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The Role of the State in Shaping Zero Hours Work in an Atypical Liberal Market Economy

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Introduction

While the OECD, ILO and EU have called for the creation of high quality jobs which foster sustainable growth, research points to the prevalence of precarious jobs involving flexible employment contracts and associated regulatory challenges (Dekker and van der Veen, 2017; Gialis et al., 2015; ILO, 2016; Vosko et al., 2016). The term precariousness has been the subject of some definitional debate but its key characteristics are ‘uncertainty, low income, and limited social benefits and statutory entitlements’ (Vosko, 2010: 2). The risk of precariousness can vary depending on the type of non-standard employment with, for example, job insecurity a feature of temporary work and low pay associated with casual and marginal part-time work (Broughton et al., 2016). Zero hours work, sometimes also referred to as hourly paid or on-call work, typifies work where there are no guaranteed hours offered by the employer. While some workers with no guaranteed hours may earn high pay, zero hours work is precarious because its outcomes, in the main, include low pay, job insecurity and very limited social and employment rights protection (Broughton et al., 2016; Eurofound, 2015; Blanchflower et al., 2017). Such work arrangements have received increased public policy attention in recent years in a number of countries including Ireland, the UK, Finland and New Zealand. A substantial number of studies have focused on a variety of non-standard employment relationships but there has been insufficient academic attention on zero hours

work specifically. The research on zero hours work has focused on its operation (Rubery et al., 2015; Lambert, 2008; Wood, 2016) and legal implications (Adams et al., 2015; Ewing, 2014) while UK think tanks and representative bodies have examined the prevalence and impact of zero hours work (Pennycook et al., 2013; CIPD, 2013).

The key contribution of this article is that it places the state centre-stage of an analysis on zero hours work and uses an industrial relations lens. The state is critical to economic life (Jessop, 2003) yet the labour and employment relations field has underemphasised the role of the state (Martínez Lucio and MacKenzie, forthcoming). The state can influence labour markets and industrial relations through its roles as an employer, regulator of the industrial relations environment and through the welfare system (Kauppinen, 1997). The article examines the following research question: how have the actions of the state through its various roles shaped the emergence of zero hours work in an atypical liberal market economy (LME), Ireland? Ireland has had a tumultuous decade moving from economic boom to a deep financial and economic crisis in 2008 to subsequent economic recovery. In the context of recovery, trade unions have campaigned for ‘decent work’ and highlighted concerns over zero hours work. Zero hours work can take a number of contractual forms in Ireland: zero hours contracts are regulated but unused by employers while so-called ‘If and When’ contracts are unregulated but used. A third relevant contract type are hybrid ‘If and When’ contracts with a mixture of some guaranteed minimum hours and hours on an ‘if and when’ basis. The findings are based on interviews with informed stakeholders in four sectors identified internationally as having a prevalence of zero hours work - retail, accommodation/food, education and health.

The structure of the article is as follows. The first section situates the role of the state in the labour market in a theoretical frame drawing on the concepts of accumulation and legitimation. It uses the varieties of capitalism literature to explore comparative differences in

state approaches to accumulation and legitimation. The subsequent section identifies why Ireland could arguably be classified as an atypical LME, at least until the economic crisis, and provides a brief picture of its polarised labour market. This is followed by a summary of the employment law and contract types that are relevant to zero hours work and includes a note on the occupations where such work is prevalent. The study's methodological approach is presented and is followed by the empirical findings on how the state has shaped zero hours work. The conclusion discusses the findings in the context of the dilemmas faced by the state in carrying out its functions.

The Role of the State and Precarious Employment

The functions of the state

The state has been defined broadly beyond that of just government to include parliament, all state agencies, judiciary, military, police, schools and the welfare apparatus (Markey, 1988). The components of the state with most relevance for labour markets and industrial relations are parliament, judiciary and state agencies particularly dispute resolution bodies. Through these components the state influences labour markets in its multiple roles as an employer and regulator of the industrial relations environment (Kauppinen, 1997). The state also exerts influence on labour market arrangements through the welfare system though studies on work and employment have been criticised for their lack of attention to welfare (Hyman, 2008; Meardi et al., 2016). The social relations of production create conflict between labour and capital and an objective of the state is to provide for an 'orderly operation of the employment relationship' (Treuren, 2000: 81). In doing so, some argue that the state secures the

legitimacy of the capitalist system or provides ‘the de-commodification of labour necessary to maintain economic and political efficiency’ (Treuren, 2000: 82; see also O’Connor, 1974; Polanyi, 1957). State policies in market societies are perennially confronted by the challenge to devise mechanisms and processes to ensure the needs of labour and capital are to a degree mutually compatible (Offe, 1984). However, the state faces a range of dilemmas over how such a compromise between capital and labour can be crafted.

