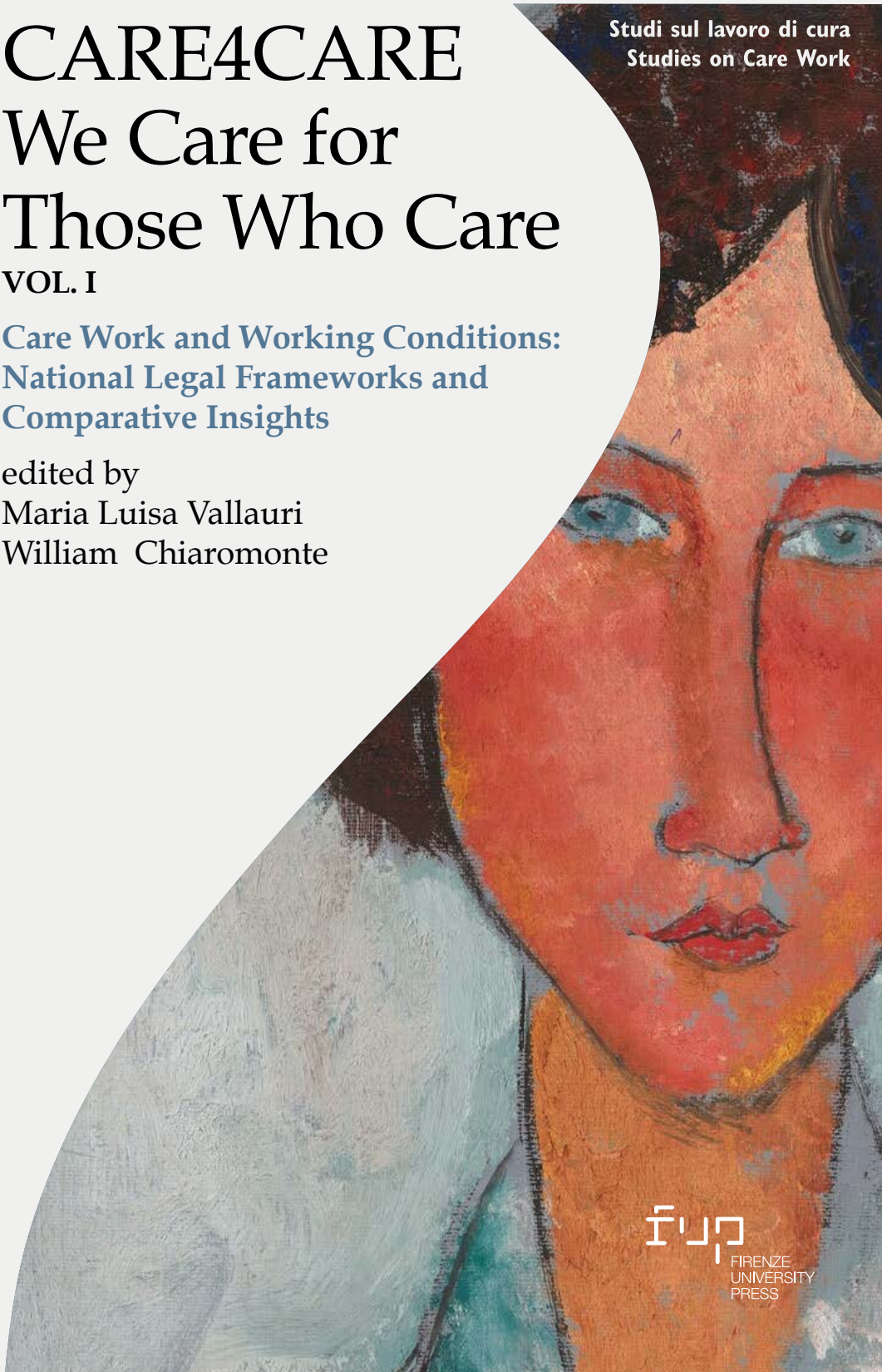
Studi sul lavoro di cura
Studies on Care Work

CARE4CARE
We Care for Those Who Care

VOL. I

Care Work and Working Conditions: National Legal Frameworks and Comparative Insights

edited by
Maria Luisa Vallauri
William Chiaromonte



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STUDI SUL LAVORO DI CURA – STUDIES ON CARE WORK

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Introduction

Maria Luisa Vallauri

1. A Starting Point: Who Care for Those Who Care?

Since the Communication to the European Parliament, the Council and the European Economic and Social Committee of 20 November 2017 containing the EU Action Plan 2017-2019, the European Commission included the care work sector among those sectors "key to the future of European society and economy".

The COVID-19 pandemic has made even more clear the centrality of care work in modern societies but it also made more visible many critical issues affecting the working conditions of care workers, such as: the lack of adequate economic resources, the workforce shortage, the pressure put on care workers, the risks for their well-being, the underfinancing of social care as a consequence of the reorganisation and partial retrenchment of the welfare state involving also privatisation and commodification of public services, the weaker bargaining power in these sectors than in many male-dominated sectors, the undervaluation of female-dominated jobs, the prevalence of undeclared work in domestic care work, patterns of discrimination in the sector on grounds of gender and nationality (and the intersectionality between these two factors).

Therefore, in her State of the Union address on 15 September 2021, President of the European Commission Ursula von der Leyen announced a European Care Strategy, pointing out, among the others, the need for decent working conditions for all workers in the care sector. One year later the European Care Strategy was presented by the European Commission to ensure quality, affordable and accessible care services across the European Union and improve the

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situation for both care receivers and the people caring for them, professionally or informally.

All this brought a question to our minds: who cares for those who care?

The willingness to care for those who care was the starting point of the CARE4CARE project funded by the Horizon Europe program under GA. n. 101094603 for a three-year lifespan, the results of which are collected in the three volumes that inaugurate the series "Studi sul lavoro di cura - Studies on Care Work".

2. Objectives and Goals of the Project

Care workers are mainly women and migrants, which makes the care sector an interesting field to verify the dynamics of segregation and exclusion that affect the labour market. At the same time, it is a challenging testing ground, which allows to design and verify new measures to counteract discrimination and promote social inclusion.

