 130 472 | 824 | - |
| Work-practice (<i>prácticas</i>) | 1 502 009 | 573 167 | 87 235 | 44 707 | 9 660 | 3 077 | 784 163 |
| Apprenticeship (<i>para la formación</i>) | 43 289 | - | - | 25 556 | 13 265 | 4 468 | - |
| Handicapped | 61 527 | - | - | 45 502 | 13 614 | 2 411 | - |
| Sustitution for retirement at age of 64 | 13 135 | - | - | - | 12 056 | 1 079 | - |
| Replacement (<i>relevo</i>) | 2 120 | - | - | - | 1 992 | 128 | - |
| Partial retirement | 34 162 | 192 | 186 | 340 | 1 275 | 32 169 | - |
| Others | 36 518 | 168 | 25 | 56 | 421 | 32 752 | 3 096 |
| | 82 209 | 34 733 | 2 502 | 6 725 | 6 239 | 1 212 | 30 798 |

Source: Anuario de Estadísticas del Ministerio de Trabajo e Inmigración. 2009.

2. Measures related to introduce flexibility in dismissal are not effective due to:

a) Creating a new indefinite contract with a cheaper indemnity in case of wrongful dismissal on objective grounds (33 days per year of service instead of 45) has not help to overturn the situation increasing the rate of indefinite contracts. The possibility – illegal but spread in labour management practice – of putting forward objective cause whereas only subjective cause existed for the dismissal, and the enlargement of collectives with whom it is possible to use the contract, carried out by Ley 35/2010, have not changed the situation of this contract as shown in the following table²⁰.

b) Termination of contract in case of illegal use of temporary employment contracts has the same effects as if the contract was indefinite, with no other disadvantages. Normally employees irregularly contracted with a temporary contract do not claim for this reason until the employer decides to end once and for all their employment relationship. When that happens (and if the employee can prove that he was contracted temporally out of the cases envisaged by law) termination of contract will be qualified as a wrongful dismissal as if it was an indefinite contract. Administrative sanction (a fine which can be from 626€ till 6250€) to the employer because his abuse of temporary contacts could only exist if an infringement procedure would be open by Labour Inspectorate, but this will require, in cases like the one described here, employee's denunciation.

²⁰ Ley 35/2010 came into force on September the 19th, but it was preceded by a *Real Decreto Ley* (Real Decreto Ley 10/2010, 16 June) in which enlargement of collectives in case on this contract was already established and came into force on the June the 17th.

Table 3

Evolution of employment contracts by modality in November 2010

| Specification | | Absolute data month | Variations | | | |
|----------------------------|---|---------------------|----------------|----------|--------------|----------|
| | | | previous month | | interannual* | |
| | | | absolute | relative | absolute | relative |
| Indefinite contracts | Indefinite "ordinary" | 50 008 | -10 244 | -17.00 | -382 | -0.76 |
| | Fomento de la contratación indefinida (fci) | 11 062 | -1 332 | -10.75 | -4 863 | -30.54 |
| | Handicapped (only with benefits on employer's social contributions) | 129 | -143 | -52.57 | -34 | -20.86 |
| | Handicapped f.c.i. | 551 | -54 | -8.93 | 31 | 5.96 |
| | Converted into indefinite | 46 381 | 1 482 | 3.30 | 5 959 | 14.74 |
| | Indefinite contracts | 108 131 | -10 291 | -8.69 | 711 | 0.66 |
| Temporary contracts | <i>Obra o servicio</i> | 507 551 | -60 846 | -10.70 | 25 230 | 5.23 |
| | <i>Eventual</i> | 482 546 | -22 470 | -4.45 | 23 712 | 5.17 |
| | Interim | 135 982 | 3 482 | 2.63 | 2 628 | 1.97 |
| | Handicapped | 1 349 | 99 | 7.92 | 185 | 15.89 |
| | Subs. Retirement at 64 | 211 | 22 | 11.64 | 60 | 39.74 |
| | Total replacement | 1 567 | 1 | 0.06 | -1 264 | -44.65 |
| | Partial retirement | 2 276 | -37 | -1.60 | -873 | -27.72 |
| | Work-practice | 4 042 | -1 834 | -31.21 | 564 | 16.22 |
| | Apprenticeship | 8 800 | 3 820 | 76.71 | 3 467 | 65.01 |
| | Other contracts | 5 024 | -554 | -9.93 | -968 | -16.15 |
| | Temporary contacts | 1 149 348 | -78 317 | -6.38 | 52 741 | 4.81 |
| Total registered contracts | | 1 257 479 | -88 608 | -6.58 | 53 452 | 4.44 |

* Relative to same month of previous year

Source: Ministerio de Trabajo e Inmigración. Servicio Pxblico de Empleo Estatal.

c) The fact that in Spanish Employment legislation indemnity in case of wrongful dismissal is calculated on grounds of duration of service does not help to increase rate of indefinite contracts, even if Spanish tribunals have stated that in case of continuity of service under different temporary contracts the duration of service must be counted since the contract that started that situation. Ley 35/2010 established the willingness of changing this situation and made the duration of service less important in relation with the indemnity to be paid to the employee in case of wrongful dismissal. Anyway this is a legal option to be developed in future.

3. The different Spanish Governments that have dealt with this matter have been reluctant to implement effective measures to prevent non causal temporary contracts, because of the existing fear of the consequences in terms

of employment levels. One example of this fear can be found in the recent Ley 35/2010. This law has decided to rise the cost of indemnity in case of termination of certain temporary contracts (basically *obra o servicio* and *eventual*) from 8 days of salary till 12 days, per year of service. Yet this compensation of 12 years is going to be reached gradually so that temporary contracts signed till 31-12-2011 will have an indemnity of 8 days; those signed since 1-1-2012 will have an indemnity of 9 days; 10 days for those signed since 1-1-2013; 11 days for those signed since 1-1-2014; and, finally, 12 days per year of service for contracts signed since 1-1-2015. The explicit reason for this progressive implementation of the measure is given in the introduction of Ley 35/2010 where it is said that such a measure must be implemented gradually and progressively because of the – negative – influence it could have on employment creation.

This behaviour based on prudence could be explained that even if in the introductions of the different laws dealing with the problem, the will of overturn the situation is proclaimed, the specific measures adopted do not show the same determination. That happened in 1994, when Ley 10/1994 declared its intention to reinstall the causality principle in temporary employment and yet non-causal temporary contracts were not removed (BAYLOS GRAU 1993, p. 3.) and the situation is the same in the last legal measure (Ley 35/2010) that recognises the possibility of a maximum duration of four years for the *contrato de obra*.

Conclusion

The aim of this paper is to highlight the situation of Spanish labour market in relation to the high rates of temporary employment contracts and reflect about its causes and the legal measures taken to overturn the situation, drawing some conclusions on the poor results of legal measures implemented for at least the last two decades in order to change this situation.

The culture of precariousness installed in Spanish entrepreneurs for different reasons; the existing fear for adopting determined policies aimed to reduce abuse in temporal hiring, and dismissal costs calculated on the basis of seniority constitute the main reasons for the failure of attempts to reduce the high rates of temporary employment in the Spanish labour market

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