These dilemmas arise from two central functions of a democratic state in a capitalist market society: primarily accumulation, with the goal of encouraging economic performance and competitiveness, and secondarily legitimation, which involves ‘maintaining popular consent by pursuing social equity and fostering citizenship and voice at work’ (Hyman, 2008: 262). Tensions can arise between the state imperative for accumulation and the need for legitimacy (Hyman, 2008). In the labour market, accumulation is perceived from a liberal market perspective to be facilitated by the absence of regulations such as minimum ages, employment laws and trade unions that inhibit the flexible use of labour (Hyman, 2008). Legitimation by contrast is enhanced by the presence in the labour market of ‘market-correcting interventions’ that protect workers such as minimum wages and support for trade unions (Hyman, 2008: 262).

State policies in the labour market can lead to contradictions whereby the pre-conditions for market efficiency are threatened by policies that constrain flexibility, productivity and profitability (Offe, 1984). Even where state policies ameliorate the impact of the market on workers through, for example employment laws, states are cautious not to undermine the long-term interests of capital (Offe, 1984). This view is exemplified by Forde and Slater (2016: 594), who describe New Labour’s strategy in the UK in the 1990s, as one which involved using the language of employment rights as a means of seeking consent from workers for flexibilities and introducing rights which imposed few costs on business. Thus

state policies can involve seemingly ‘contradictory logics between the state and economy’ (Forde and Slater, 2016: 593). The development of labour market regulations is complex, involving interaction of a variety of regulatory actors at different levels, spaces and sites (Martínez Lucio and MacKenzie, forthcoming) and so, the outcomes of state policies can be ambiguous and uncertain as they are determined by ‘the structural relationship of power and constellation of interests’ (Offe, 1984: 106).

Globalization and, in the case of EU countries, Europeanization, has exacerbated tensions between state functions (Schmidt, 2007). In this macro context, there has been greater political support for labour market flexibility even amongst left-oriented parties (Howell, 2015). In the pursuit of enhanced economic performance, the state has sought to improve competitiveness and restrain costs by reducing its role as employer. Rather than act as the ‘model employer’ (Beaumont and Leopold, 1985; see also Meardi et al., 2016), state policies of deregulation, privatisation and outsourcing have been a driver of precarious jobs (Prosser, 2016; Kalleberg, 2012; Carré et al., 2012). Alternatively, in EU countries, employment law has expanded considerably which has legitimised but provided some protection for workers in non-standard employment such as fixed-term work. Law is a key tool through which the state regulates the labour market especially where collective bargaining is weak (Kahn-Freund, 1969). Law may be used to pursue social equity goals as well as secure peaceful class relations in the capitalist system (Offe, 1985). The effectiveness of such mechanisms in improving working conditions depends on their coverage, scope, ‘exit options’, enforcement as well as the interaction with other labour market institutions (Appelbaum and Schmitt, 2009; Prosser, 2016). The role of the state in collective bargaining can be critical given the importance of this process to job regulation (Martínez Lucio and MacKenzie, forthcoming). Research indicates that collective bargaining provides a critical way of limiting precarious work and the state can support collective bargaining through union

recognition laws and the extension of collective agreements to unorganised sectors of the economy (Grimshaw et al., 2014; 2016). Generous welfare systems can be influential in reducing labour market insecurity (Anderson and Pontussen, 2007). Conversely, states may decide that economic performance is more efficiently operationalised by reforming the welfare system to penalise workers for lack of participation in the labour market. Such welfare reforms can have the effect of pressuring workers into low wage jobs or can exclude workers in insecure employment from welfare benefits (Gautié et al., 2010).

Labour market regulation and the state

Pessimistic views of the potential for state regulation of precarious work are based on the premise that the power of global capital has exceeded the ability of nations to regulate it (Arnold and Biongioiv, 2013). It is also argued that there has been a withdrawal of the state from economic and social policy and destatization (Howell, 2015; Jessop, 2003). Moreover trade unions, the other key driver of worker protection, have declined significantly in membership and density levels and represent a smaller proportion of the employed labour force in Europe than at any other time since 1950 (Verma and Kochan, 2004). Governments have instituted social and labour market reforms to increase labour market flexibility. In some EU countries the dilution of market-correcting interventions since the economic crisis, including cuts to minimum wages and restrictions on collective bargaining, were imposed by supranational institutions (Schulten and Müller, 2013). An alternative and more optimistic view of the state is that it still has significant capacity to intervene in the labour market with policies to limit precarious work. Examples of such policies include social dialogue, increased minimum wages, employment law, clauses in procurement contracts,

enhanced worker incomes through social welfare systems and support for corporatist systems of pay determination (Grimshaw et al., 2016; Bosch and Weinkopf, 2017).