The CARE4CARE project investigated in a comparative and multidisciplinary perspective the working conditions of care workers and their perception of the working environment and dynamics in six EU Member States (France, Germany, Italy, Poland, Spain and Sweden) in order to develop suitable tools to improve job quality and counteract discrimination in the sector, such as: elaborating policy strategies to tackle the undervaluation of care work, with particular attention to the key role that trade unions, employers' associations as well as equality and monitoring bodies can play both at national and EU level; designing training programs to empower trade unions, families' and employers' associations to improve job quality in the sector; setting up of a network on care work, which will implement a web platform accessible to care workers, in order to improve their rights' awareness.

More precisely, the project aimed at highlighting the risks and conditions of vulnerability of the target, with a specific focus on discrimination and socio-economic undervaluation.

The ambition was, then, to create a model of analysis and regulation of the care sector that can be replicated in other European countries and can bring out new relevant strategies for intervention in order to elaborate legislative and policy proposals at the national and the EU level.

Lastly, the project aimed at giving voice to care workers and to their representatives in the design and delivery of policies and measures that affect their lives. To this end, it seemed necessary to raise awareness and consciousness among care workers and trade unions by making rights clear and usable for workers and enhancing collective bargaining strategies.

Target of the project were workers employed in the public and private sector, caring for people with disabilities, the elderly and sick people: home caregivers, basic healthcare workers, healthcare professionals with at most a Bachelor's degree, such as nurses. Particular attention was also paid to undeclared work in the sector.

3. The Consortium

The CARE4CARE Consortium spanned the European Union from north to south and from east to west and comprises ten partners.

The Consortium has been led by a team of experts in labour law from the Department of Legal Sciences of the University of Florence (Italy). In addition to the University of Florence, six other Universities were involved: Lunds Universitet (Sweden), Universidad de Girona (Spain), Universidad de Sevilla (Spain), Europa - Universität Viadrina (Germany), Uniwersytet Rzeszowski (Poland), Université de Bordeaux - Centre National de la Recherche Scientifique (France).

Tuscan Organisation of Universities and Research 4 Europe - Tour4UE (Belgium) oversaw communication and dissemination with great expertise.

Two associations from civil society, European Federation for Family Employment & Home Care and European Federation for Services to Individuals, acted as a bridge with stakeholders at European level.

The Consortium could also rely on the support of the European Trade Union Institute (ETUI).

4. The Outputs of the Project

The outputs of this research project were twofold: research outputs and societal outputs.

Regarding the research outputs, firstly, the research provided a comparative analysis of the working conditions in the care sector; secondly, the research assessed the direct perception of working conditions and well-being at work, as well as awareness of rights; thirdly, the project investigated strategies and techniques of regulation of working conditions in the sector.

Regarding the societal outputs, the first outcome was represented by the drafting of the CARE4CARE Policy paper that includes: general policy objectives, possible measures in national laws, possible measures for national social partners and institutions, possible measures in European law and for European social partners and institutions.

The second outcome of CARE4CARE the design and delivery of training programmes to empower trade unions, employers and the representatives of families' associations who will be the target group of the training. The aim is to improve knowledge and skills to recognize vulnerabilities of care workers in order to improve job quality and counteract discriminations in the care sector.

The third outcome of CARE4CARE consists in the realisation of a web platform optimised for smartphones and tablets that is structured to provide user-friendly information on relevant national legislation to improve care worker's awareness of rights.

All partners have been heavily involved in the implementation of both research and societal outputs and in the communication and dissemination of the results, in order to maximize the impact of the project on the scientific community and civil society.

5. The Methodology

The main methodology adopted was legal research in a comparative and EU perspective.

A comparative analysis of legal aspects, labour market conditions and industrial relations aspects on job quality and working conditions for care workers was conducted, in order to get an assessment of the sector in the six EU Member States involved in the project and characterised by different models of welfare state.

A psycho-social survey was also conducted through focus groups, questionnaires and audits to outline a picture of the quality of work and awareness of workers' rights.

Both qualitative and quantitative data were collected to shed light on psychosocial working conditions that can affect care workers' well-being across the six EU member states involved in the research. Specific attention was given to how structural variables—such as demographic variables, work-related variables, psychological and interpersonal variables—are related to care workers' mental health and well-being both in private and public sectors.

6. Presentation of the Publication

The three volumes that inaugurate the series "Studi sul lavoro di cura - Studies on care work" bring together the results of the research conducted between 2023 and 2025 by the Consortium that I had the great privilege of coordinating.

Volume I: *Care Work and Working Conditions: National Legal Frameworks and Comparative Insights*—brings together national reports drawn up by esteemed labour law scholars from the Universities of Bordeaux, Florence, Frankfurt (Oder), Girona, Lund and Rzeszowski . The reports outline the regulatory framework applicable to care professionals, both from a legal and collective bargaining perspective in the six countries involved in the project. University of Lund, leader of Work package 2, prepared the comparative report that formed the basis for the development of intervention strategies to improve working conditions in the sector.

Volume II: *Discriminations in the Care Sector: National Legal Frameworks and Comparative Insights*—collects reports on the mapping of discrimination based on gender and nationality in the sector elaborated through the study of case law, national reports and statistics in the six countries. The comparative report drafted by University of Girona, leader of Work package 3, summarises the national overview to identify similarities and differences in order to develop strategies to counteract discriminations.

Volume III: *Building Dignified Care Work in Europe: Critical Reflections, Political and Social Tools*—brings together critical contributions on the issues raised by the research, written by scholars who, with different sensibilities and points of view, contributed to the realisation of the project. The legal analysis is accompanied by a psychosocial reflection developed by researchers of the University of Seville, leader of Work package 4, who conducted an investigation on working

conditions and the perception of rights in the sector. The volume also includes the keynote lecture given by Professor Silvia Borelli during the project kick-off meeting held in Florence on 16th–17th March 2023.

The Policy Paper drafted by the German team of Europa - Universität Viadrina Frankfurt (Oder), leader of Work package 5, on the basis of the overall research findings, is included in the appendix to the third volume, together with the Training model for trade unions developed by the Polish team of the University of Rzeszowski, leader of Work package 6, and the description of the Web platform built by the Italian team of the University of Florence, leader of Work Package 7.

The success of this project is due to the great communication effort made by Tour4UE, which is not reflected in the volumes but was essential in bringing our research to the attention of European institutions and of National and European stakeholders.

Equally important was the contribution of EFFE and EFSI as bridges with civil society, representing the sector's needs to researchers and thus enabling the design of targeted and more effective intervention policies.

Acknowledgements

The ethical soundness of our work has been verified by Prof. Rupert Brown of the University of Sussex who checked every stage to ensure that the research complied with the highest ethical standards. We are very grateful to him for his discreet and estimable supervision and help.

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Heartfelt thanks to Mrs. Katherine Quezada and Mrs. Caroline Ibanez, Project Officers of the European Commission, and to Mrs. Maria Del Pilar Gonzalez Pantaleón, Policy Officer, who accompanied us during these three years of work, listening patiently to our requests and always offering us valuable advice with great competence and kindness.

We are also very grateful to all the administrative staff at our Universities, who work behind the scenes, but without whom we would not even have been able to embark on this fantastic adventure.

Finally, all our gratitude goes to our beloved project manager Fabio Ballerini, for his patient and confident guidance in the implementation of this project, never failing to give us his smile and good humour. Thank you so much, dearest Fabio!

I would like this to be a never-ending story.

My heart is full of gratitude to all my colleagues and now friends of the Consortium who contributed with their tireless work and great expertise to achieving the results we had set: Aude Boisseuil, Andrea Cano Redondo, William Chiaromonte, Marta Ciabatti, Simona Costa, Isabelle Daugareilh, Aurelie Decker, Francisco Josè Medina Diaz, Giulia Frosecchi, Thomas Hector, Andrea Iossa,

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CHAPTER 1

Comparative Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Mia Rönnmar

1. Executive Summary

This comparative report, corresponding to WP2 of the "CARE4CARE: We care for those who care" research project, examines job quality and inclusive working conditions for care workers in six EU Member States: France, Germany, Italy, Poland, Spain, and Sweden. The comparative analysis focuses on labour law but also covers industrial relations, policy, and labour market characteristics, as well as the interplay between national and EU/international law.

CARE4CARE targets care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal and/or health assistance to elderly persons, sick persons, or persons with disabilities, particularly those with at most a Bachelor's degree. The report synthesises and compares findings from national reports authored by experts from each country, using a common questionnaire to ensure consistency.

The content of the report includes the following sections:

- the legal and policy framework (Section 3), discussing international standards from the ILO, Council of Europe, and EU.
- the care work context (Section 4), detailing sector characteristics and ongoing debates.
- trade union rights and industrial relations (Section 5), including collective bargaining and employee influence.

[1] The contents of this report were finalized on December 31, 2023.

Mia Rönnmar, Malmö University, Sweden, rektor@mau.se

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- employment status, flexible forms of employment, and employment protection (Section 6).
- wages and benefits (Section 7), including minimum wage regulations.
- working time and health and safety (Section 8), including implications of the COVID-19 pandemic, and training and competence development.
- social security (Section 9), examining coverage and benefits.

The report stresses the marked diversity of labour law and industrial relations systems across the six countries. France and Germany represent the Continental-European system, Italy and Spain represent the Southern-European system, Poland represents the Eastern-European system, and Sweden represents the Nordic system. This diversity profoundly influences various aspects, including legal culture, the balance between legislation and collective bargaining, the degree of state influence, the presence and role of trade unions, and the mechanisms of employee representation. In terms of welfare state and social security systems, France, Germany, and Poland reflect the Bismarck model, Italy and Spain reflect a mix of the Bismarck and Beveridge systems, and Sweden reflects the Scandinavian system. All countries, except Sweden, have a family-based welfare model, which has implications for care work. Social security coverage is extensive in all countries, though there are gaps, such as limited coverage for home caregivers in Italy. Spain recently extended unemployment insurance to domestic workers following EU case law, highlighting the importance of EU gender equality law in enhancing social security for domestic workers.

This report identifies common challenges and potential improvements through comparative analysis, highlighting synergies between labour law and industrial relations. It underscores the importance of integrating various legal perspectives to enhance job quality and inclusive working conditions for care workers across Europe.

2. Methodology[2]

This comparative report within the framework of CARE4CARE WP2 includes a comparative analysis of job quality and inclusive working conditions of care workers in six countries and EU Member States, namely, France, Germany, Italy, Poland, Spain, and Sweden. The focus of the comparative analysis is on labour law, but also includes aspects of industrial relations, policy, and labour market characteristics, as well as an analysis of the interplay between national law and EU/European and international law.

CARE4CARE studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance

[2] This study has received ethical approval by the Swedish Ethical Review Authority (project title: 'CARE4CARE: en studie av arbetsvillkoren och arbetssituationen för care workers', dnr 2023-04438-01).

to elderly persons, sick persons, and persons with disabilities. Focus is on care workers who have at most a Bachelor's degree (Section 3).

The content and outline of this comparative report is as follows. Section 3 presents the ILO, Council of Europe, and EU legal and policy framework. Section 4 discusses various aspects of care work and domestic care work, including the care sector, care workers, and current debates. Section 5 addresses fundamental trade union rights, social partners and industrial relations, collective bargaining, and employee influence. Section 6 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 7 presents a discussion on wages and benefits, including minimum wage regulation. Section 8 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 9 discusses social security coverage and benefits. Section 10, finally, contains some concluding remarks.

This report is the outcome of international research collaboration. The comparative analysis is primarily based on the rich information and analysis provided by the following CARE4CARE WP2 national reports:[3]

- the French National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: COMPTRASEC – UMR CNRS 5114 – University of Bordeaux, authors: Isabelle Daugareilh, Guillaume, Santoro, Haoussetou Traore) (see chapter 2, *infra*),
- the German National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: European University Viadrina Frankfurt (Oder), authors: Ziga Podgornik-Jakil, Dominic Andres, Eva Kocher) (see chapter 3, *infra*),
- the Italian National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: University of Florence, authors: Maria Luisa Vallauri, William Chiaromonte, Giulia Frosecchi, Samuele Renzi, Michele Mazzetti) (see chapter 4, *infra*),
- the Polish National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: University of Rzeszow, authors: Agata Ludera-Ruszel, Hubert Kotarski) (see chapter 5, *infra*),

[3] This comparative report also partly draws on previous comparative labour law and industrial relations research carried out by the author, see Mia Rönnmar, Marcus Kahmann, Andrea Iossa, Jan Czarzasty, and Valentina Paolucci, "Trade Union Participation and Influence in Decentralised Collective Bargaining," in *Pathways in Decentralised Collective Bargaining in Europe*, edited by Frank Tros, (Amsterdam University Press, 2023), 211–38; Mia Rönnmar, "Age Discrimination and Labour Law: A Comparative Analysis," in *Age Discrimination and Labour Law. Comparative and Conceptual Perspectives in the EU and Beyond*, edited by Ann Numhauser-Henning, and Mia Rönnmar (Alphen aan den Rijn: Kluwer Law International, 2015), 415–47, and Mia Rönnmar, "Labour and equality law," in *European Union Law*, edited by Catherine Barnard, and Steve Peers (Oxford: Oxford University Press, 2023[4]), 630–61. See also the Swedish WP2 National Report on "Care Workers, Job Quality, and Inclusive Working Conditions" by Mia Rönnmar and Jenny Julén Votinius. I would also like to express my thanks to the participants at the European stakeholder meeting for generously sharing their time and providing important comments.