The implementation of state regulatory policies in the labour market is contingent on the government in power, conflicts within political parties and the influence of interest groups and societal actors (Hyman, 2008; Bosch and Weinkopf, 2017). These contingencies over time define the shape of the accumulation and legitimation regime and give rise to many different ways of organizing a capitalist market economy (Hall and Soskice, 2001). Differences in labour market characteristics of economies were identified in Hall and Soskice's varieties of capitalism framework though it has been criticised for downplaying state action (Schmidt, 2007). Coordinated market economies (CMEs) have high levels of non-market coordination in financial and industrial relations systems (Hall and Soskice, 2001). These regimes have a higher prevalence of high quality jobs because of a more left-leaning political orientation, a closer 'fit' between social protection and production systems and industrial relations arrangements which mediate those systems (Amable, 2003; Rhodes, 2005; Gallie, 2007). The state seeks to protect the production system's non-market coordinating institutions (Schmidt, 2007). CMEs are more likely than others to pursue policies which limit precarious work to achieve social justice and enhance competitiveness. In contrast, in LMEs, the state is 'an agent of market preservation' and has 'an arm's length approach to business and labour' (Schmidt, 2007: 5). LMEs 'rely on markets to coordinate endeavours in both financial and industrial relations systems' (Hall and Soskice, 2001: 19), have an 'institutional bias toward market-driven solutions to investment, growth and pay determination' (Hardiman et al., 2008: 602), and are associated with more right orientated political party dominance (Amable, 2003), weak industrial relations systems and little 'coupling' of the social protection and production systems (Rhodes, 2005). However there are limits to the extent that LMEs will pursue accumulation through lack of regulation at the

expense of legitimation, and limits to the extent of regulation in CMEs, because 'it cannot be assumed that various sections of the state will act in unity' (Treuren, 2000: 79).

The Irish Context

Ireland represents an interesting case with which to examine the relationship between the actions of the state and zero hours work given that it is considered an LME-like or atypical liberal market economy, at least prior to the financial crisis in 2008 (Schneider and Paunescu, 2012). Ireland differed from the UK and USA as an LME because of its competitive corporatist approach to pay determination between 1987 and 2009 despite lacking the 'institutional preconditions for national concertation on wage bargaining' (Teague and Donaghey, 2015: 418; also see Lamare et al., 2013). In addition, Ireland had a largely liberal welfare regime which differed from other liberal regimes by having higher welfare payments, more investment in active labour market programmes and less sanctions and conditionality attached to benefits (Murphy, 2016). Finally, Ireland differed from other LMEs by having a proportional representation rather than a majoritarian electoral model and a historical legacy of neither left nor confessional parties influencing the development of the welfare state or production regime (Korpi, 2006).

Ireland has a polarised labour market in regards to occupation and sector (Wickham and Bobek, 2016). The long-held state policy of attracting high-value foreign direct investment has led to the expansion of relatively high-skilled jobs but there have also been considerable indicators of precariousness (Wickham and Bobek, 2016). Using 2005 data Holman (2013) found, albeit from a small sample, that Ireland had the fourth highest proportion of 'insecure jobs' out of 27 countries. Low pay has been an enduring feature of the labour market with Ireland having one of the highest levels of low pay in the OECD, accounting for approximately 30 per cent of all employees (Collins, 2015). Low pay is

concentrated in the retail and accommodation/food sectors (Turner and O’Sullivan, 2013; Collins, 2015) and average working hours in these sectors have fallen, though much of this reduction happened before the economic recession (O’Farrell, 2013). The concentration of low pay in retail and accommodation/food has significant implications because Ireland has a greater reliance on these sectors for indigenous employment than other comparable EU economies (Taft, 2016). In terms of non-standard employment, there has been a long-term trend towards part-time employment (24% of employees in 2016) and a steady rate of temporary employment (8% of employees in 2016) (Central Statistics Office, 2016).

Trade unions’ ability to improve working conditions at workplace level has diminished with a consistent decline in unionisation rates since the 1980s. Between 2006 and 2016, unionisation fell from 32 percent to 24 per cent (Central Statistics Office, direct contact). There is a public sector-wide collective agreement and private sector-bargaining, where it exists, is mostly at enterprise level. Industry-level bargaining is much weaker than other European countries but historically trade unions were able to influence working conditions in low paid sectors through Joint Labour Committees – statutory tripartite committees whose agreements on minimum pay and conditions were extended across employments. However, this system has come under significant pressure as will be discussed later. The next section outlines the legislative framework and various types of contracts that are relevant to the discussion of zero hours work.

Zero Hours Work in Ireland

Ireland appears to have a superior regulatory system in comparison to other countries with regard to zero hours work (Deakin, 2014). The only reference in employment law to zero hours contracts is in the Organisation of Working Time Act 1997, introduced on foot of the EU Working Time Directive (93/104/EC). At the time of the drafting of the law, the national

corporatist system of social partnership was in existence and, during negotiations on a new national agreement, the Irish Congress of Trade Unions demanded that employment legislation be reviewed in light of the growth of atypical work. A section was introduced in the working time legislation to respond to unions' concerns. Section 18 states that a zero hours contract is one which requires employees to be available to the employer in a particular week but they may not be called on by the employer. Should an employer not provide work, the employee is entitled to compensation amounting to 25 percent of the time they were required to be available or 15 hours pay whichever is the lesser. However, Section 18 states that these protections are not available those who are contracted on a more casual basis. This clause was inserted despite objections by political parties in opposition to government at the time of law's drafting (Houses of the Oireachtas, 1997).