- the Spanish National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: Universitat de Girona, authors: Ferran Camas Roda, Maria Antonia Barceló Rado, Dolors Juvinyà Canal, Marc Sáez Zafra, Anna Maria Molina Garcia, Andrea Cano Redondo) (see chapter 6, *infra*), and,
- the Swedish National Report on "Care Workers, Job Quality, and Inclusive Working Conditions", WP2 (partner: Lund University, authors: Mia Rönnmar, Jenny Julén Votinius) (see chapter 7, *infra*).

These national reports are drafted on the basis of a common questionnaire and written by distinguished experts in the field, who are familiar with the specific national labour law and industrial relations systems, legal cultures, and primary legal sources. In this comparative report, a reference made to a specific national context implies, if not otherwise stated, a reference to the corresponding national CARE4CARE WP2 report. The author of this comparative report is solely responsible for the interpretation of the findings and for any errors or omissions in the text of this report.

This comparative report combines a legal-analytical method, i.e. an analysis of legal sources in order to clarify, systematise, and evaluate the content of labour law, with a socio-legal approach and an integration of labour law, industrial relations, and labour market perspectives.[4] The materials subjected to study are legislation and preparatory works at national, EU/European, and international level, collective agreements at various levels, case law and decisions from national, EU/European and international courts and supervisory bodies, legal doctrine and other research, statistics, and policy documents at national, EU/European, and international level.

The comparative analysis highlights similarities and differences between national developments in the selected six countries. Through a comparative approach, common challenges and potentials can be identified and critically analysed. Furthermore, important synergies between labour law and industrial relations, and between various areas of law, including labour law, fundamental rights and constitutional law, and social security law, can be highlighted.[5]

The six countries represent institutional diversity, and variety in terms of labour law and industrial relations systems and welfare state and social security systems. In the scholarly discourse, various comparative typologies have been

[4] See e.g. Mark Van Hoecke, edited by, *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011) and Amy Ludlow and Alysia Blackham, edited by, *New Frontiers in Empirical Labour Law Research* (Oxford: Hart Publishing, 2015).

[5] See e.g. Bob Hepple and Bruno Veneziani, edited by, *The Transformation of Labour Law in Europe. A comparative study of 15 countries 1945–2004* (Oxford: Hart Publishing, 2009) and Matt W. Finkin and Guy Mundlak, edited by, *Comparative Labor Law. Research Handbooks in Comparative Law* (Cheltenham: Edward Elgar, 2015).

used to illustrate such variety.[6] Thus, France and Germany can be said to represent the Continental-European labour law and industrial relations system, Italy and Spain can be said to represent the Southern-European labour law and industrial relations system, Poland can be said to represent the Eastern-European labour law and industrial relations system, and Sweden can be said to represent the Nordic labour law and industrial relations system. This multitude of labour law and industrial relations systems is reflected in differences as regards, for example, legal culture and the importance of constitutional principles, the balance between legislation and collective bargaining, the degree of state influence or voluntarism, the role of courts and case law, the degree of trade union and employer organisation and collective bargaining coverage, and forms of employee representation and influence (Section 5). In relation to welfare state and social security systems, France, Germany and Poland can be said to reflect mainly the Bismarck system, Italy and Spain can be said to reflect a mix of the Bismarck and Beveridge systems, and Sweden can be said to reflect the Scandinavian system (Section 9). In addition, all countries, except Sweden, can be said to reflect a family-based welfare model, which in turn has implications for care work, such as an emphasis on family caregiving and unpaid, informal, and outpatient care.[7]

The character of the overall national labour law regulatory framework also varies between the countries. In France, Germany, Poland, and Sweden, there is, in principle, a uniform regulatory framework for the entire labour market, including the care sector (although, in France there are some elements of specific regulation of the care sector in the public health code). In Italy and Spain, the regulatory framework is more diversified with important elements of specific labour law regulation of the care sector and/or specific care occupations, for example, for home caregivers.

There is also variation between the countries when it comes to the degree of differences between the labour law regulation in the public and private sector. In Poland, Spain, and Sweden there are minor differences between the public and private sector. In contrast, in France and Italy there are major differences as regards labour law regulation in the public and private sector, although a recent statutory reform in France has increased the similarities between the two regulatory regimes and there has been a process of contractualisation of the civil service in Italy since the late 1980s. In Germany there are major differences as regards labour law regulation in part of the public sector.

[6] See e.g. Gøsta Esping-Andersen, *The three worlds of welfare capitalism* (Cambridge: Polity Press, 1990); Peter A. Hall and David Soskice, edited by, *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001); Greg J. Bamber et al., *International & Comparative Employment Relations. Global Crises and Institutional Responses* (London: Sage, 2021[7]), and Paul Marginson and Keith Sisson, *European integration and industrial relations. Multi-level governance in the making* (Basingstoke: Palgrave MacMillan, 2004).

[7] See e.g. Silvia Borelli, *Who cares? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020).

In all countries, with the exception of Poland, the regulatory framework is characterised by an emphasis on the interplay between statutory regulation and collective bargaining. In Poland the emphasis is instead on the interplay between statutory regulation and employment contract regulation.