Evidence from a wider study of zero hours work in Ireland, from which this article is drawn, indicates that zero hours contracts within the narrow meaning of the legislation are not used by employers. Instead, zero hours work is operationalised through an alternative type of contract – an 'If and When' contract. Under this contract, there are no guaranteed hours of work and the person hired is not contractually required to be available to an employer. The contractual requirement to be available to an employer or not is a key difference between a zero hours contract and an 'If and When' contract. By way of comparison, a zero hours contract in the UK is the equivalent of both a zero hours contract and an 'If and When' contract in Ireland. A third type of relevant contract is a 'hybrid If and When' contract whereby an employee is guaranteed some minimum number of hours work but additional hours of work may be offered to them on an 'If and When' basis. No national labour market data is collected on prevalence of any of these contract types but our wider study indicates that 'If and When' contracts are prevalent in certain sectors or occupations within sectors. They are prevalent across accommodation/food while hybrid contracts are

prevalent amongst large retail chains. In the education sector, 'If and When' contracts and hybrid contracts are prevalent amongst second-level school teachers, second-level ancillary staff such as caretakers, secretaries and cleaners, third-level lecturers and adult education teachers. In the health sector, 'If and When' contracts are used on a limited basis in administration, catering and ancillary services but more widely in intellectual disability and community homecare services. In this article the tensions between Irish state policies of accumulation and legitimation and their influence on zero hours work are explored.

Methodology

A qualitative methodology with an interview design was used to gain an understanding of the impact of the state on the emergence of zero hours work. The findings for the article are based on interviews with stakeholders with informed knowledge of labour market developments and state policies. The stakeholders included the largest employer organisations and trade unions in four sectors identified internationally as having a prevalence of zero hours work and include a mixture of public and private sectors (retail, accommodation/food, education, health) as well as the national confederation of trade unions and national peak employer organisations (full list in Table 1). Research indicates that precarious workers are likely to be non-unionised and certain groups of workers tend to be more vulnerable to precarious work (Woolfson et al., 2014). To capture the voices of such groups, interviews were undertaken with civil society organisations (CSOs) representing women, youth, migrants and the unemployed. To obtain policy-makers' perspectives, the informed stakeholders included government departments with responsibility for the welfare system, public expenditure, and education and training, as well as the largest state dispute resolution body and the state labour inspectorate service responsible for enforcing

employment laws. Lastly, interviews were undertaken with the national representative body for the legal profession for their expertise on employment law on zero hours work. Thirty three stakeholders were invited to participate in the study and 31 agreed. Each stakeholder chose their representatives for interview, with variations in numbers participating from each. In total 35 interviews were undertaken with 82 representatives from 31 bodies in 2015 (Table 1). An interview schedule was developed and pilot interviews were undertaken with an employer organisation and a trade union prior to the main set of interviews. Interviews were undertaken in two stages: stakeholders with representative capacity/knowledge in the wider labour market were interviewed first and these informed the second round of interviews with sector-specific stakeholders. Interviews lasted between 40 and 90 minutes and were recorded. In line with thematic analysis, the authors familiarised ourselves with the data, generated initial codes and searched for themes based on their frequency and ‘keyness’ (Braun and Clarke, 2008). These categories were then grouped together and themes were inferred and generated from the data. Thematic analysis was conducted reiteratively throughout the data collection process. The themes generated are presented below under the following headings: the state as a regulator of the labour market and industrial relations environment, the state as employer, and the welfare system.

Table 1 Stakeholders Interviewed

Stakeholders	Number of Interviews & Interviewees
Employer Organisations	
Irish Business and Employers Confederation	1 Interviews; 2 representatives
Irish Small and Medium Enterprises Association	1 interview; 1 representative

Irish Hotels Federation	1 interview; 1 representative
Restaurants Association of Ireland	1 interview; 1 representative
Irish Universities Association	1 interview; 1 representative
Institutes of Technology Ireland	1 interview; 1 representative
Education and Training Boards Ireland	1 interview; 20 representatives
Joint Managerial Body for School Management	1 interview; 1 representatives
Health Service Executive (HSE)	1 interview; 3 representatives
Nursing Homes Ireland	1 interview; 1 representatives
National Federation of Voluntary Bodies	1 interview; 8 representatives
National Recruitment Federation	1 interview; 2 representatives
Chambers Ireland	1 interview; 2 representatives
Civil Society Organisations	
Migrant Rights Centre of Ireland	1 interview; 1 representative
National Women's Council of Ireland	1 interview; 1 representative
Irish National Organisation for the Unemployed	1 interview; 1 representative
National Youth Council of Ireland	1 interview; 2 representatives
Trade Unions	
Irish Congress of Trade Unions	1 interview; 1 representative
Services, Industrial, Professional and Technical Union	4 interviews; 4 representatives in health,

(SIPTU)	education, hospitality & state sector
Mandate, the retail union	1 interview; 3 representatives
IMPACT, the largest public sector union	1 interview; 2 representatives
Association of Secondary Teachers Ireland	1 interview; 1 representative
Irish Federation of University Teachers	1 interview; 1 representative
Teachers Union of Ireland	1 interview; 2 representatives
Irish Nurses and Midwives Organisation	1 interview; 2 representatives
Government Departments/ State Agencies	
Department of Social Protection	1 interview; 6 representatives
Department of Public Expenditure & Reform	1 interview; 1 representative
Department of Education and Skills	1 interview; 3 representatives
Labour Relations Commission (now Workplace Relations Commission)	1 interview; 3 representatives
National Employment Rights Authority (now Workplace Relations Commission)	1 interview; 2 representatives
Other	
Employment Law Association of Ireland	2 interviews; 2 representatives

Findings

The State as Environmental Regulator

Employment Law

Employer stakeholders in interviews argued that the Organisation of Working Time Act 1997 has been effective at regulating zero hours contracts because very few legal cases had been taken under the Act by employees on such contracts. However, trade unions stated that this argument is irrelevant since employers do not use zero hours contracts but operationalise zero hours work through 'If and When' contracts. Indeed, the largest employers' organisation, the Irish Business and Employers Confederation, acknowledged that there is no advantage to an employer to offer someone a zero hours contract within the meaning of the Organisation of Working Time Act with a risk of paying compensation for unworked hours. It is more economically advantageous for an employer to have a panel of people on 'If and When' contracts, who are not contractually required to be available. 'If and When' contracts offer total flexibility to an employer as they have no obligation to pay someone for unworked hours. Thus, the Act incentivised employers to shift people from one type of zero hours work (zero hours contracts) to a more extreme type of zero hours work ('If and When' contracts).

The legal situation regarding the rights of 'If and When' workers is complex. In practice, employers may treat people on 'If and When' contracts as employees in the sense of paying tax and social contributions on their behalf and they may choose to treat them the same as other employees in regards to employment rights. However, that does not mean that 'If and When' contracts are covered by employment legislation. As no piece of employment legislation makes specific reference to 'If and When' contracts, it is the responsibility of employment rights bodies like the Labour Relations Commission and Labour Court and civil courts to determine the employment status of such workers. In the small number of cases

taken by people on 'If and When' contracts, civil courts and state employment rights bodies have decided that they are excluded from the protections offered to people on zero hours contracts in working time legislation because they are casual workers. They are defined as such because they fail the first legal test used in case law to determine employment status – mutuality of obligation. As people on 'If and When' contracts do not have to make themselves available to an employer, and an employer is under no obligation to provide work, there is no mutuality of obligation. The Employment Law Association of Ireland commented that it was easy for employers to construct contracts which ensure that they have no obligations under the working time legislation.

Significantly, the fact that 'If and When' contracts fail the mutuality of obligation test means they are not legally defined as employees, and therefore are outside the scope of most other employment laws including on unfair dismissals and redundancy. The Irish Congress of Trade Unions argued against the logic of decisions on employment status by employment rights bodies, which were based on the wording of employment contracts rather than "*the nature of an employment relationship, the reality of that relationship*". The complexities of determining employment status of 'If and When' workers are the same as those faced by zero hours contract workers in the UK. While in the UK, people on zero hours contracts might be categorised in case law as 'workers', Ireland does not have a developed 'worker' or intermediary category between employee and self-employed that other countries have. Only a few employment laws such as equality and the national minimum wage extend protection beyond employees, which means that 'If and When' workers are largely in 'legal limbo'.

In interviews, employer organisations rejected suggestions that the state should introduce laws to prohibit 'If and When' contracts and have minimum guaranteed hours. The Restaurants Association of Ireland commented that it feared that government attempts to legislate on 'If and When' contracts would not "*take into account the practicalities of*

hospitality". The Irish Small and Medium Enterprises Association argued that the issue of zero hours was a "*storm in a teacup*" and that low hours work was "*not an issue*". It noted that small business would be "*unhappy*" about any legislation which required employers to provide guaranteed hours. The arguments made by employer associations were that additional regulations would be detrimental to competitiveness and employment and also to certain groups of workers whom, they said, demanded the flexibility offered by such contracts particularly women with caring responsibilities, young people and older people. These arguments were refuted by trade unions and CSOs, all of which commented that such groups of workers may want flexibility but not unpredictability. The Irish National Organisation of the Unemployed described the argument that regulations on minimum hours would impact employment as "*a red herring*".