3. ILO, Council of Europe, and EU Legal and Policy Framework

The six countries are covered by a common legal and policy framework related to job quality and inclusive working conditions of care workers emanating from the ILO, the Council of Europe, and the EU. This international and EU/European framework interplays with national regulation in important ways.[8]

The ILO provides a fundamental rights framework through Fundamental Conventions on, for example, freedom of association and occupational safety and health,[9] and numerous ILO Conventions and Recommendations on various aspects linked to job quality and working conditions, including domestic work, flexible forms of employment, employment protection, wages, working time, health and safety, violence and harassment at work, and social security and social protection.[10]

The fundamental rights framework of the Council of Europe entails the European Convention of Human Rights and the revised European Social Charter, including a recognition of fundamental trade union rights, such as the freedom of association, right to collective bargaining, and right to collective action, and several other rights linked to aspects of job quality and working conditions.[11]

In the EU, the Lisbon Treaty of 2009 made the EU Charter of Fundamental Rights legally binding and part of primary EU law (Article 6 of the Treaty of the Functioning of the European Union (TFEU)). The EU Charter of Fundamental Rights encompasses rights, freedoms and principles of great relevance to EU

[8] For a discussion on the international and EU/European legal and policy framework related to care workers and aspects of gender equality, non-discrimination, and labour migration, see CARE4CARE WP3 comparative and national reports. This Section draws on previous EU law research, see Rönnmar, "Labour and equality law," 630–61. See also e.g. Teun Jaspers, Frans Pennings, and Saskia Peters, edited by, *European Labour Law* (Antwerp: Larcier Intersentia, 2024[2]).

[9] See ILO Conventions No 87, 98, 155, and 187.

[10] See, for example, General Surveys of the ILO Committee of Experts on the Application of Conventions and Recommendations, Jean-Michel Servais, *International Labour Law* (Alphen aan den Rijn: Kluwer Law International, 2022[7]); Edoardo Ales et al., edited by, *International and European Labour Law. Article-by-Article Commentary* (Baden-Baden: Nomos, 2018), and Adelle Blackett and Anne Trebilcock, edited by, *Research Handbook on Transnational Labour Law* (Cheltenham: Edward Elgar, 2015).

[11] See, for example, Matti Mikkola, *Social Human Rights of Europe* (Helsinki: Karelactio, 2010); Niklas Bruun et al., edited by, *The European Social Charter and the Employment Relation* (Oxford: Hart Publishing, 2017), and Filip Dorssemont, Klaus Lörcher, and Isabelle Schömann, edited by, *The European Convention on Human Rights and the Employment Relations* (Oxford: Hart Publishing, 2013).

labour law and the regulation of job quality and working conditions, including, for example, the respect for private and family life (Article 7), the freedom of expression and information (Article 11), the right to information and consultation (Article 27), the right to collective bargaining and collective action (Article 28), the protection against unjustified dismissals (Article 30), and the right to fair and just working conditions (Article 31), including aspects of working time, annual leave, and health and safety.

EU labour law is an area of shared competence, which is regulated by a mix of Treaty provisions, fundamental rights and general principles of EU law, secondary law, collective agreements at EU level, case law from the Court of Justice, and various policies and soft law measures. The European social dialogue, involving the European social partners, takes place at both cross-sectoral and sectoral level (Articles 152 and 154–155 TFEU). Care work is addressed by a multitude of European social partners and civil society organisations, active in both the public and private care sector. There is development in sectoral social dialogue linked to the adoption of the European Care Strategy (see further below), such as the setting up of a new European social dialogue committee for social services, in addition to the existing social dialogue committees, for example, for hospitals and healthcare.[12] This important European social partner and civil society element is also integrated into CARE4CARE through the partner involvement of EFFE (European Federation for Family Employment) and EFSI (European Federation for Services to Individuals) and collaboration with ETUI (European Trade Union Institute), and the organisation of various stakeholder meetings at EU and national levels.

In addition to EU primary law and provisions on social policy and labour law in the Treaty on European Union and the Treaty on the Functioning of the European Union, numerous EU Directives address issues linked to job quality and working conditions, such as collective bargaining, employee influence, whistleblowing, flexible forms of employment, transparent and predictable working conditions, minimum wages, employment protection, working time, leave, and health and safety. Thus, working conditions and their improvement, are important aspects of EU labour law.

The personal scope of most EU Directives is defined in relation to the different notions of an employee developed and existing in each of the EU Member States. However, in the area of free movement of workers, EU law contains an autonomous and far-reaching notion of a worker. This uniform notion of a worker has, through the case law of the Court of Justice, been applied also in other areas, such as equal pay and working time.[13] In several recent EU Directives, for

[12] See European Commission, *Commission decision setting up the European social dialogue committee for social services*, 230710, <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10630#navItem-1> (accessed June 17, 2024).

[13] See Cases C-66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, C-53/81 *Levin v Secretary of State for Justice* [1982] ECR 1035, and C-428/09 *Union syndicale Solidaires Isère* [2010] ECR I-9961.

example, the Directives on work-life balance, transparent and predictable working conditions, and adequate minimum wages, a "hybrid" notion of worker has been introduced, which refers both to national notions of an employee and the EU notion of a worker.

EU law emphasises employee influence and aims for a partial harmonisation of regulation on information, consultation, and employee participation through regulation on this topic in, for example, the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation.[14] The Whistleblowing Directive[15] aims to enhance the enforcement of Union law and policies in specific areas and lays down common minimum standards of protection of persons reporting breaches of Union law.

EU law regulates aspects of flexible forms of employment through the Part-Time Work Directive, the Fixed-Term Work Directive, and the Temporary Agency Work Directive, which also form part of the EU law flexicurity strategy aimed at a combination of flexibility and security.[16] Thus, these Directives share some common features, such as a combination of promotion of flexible employment and protection of flexible employees. The Directive on Transparent and Predictable Working Conditions[17] sets out to increase the protection for employees, including precarious groups of flexible employees, such as digital platform workers, on-demand workers, and workers with zero hours contracts. The aim of the Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability. At EU level, employment protection is only partly regulated, for example by Article 30 of the EU Charter of Fundamental Rights, the Fixed-Term Work Directive, and the Directives on Transfers of Undertakings and Collective Redundancies, as well as by different non-discrimination directives, which ban discriminatory dismissals.

In the area of health and safety a number of Directives, so-called Workplace Directives, related to health and safety and the working environment in the workplace, have been adopted.[18] The Framework Directive on Health and Safety[19] aims at introducing measures to encourage improvements in the health and safety of workers at work, and lays down minimum standards in this area.[20] It stipulates general principles on the prevention of occupational risks, the protection of health and safety, the elimination of risk and accident factors, and consultation of workers and their representatives. The employer has a duty to ensure the

[14] Directives 2001/23/EC, 98/59/EC, 2009/38/EC, and 2002/14/EC.

[15] Directive 2019/1937/EU.

[16] Directives 97/81/EC, 1999/70/EC, and 2008/104/EC.

[17] Directive 2019/1152/EU.

[18] In addition, several Directives, so-called Product Directives, related to the harmonization of Member State regulation in the area of free movement of goods and the character and control of different products to ensure the goods are safe have also been adopted.

[19] Directive 89/391/EEC.

[20] On the basis of the Framework Directive a number of more specific 'daughter Directives' have been adopted.

safety and health of workers in every aspect related to work. The Working Time Directive[21] aims to lay down minimum health and safety requirements for the organization of working time. The Directive contains provisions on, for example, daily rest, breaks, weekly rest periods, maximum weekly working time, night work, and annual leave. The Directive also provides for adaptations through the use of collective agreements, as well as an "opt-out" for Member States in relation to Article 6 and the maximum 48-hour week. In relation to leave, the Work-Life Balance Directive[22] lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents or carers. The Directive provides for individual rights related to paternity leave, parental leave and carers' leave, and flexible working arrangements for parents and carers.

The aim of the Directive on adequate minimum wages in the EU[23] is to establish a framework for setting adequate levels of minimum wages, and access of workers to minimum-wage protection, in the form of wages set out by collective agreements or, where it exists, in the form of a statutory minimum wage. The Directive also includes provisions on measures to promote collective bargaining.

As regards the policy framework, there is important policy discussion and research at the ILO level, in and after the COVID-19 pandemic, on the key role of the care economy and care work and the need to ensure decent work.[24] Similarly, at the EU level, there is vital policy discussion and soft law developments related to the care economy and the promotion of improved working conditions in care work. The European Care Strategy aims to ensure quality, affordable and accessible care services across the European Union and improve the situation for both care receivers and the people caring from them, professionally or informally. The European Care Strategy emphasises the need for decent working conditions for all workers in the care sector.[25] The European Pillar of

[21] Directive 2003/88/EC.

[22] Directive 2019/1158/EU.

[23] Directive 2022/2041/EU.

[24] See, for example, ILO, *Care Work and Care Jobs for the Future of Decent Work* (Geneva: ILO, 2018); ILO, *Decent work and the care economy*, Report VI, International Labour Conference, 112th Session, 2024 (Geneva: ILO, 2024); ILO, *Securing decent work for nursing personnel and domestic workers, key actors in the care economy. General Survey concerning the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part B) (Geneva: ILO, 2022), and ILO, *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery* (Geneva: ILO, 2022). See also Mia Rönnmar and Susan Hayter, edited by, *Making and Breaking Gender Inequalities in Work* (Cheltenham: Edward Elgar, 2024; ILERA Publication Series, 4).

[25] See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European care strategy, COM/2022/440 final.

Social Rights aims to deliver new and more effective rights for citizens and to express a number of essential principles to support well-functioning and fair labour markets and welfare systems. The Pillar relates to a wider notion of social policy and contains 20 principles on equal opportunities and access to the labour market, fair working conditions, and, adequate and sustainable social protection. These principles have been integrated into the European Semester and a number of legal initiatives have been taken on the basis of the European Pillar of Social Rights, including adoption of EU Directives in the labour law area. The European Care Strategy will support the implementation of European Pillar of Social Rights, especially the principles on gender equality, work-life balance, childcare and support to children and long-term care.

4. Care Work and Domestic Care Work

In all six countries developments in the care sector are set against the background of trends, such as the ageing population, increasing care needs, lingering effects of and lessons learned in the COVID-19 pandemic, and digitalisation and technological development. There is an overall trend in all six countries towards increased privatisation of the care sector. In France, Germany, Italy, Poland, and Spain there are both public and private care sectors, and care services are provided by both public and private entities (and in some cases also by "hybrid" entities, between public and private, such as the *Wohlfahrtsverbände* in Germany). In Sweden, there is mainly a public care sector, although the private care sector is growing. In Italy, there is a clear trend towards marketisation and increased contracting out of care services, *inter alia* related to economic effects of the economic and financial crisis of 2007 and 2008 and the COVID-19 pandemic, the contraction of public welfare, and limited public spending on personal care services. The national reports reflect a multitude of public and private actors and entities, in both the public and private care sector, which provide care services in the six countries, such as regions and municipalities, private commercial companies, including temporary work agencies and placement agencies, and private non-profit associations. Care services are also offered by individual care workers, often domestic care workers, who provide care services directly to the care recipient, for example, by way of live-in-care. Thus, in care services, an important distinction is made between residential care services, where care is provided in establishments to groups of care recipients, and home care services, where care is provided in the individual home of the care recipient. Two different models of employment are commonly used in home care services: either care work is carried out by domestic care workers who are employed directly by the care recipient or his or her family, for example, in France, Germany, Italy, Poland, and Spain, or care work is carried out by domestic care workers who are employed by public or private entities, for example, in France and Sweden.

There is a major element of domestic care work in all six countries. However, there are country variations when it comes to its regulation, institutional set-up, and practical organisation, and the level of precariousness and vulnerability of

domestic care workers. Germany, Italy, Spain, and Sweden, but not France and Poland, have ratified ILO Convention No 189 on Domestic Work. Article 1 of the Convention states that

> [f]or the purpose of this Convention: a) the term domestic work means work performed in or for a household or households; b) the term domestic workers means any person engaged in domestic work within an employment relationship; c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

The Convention applies to all domestic workers (Article 2.1.), but there is scope for wholly or partly excluding some categories of workers from the scope of the Convention (Article 2.2.–2.3.). The Convention entails *inter alia* an obligation to take measures to ensure the effective promotion and protection of human rights of all domestic workers, including the freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination (Article 3) and an obligation to take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions, and if they reside in the household, decent living conditions that respect their privacy (Article 6).[26]

There is a major element of domestic care work in France, although most of the care is provided in residential care services, and institutional care workers outnumber domestic care workers. In France, there is discussion on the problem of effective enforcement of labour law protection in domestic care work and labour inspectors' potentially limited access to the workplace when care work is carried out in private homes. The national reports, for example, in relation to Italy and Spain, highlight a number of concerns as regards the working conditions of domestic care workers, especially domestic care workers employed directly by the care recipient and live-in-care workers, such as low wages, limited social security protection, health and safety risks, for example, related to excessive working hours, strong dependence on the goodwill of the employer, and violence, harassment, and discrimination. Live-in-care is often provided by migrant workers, from Central and Eastern European countries or from third countries. In some countries domestic care workers are subject to specific, more limited, labour law protection (as allowed and provided for by the ILO Convention, Article 2). In Sweden, for example, a specific statute regulates domestic workers, including domestic care workers who are directly employed by the care recipient, a very small group of

[26] For scholarship on domestic workers, and the role of international and EU law in promoting rights of domestic workers, see, for example, Adelle Blackett, *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Cornell University Press, 2019); Virginia Mantouvalou, "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor," *Comparative labor law & policy journal* 34 (2012): 133, and Vera Pavlou, *Migrant Domestic Workers in Europe. Law and the Construction of Vulnerability* (Oxford: Hart Publishing, 2021).

all domestic care workers in Sweden. This statute contains specific provisions on working hours, overtime, and limited employment protection.