Collective bargaining

Trade unions and CSOs argued that non-unionisation was a key barrier to protecting 'If and When' workers. In Ireland people have a right to join unions but there is no compulsory union recognition law so employers have no obligation to negotiate with unions. There is some state support for limited industry-level wage setting and this has historically provided enhanced rights to people working in sectors with precarious jobs. This statutory system of Joint Labour Committees was one in which employer organisations and unions negotiated minimum pay and conditions of employment. Committees were established, on the application of trade unions, to cover low paid employments in hotels, catering, security, hairdressing, agriculture, contract cleaning and retail among others. Agreements between employer organisations and unions were legally binding on the employments covered and people working in these sectors were entitled to minimum wages at higher rates than the

national minimum wage, to overtime rates, and to other entitlements not covered by employment law such as sick pay schemes. In 2011 a newly established employers' organisation was successful in a legal action against the Joint Labour Committee system which resulted in the entire system being suspended (O'Sullivan and Royle, 2014). In interviews the largest trade union in the country, SIPTU, argued that the suspension of the system incentivised employers in hotels and food to hire new staff on 'If and When' contracts on lower pay rates than existing staff who held contractual rights to the former Joint Labour Committee-set pay and conditions. Contrary to reports that the system was abolished (Prosser, 2016), it remained suspended until the government introduced legislation in 2012 which re-established the system though with reduced powers. While unions and employer organisations have since used the system to agree new terms and conditions for some sectors such as security, no new regulations have been established for hotels and catering because employer organisations in those sectors have refused to re-engage. They are opposed to the Joint Labour Committees because they claim the system will negatively affect employment and competitiveness.

The State as Employer

Trade unions and CSOs expressed significant concern that 'If and When' contracts and hybrid contracts have become a growing feature of public sector employment. The Department of Public Expenditure and Reform stated that it has influence over pay policy and employment numbers in the public sector but does not have control over types of employment contracts provided to employees. Stakeholders referred to funding and employment restrictions as drivers of 'If and When' work. As a result of an agreement with the Troika (European Central Bank, European Commission and International Monetary Fund)

in 2010 for financial assistance, the state agreed to reduce the public sector pay bill. An Employment Control Framework introduced in 2011 sought to reduce headcount by setting ceilings on the numbers employed in the public sector and laid down restrictions on terms and conditions of employment. Stakeholders in the health sector noted that more people were hired on 'If and When' contracts and through agencies as a result of the restrictions on recruitment. In third-level education, employer stakeholders referred to the pressures placed on them to reduce headcount and the barriers to creating permanent contracts which led to an increase in hourly-paid contracts. In addition to employment restrictions, employer groups noted that the reduction in state funding has influenced the nature of employment contracts. In third-level education declining funding has placed pressure on staff to seek non-exchequer revenue, leading to unstable employment. In adult education, state funding can be insecure and very limited, which leads to adult education tutors being hired on 'If and When' or hybrid contracts. In second-level education, ancillary staff such as caretakers, secretaries and cleaners, are not categorised as public servants and not covered by collective agreements on public sector pay yet they were subjected to public sector pay cuts during the economic crisis. Schools receive grants from the state for ancillary staff but this is insufficient to cover full-time employment and compels schools to offer jobs with insecure hours.

Stakeholders in the health sector noted that in addition to restrictions on public sector employment, the most significant drivers of zero hours work have been the increase in community care provision and increased subcontracting of community care services. Historically community care services were provided either directly by the state health agency, the Health Service Executive (HSE), or by not-for-profit organisations funded by the HSE. Not-for-profit organisations employed staff on the same terms and conditions as HSE employees. Trade unions in health as well as the Migrant Rights Centre of Ireland claimed that cost became a primary criterion for the awarding of tenders for homecare, which they

argued, has resulted in downward pressure on employee terms and conditions. There has been a growth in private organisations in the homecare market and they offer a lower cost alternative to the HSE or not-for-profit organisation services. State-provided care is estimated to cost €29 per hour while private care costs €21 per hour (IHPCA, 2009). In the view of trade unions, private organisations have used zero hours work to cut costs and increase profits. In this environment, not-for-profit organisations have found it difficult to compete for HSE funding as they are undercut by private organisations on the basis of lower pay and conditions. Private organisations acknowledged that they employ people on ‘If and When’ arrangements but argued that the funding model of the HSE was a barrier to providing more secure employment as funding is based on an estimate of required care services in the future but demand for services can fluctuate. The HSE noted that cost was a consideration in the decision-making process for tenders “*due to an environment of constrained resources*” and an ageing population, but it asserted that quality of care was the key criterion for awarding tenders. Intellectual disability services operated by non-statutory organisations rely heavily on ‘If and When’ contracts for relief work. The National Federation of Voluntary Bodies, which represents intellectual disability service providers, commented that any state policy which prohibited the use of ‘If and When’ contracts would create a demand amongst providers for significantly increased state funding to create more secure jobs.