Undeclared work is present in care work in the EU, especially in domestic care work and live-in-care. The national reports highlight that there is a minor element of undeclared work in the care sector in France, Germany, and Sweden, and a major element of undeclared work in the care sector in Italy, Poland and Spain.

CARE4CARE studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance to elderly persons, sick persons, and persons with disabilities. Focus is on care workers who have at most a Bachelor's degree.

In the six countries, there is a multitude of care worker categories and care occupations, related to the national context and welfare state, care sector, and labour law and industrial relations features. It is difficult to make a direct comparison of the various care occupations due to different national care work dynamics and characteristics. The definition of a specific care occupation and its characteristics can follow, for example, from statutory regulation, from professional occupational titles, licenses, authorisations or qualification criteria, and from trade union and labour market organisation.

The national reports contain a systematisation and discussion of the care worker categories who are included in CARE4CARE. In France there are three main care worker categories: nurses and care assistants who provide care in institutions or at home, and home helps/life assistants, who only provide care at home. In Germany there are two main care worker categories: nursing staff and domestic care workers. The category of nursing staff is divided into the care occupations of nursing assistants, nursing professionals, health professionals in nursing. The category of domestic care workers is divided into the care occupations of care assistants and live-in workers. In Italy there are four main care worker categories: home caregivers, basic care workers, social and care workers, and health professionals with at most a Bachelor's degree. In Poland there are two main care worker categories: basic care work and specialized care work. The category of basic care work is divided into the care occupations of technicians and associate professionals, service providers, and basic workers. The category of specialized care is divided into the care occupations of health professionals and technicians and associate professionals. In Spain there are three main categories of care workers: home caregivers, professional carers (including nursing assistants and nursing care technicians) and health professionals (incl. nurses and midwives). In Sweden there are four main categories of care workers: home caregivers (personal assistants for persons with disabilities), basic care and nursing workers (care assistants and assistant nurses), health professionals in nursing with a Bachelor's degree (nurses), and health professionals in nursing with a Master's degree (specialized nurses, incl. midwives).

A rich discussion on the labour market characteristics of care workers and various care occupations in the national contexts are provided in the national reports. The discussion explores aspects, such as gender and age composition of the work-

force, migratory status of the workforce, employment and unemployment rates, average retirement age, and rate of fixed-term work, part-time work, temporary agency work and other forms of flexible or precarious employment. National developments in the six countries confirm European and global trends, also highlighted in research and policy reports from e.g. the EU and the ILO (Section 3), of a female-dominated workforce (in all six countries), a migrant-dominated workforce (in Italy and Spain, in particular in domestic care work) or a workforce with an important element of migrant and/or immigrant workers (in France, Germany, Poland, and Sweden), and of a flexible and/or precarious workforce, with, for example, high rates of fixed-term and part-time work (in all six countries).

Current national debates on care work are explored in the national reports. Two key debates stand out, and are highlighted in all six countries as well as in overall international and European policy discussion, namely, the debate on the skills and staff shortage and challenges of recruitment and talent management in the care sector, and the debate on the low level of wages and poor quality of working conditions, including aspects related to flexible forms of employment, health and safety concerns, and lack of effective enforcement of working conditions and protection for care workers. In Poland, the staff shortage in the care sector is also related to an outflow of skilled workers, including health care professionals. In Sweden, the rare industrial conflict, including strike action, in the care sector between the employers' organisations in the public sector of regions and municipalities (the Swedish Association of Local Authorities and Regions (*SKR*) and *Sobona*) and the nurses' trade union (the Swedish Association of Health Professionals, *Vårdförbundet*) in the spring and summer of 2024 was related, not primarily to the level of wages, but to these debates. The social partners have partly different perspectives and proposed solutions on how to address the skills and staff shortage, future recruitment and talent management, and health and safety concerns, including stress and workload. The main conflicting issue was the trade union's claim for general working time reduction for all members.

Current national debates on care work also include, for example, the debate on the undervaluing of care work and the need for recognition of the professional qualifications of care workers and the debate on the risk of exploitation and discrimination of care workers. The risk of exploitation and discrimination is highlighted specifically in countries with a migrant-dominated care workforce and an emphasis on domestic care work, live-in-care and presence of undeclared work, such as in Italy, Poland, and Spain. This risk is also related to health and safety and aspects of violence and harassment in the workplace.

5. Fundamental Trade Union Rights, Social Partners and Industrial Relations, Collective Bargaining, and Employee Influence

5.1 Social Partners and Industrial Relations

The six countries present a variety in terms of labour law and industrial relations and represent the Continental-European labour law and industrial relations system (France and Germany), the Southern-European labour law and

industrial relations system (Italy and Spain), the Eastern-European labour law and industrial relations system (Poland), and the Nordic labour law and industrial relations system (Sweden). The labour law and industrial relations systems differ in various ways in relation to, for example, the importance of legislation, collective bargaining, and employment contracts, state influence or voluntarism, trade unionisation, employer organisation, and collective bargaining coverage, and employee representation and influence (Section 2).

Italy and Sweden represent the Southern-European and the Nordic system, respectively, but share a strong emphasis on voluntarism, collective autonomy, and a private law approach and contractual regulation of terms and conditions of employment through collective agreements and employment contracts. For example, in Sweden and Italy, most of an employee's terms and conditions of employment, including wages, are set by collective agreements, and there is no minimum wage legislation or system for extension of collective agreements. In Sweden, autonomous collective bargaining is complemented, and strengthened, by statutory regulation on trade unions, collective bargaining, and employee influence, including information, consultation, and co-determination. In addition, most statutory regulation is "semi-compelling", and provides room for deviations by way of collective agreements. France and Spain represent the Continental-European and the Southern-European system, respectively. In France, in similarity with Spain, labour law and industrial relations are characterised by a legalistic tradition, extensive statutory regulation in working life and on trade unions, collective bargaining, and employee influence, and state intervention in industrial relations. In France, there is minimum wage legislation, and a statutory system for extending collective agreements, resulting in an almost complete collective bargaining coverage of care workers. In recent years, state intervention and statutory reform have reframed the system of employee representation and influence and introduced a compulsory division of collective bargaining topics between company and industry levels. In Germany, which represents the Continental-European system, labour law is influenced by a legalistic tradition and characterised by an elaborate constitutional and statutory framework for collective bargaining and employee influence and workplace co-determination. At the same time, there is strong emphasis on collective autonomy and collective bargaining. There is a system in place for extending collective agreements, but in recent years fewer collective agreements have been declared generally binding. Minimum wage legislation was introduced in 2015, in response to an "erosion of collective bargaining". In Poland, which represents the Eastern-European system, labour law and industrial relations have been influenced by the processes of democratic transformation, EU enlargement, and marketisation, resulting *inter alia* in fragmented collective bargaining.[27]