The Welfare System

Employers Social Insurance

Employers and employees pay social insurance on wages into a national social insurance fund. However, the level of social insurance paid by employers on wages is one of the lowest in the OECD (Forfás, 2012). In 2012 the Irish rate of employers' social insurance contributions was near 10 percent compared to the OECD average of almost 15 percent and the EU average of almost 19 percent (Forfás, 2012). The state requires lower contributions from employers for lower paid jobs. For people earning less than €376 per week, employers pay 8.5 percent social insurance while they pay 10.75 percent for employees with earnings of more than €376 per week. This has incentivised employers pursuing a labour cost-cutting strategy to hire people on lower weekly earnings so as to reduce their social insurance bills. This incentive was strengthened during the economic crisis when the government introduced a Jobs Initiative in 2011 and halved employers' social insurance contributions for low paying jobs from 8.5 percent to 4.25 percent for two years. The then government stated that it cut the rate to encourage job creation and improve labour cost competitiveness and was particularly aimed at the tourism sector (Department of Finance, 2011). The trade union, SIPTU, argued that this cut was a "*defining factor*" motivating employers to hire more people on 'If and When' contracts in the accommodation/food sector. SIPTU and the Irish National Organisation for the Unemployed argued that the policy change resulted in employers engaging in "*job splitting*", dividing one full-time job into two jobs. While the Irish Hotels Federation argued that "*[employers are not] trying to minimise hours people work*" and that employees were satisfied with their hours, the Restaurants Association of Ireland commented that the restaurant sector could not afford to offer full-time jobs. The Department of Social Protection noted that employment did increase after the reduction in employers' social insurance contributions and recognised that this might have incentivised the employment of two people instead of one full-time person but noted that no impact study was undertaken on the policy. Despite this lack of evaluation, the Programme for Government 2016 committed

to further reductions in employers social insurance contributions for low income workers to ‘mitigate’ the cost of planned national minimum wage increases (Department of Taoiseach, 2016: 40).

Worker Income Supports

All stakeholders noted the importance of state welfare benefits to people on zero hours work. There are two main in-work income supports available. Family Income Supplement is a weekly tax-free payment to families at work on low pay. To qualify, an employee must be in a paid job expected to last at least 3 months, work at least 19 hours work per week, have at least one child and earn under particular income thresholds. A second support is the Jobseeker’s Scheme, under which a person may gain state assistance if they work 3 days in a 7 day period and are unemployed for the remaining 4 days. This contrasts with the UK unemployment benefit system which is hours-based rather than day-based. Trade unions and CSOs believed that people have felt increasingly pressured by the social welfare system to accept insecure work with non-guaranteed or low hours. Historically the state differed from other liberal welfare regimes in its reluctance to apply benefit sanctions to job seekers (Murphy, 2016), but in interviews, the Department of Social Protection noted that people seeking unemployment benefit cannot refuse job offers “*without just cause*” and that there should be “*reasonable employment*” offered. A person receiving benefit under the Jobseekers Scheme must be available for, and genuinely seeking work, and shall not be regarded as being available for employment if they impose unreasonable restrictions on the nature of the employment, the hours of work, the rate of remuneration, the duration of the employment, the location of the employment, or other conditions of employment he or she is prepared to accept (Statutory Instrument 142/07). The National Youth Council of Ireland argued that

there has been a shift towards increased sanctions and conditions attached to unemployment benefit since the economic crisis and that young people have felt impelled to accept low quality jobs. The Irish National Organisation of the Unemployed argued that unemployed people should not be obliged to accept a job where they are *“not better off, in precarious low paid work especially when it’s the only income in house”*. Hospitality and retail were two sectors noted by unions as having a high prevalence of employees on state income supports. SIPTU stated that 12.5 percent of employees in hospitality are receipt of income benefits excluding the Family Income Supplement.

Employer organisations pointed to the Jobseekers Scheme as a driver of low working hours because, they suggested, employees refused additional working hours that extend into a fourth working day. Under the Scheme, even one hours work on a fourth day of the week warrants ineligibility for benefits. The Department of Social Protection acknowledged that it could be rational for people to refuse additional work on a fourth day and the retail union Mandate referred to the *“perverse kind of poverty trap and welfare trap”* when people are worse off if they work additional hours above income support thresholds. In addition to potentially losing social benefits, employees who earn above certain weekly earnings can lose social insurance exemptions. Employees who earn less than €352 gross per week pay no social insurance contributions; any earnings above this level incur a 4 percent contribution rate. In contrast to employer arguments, trade unions and CSOs claimed that social welfare is not a disincentive to work but that insecure work is a disincentive to leaving social welfare. The National Womens Council of Ireland argued that people did not want *“to gamble a suite of essential supports for a job which might shrink or be insecure and is unpredictable”*. Employer organisations and trade unions cited instances of organisations facilitating employee requests to have at least 19 hours work to avail of Family Income Supplement or to schedule work over 3 days so they could avail of Jobseekers Scheme. However trade unions

and CSOs also argued that some organisations use employees' dependency on social welfare as a lever of managerial control. Workers on 'If and When' contracts are particularly vulnerable to this control as the nature of their contracts means that employers can schedule hours in a highly variable pattern which may make them ineligible for income supports. This vulnerability can be exacerbated for non-EU migrant workers, whom the Migrants Rights Centre argued, would be reluctant to claim income supports in case it could negatively impact economic viability tests in future citizenship applications.

Conclusion

Using a qualitative study in an atypical liberal market economy the article explored the tensions in the regulation of the labour market between state policies of accumulation and legitimation and their influence on zero hours work. The main conclusion is that the actions of the state have created a weak regulatory environment that has facilitated the emergence of zero hours work. There is minimal employment legislation regulating zero hours work and working time legislation has been demonstrably ineffective at preventing its development. Avoidance of this legislation has encouraged and legitimised the use of 'If and When' contracts and placed many workers in a precarious position with few employment rights. State policy on employers' social insurance has incentivised employers to create more low paying zero hours jobs. In its role as employer, the state introduced controls in education and health and outsourced community care services to private organisations which resulted in more 'If and When' working arrangements. Stakeholders argued that changes to the welfare system are also pushing people into insecure jobs. Workers on 'If and When' contracts can be excluded from state income supports because of eligibility thresholds and, because of their vulnerability, they can face significant challenges negotiating with employers to redress the

number and scheduling of their working hours. The state policies pursued, particularly the non-regulation of 'If and When' work, allowed employers to create insecure jobs in those sections of the economy with weak labour power. These state actions indicate a relatively coherent policy prioritising accumulation and weak regulation in the labour market. For example, the explicit objective of reducing employers' social insurance was to create jobs with little consideration of the quality of the jobs created. Certain groups of workers are disproportionately affected by the state failure to effectively regulate zero hours work, namely, women and migrant workers, who may have little choice but to accept jobs with insecure hours. This vulnerability is compounded by a lack of independent voice and collective power in weakly unionised sectors such as accommodation/food. Even in well organised sectors where collective bargaining avenues are available, such as in health, workers with insecure hours have become outsiders as a result of increasing marketization of public services.

The state did also initiate some market-correcting measures as the economy improved after 2011, which ameliorated the working conditions of zero hours workers. The national minimum wage was increased in 2016 and 2017 despite lobbying by the Department of Health against the increases because of its concerns over labour costs for community care workers (Bardon, 2016). In addition, the Joint Labour Committee wage-setting system was re-established for sectors prone to precarious work. Labour market changes are contingent on political pressure both from within government and from interest groups (Hyman, 2008; Bosch and Weinkopf, 2017). It could be argued that Ireland's 'atypicality' in its electoral and political system with a series of governments with minority left partnerships provided an avenue for trade unions to resist deregulation and lobby the government for policies to protect the bottom of the labour market. The introduction of countervailing measures suggests too that there are limits on the extent to which an LME can pursue accumulation through lack of

regulation and ignore the requirements for legitimation and consent in a democratic society. Rubery (2011) argues that there are barriers to the withdrawal of the state noting that neoliberal policies can contribute to new risks, which in turn increases demands on the state for social support.

Thus, there have been ‘some but limited’ attempts by the state to regulate the labour market since the financial crisis (Murphy, 2016: 16). Meardi et al. (2016) argue against presumptions that even when a neoliberal-oriented government introduces market-correcting measures, that neoliberal outcomes are inevitable. Thus, the strength and impact of state policies in the labour market requires consideration. In the Irish case, the rate of change in the minimum wage has been comparatively low since the recession (Eurostat, 2017). While the Joint Labour Committee system was regenerated, the government curtailed its powers to appease employers’ demands and some have refused to engage with the new system. There has been no initiative by the state to force employers to participate with the consequence that many employers, particularly in precarious sectors such as accommodation/food, have greater freedom to generate zero hours and low hours jobs with poorer conditions. Ireland’s employment policy mix shows that there has not been, to use Schmidt’s (2007: 11) turn of phrase, ‘a slide all the way to *laissez-faire*’ but there has been some institutional conversion in a liberalised trajectory, a phenomenon not confined to LMEs (Baccaro and Howell, 2011). The wider policy context must also be considered. Since the economic crisis, Ireland has lost many of those features which characterised it as an atypical LME with the collapse of tripartite corporatist arrangements and the increasing use of conditionality in the welfare system so that it has moved closer to a typical LME.

In a capitalist democracy with diverging principles of social justice and market justice (Streeck, 2012), there is pessimism about the extent to which the legitimation function of

states is applicable in a global economy (O'Connor, 2001). Employer organisations in Ireland have argued against the curtailment of 'If and When' jobs because workforce flexibility is a necessity. For employers the 'the problem of legitimation has been transformed into the problem of competitiveness in the global marketplace' (O'Connor, 2001: 111). Employer arguments for 'competitiveness' has framed regulation as a zero-sum game that excludes alternative working time arrangements to zero hours type work. Trade unions have argued that zero hours workers experience the worst excesses of employer discretion. Should the state introduce some further regulation on zero hours work, this may be unsurprising, reflecting a need 'to compensate losers' to justify the persistence to a flexible labour market (Forde and Slater, 2016: 594). In a period of declining unionisation and diminishing capacity of unions to influence multiple regulatory spaces, the outcome of a state committed to weak regulation is likely to be a *status quo* of working conditions for most zero hours workers.

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