[27] See also Rönnmar et al., "Trade Union Participation," 211–38 and Andrea Iossa, *Collective Autonomy in the European Union. Theoretical, Comparative and Cross-border Perspectives on the Legal Regulation of Collective Bargaining* (Lund: Lunds universitet, 2017).

There is a multitude of trade unions, employer's organisations, and other social actors in the care sectors of the six countries. This multitude is related to the national context and the dynamics and characteristics of the care sector, including the balance and interaction between the public and private care sector. The industrial relations system also plays an important role, including the adversarial or cooperative character of social partner relations, strategies of trade unions and employer's organisations, and traditions of labour market organisation and trade union structures, including aspects of trade union pluralism and trade union demarcation (e.g. industrial or craft trade unions, blue-collar, white-collar, professional or general trade unions, political or religious affiliations of trade unions, and the existence of "yellow trade unions").

There are varying trade unionisation rates in the six countries. With reference to a leading industrial relations database, the OECD and AIAS, Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS), and from a comparative perspective, the trade unionisation rate can be described as low in France, Germany, Poland, and Spain, as medium-high in Italy, and as high in Sweden. Similarly, the collective bargaining coverage rate can be described as restrictive in Poland, as medium-high in Germany, and as extensive in France, Italy, Spain, and Sweden. The collective bargaining coverage rate is related *inter alia* to the legal framework of collective bargaining, the legal effects of collective agreements, and existing mechanisms of extension of collective agreements (Section 5.2).[28]

In general, there is a minor influence of the social partners in the labour market in Poland (although, there is an element of tripartite social dialogue), and a major influence of the social partners in the labour market in France, Germany, Italy, Spain, and Sweden. At the same time, in some countries, such as Italy and Spain, the influence of the social partners in the care sector is less than the general influence of social partners in the labour market, due to, for example, a lower rate of trade unionisation of care workers and the specific conditions of, and related risks in, for example, domestic care work and live-in-care (Section 4).

5.2 Fundamental Trade Union Rights, Collective Bargaining, Employee Influence, and Whistleblowing

The ILO, the Council of Europe and the EU provide a strong and common fundamental rights framework for fundamental trade union rights, including freedom of association, right to collective bargaining, right to collective action, and employee representation and influence. Throughout the years, national law and international and EU/European law in this area have interplayed in complex ways. Fundamental trade union rights have been challenged by political, soci-

[28] See OECD and AIAS, *Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts* (OECD Publishing, 2021), <www.oecd.org/employment/ictwss-database.htm>.

etal, and economic developments, and case law and decisions from international and EU/European courts and supervisory bodies have shaped, and re-shaped, the content and strength of these fundamental trade union rights (Section 3).

Fundamental trade union rights, and aspects of freedom of association, collective bargaining, collective action, and employee influence, are also subject of elaborate national constitutional, statutory, and collective bargaining regulation of varying content and strength in the six countries.

Regulation on trade unions includes issues of freedom of association, formation and representativeness of trade unions, and internal affairs of trade unions. The representativeness of trade unions can be the subject of statutory regulation, as in France, or, as in Sweden, there can be minimal formal requirements for forming a trade union, and recognition of trade unions can be automatic. Furthermore, regulation on rights to time-off, training, and practical facilities for trade union representatives provides important support for trade union organisation and activities. In the care sector the right to collective action may to varying degrees be subject to restrictions with reference to the important societal role played by care work and the notion of essential public services (for example, in France and Italy) or the notion of industrial conflict which threatens public interest (in Sweden).

EU law provides some regulation of collective bargaining, by way of the European social dialogue framework and the provisions on measures to promote collective bargaining in the Directive on adequate minimum wages in the EU. There is a statutory legal framework of collective bargaining in the six countries and regulation on the right to, and sometimes, as in France, an obligation of, collective bargaining, and provisions on actors, processes, and outcomes of collective bargaining. Collective agreements have normative and binding effects, although the specific regulation and definitions and legal effects of collective agreements vary between the countries. There are systems for extension of collective agreements in France, Germany, Poland, and Spain. Multi-employer collective bargaining exists, or dominates, in France, Germany, Italy, Spain, and Sweden, while single-employer collective bargaining prevails in Poland. Decentralisation developments influence collective bargaining in several countries, in both "organised" forms (for example, in Sweden) and "disorganised" forms (for example, in Poland).[29] The collective bargaining coverage rate varies from restrictive (in Poland), to medium-high (in Germany), to extensive (in France, Italy, Spain, and Sweden) (Section 5.1). Collective bargaining plays a minor role in regulating the care sector and care work in Poland, and a major role in regulating the care sector and care work in France, Germany, Italy, Spain, and Sweden, although collective bargaining in the care sector is fragmented in some of these countries, in Germany, Italy, and Spain.

[29] See Tros, *Pathways in Decentralised Collective Bargaining in Europe* and Franz Traxler, "Farewell to labour market associations? Organized versus disorganized decentralization as a map for industrial relations," in *Organized Industrial Relations in Europe: What Future?* edited by Colin Crouch, and Franz Traxler (Aldershot: Dartmouth Publishing, 1995), 3–19.

In France, Germany, and Sweden, for example, collective agreements are legally binding, both for the contracting parties and for their members. In Sweden, an employer bound by a collective agreement is obligated to apply this agreement to all employees, irrespective of trade union membership. Furthermore, unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement may not deviate from it by way of an individual employment contract. In France, and Germany, as in many other countries, deviations from the collective agreements are permissible if they are favourable to the employee. Furthermore, in Germany the dual-channel model of employee representation and influence (see below) also results in a dual structure of collective agreements, i.e. a collective agreement (*Tarifvertrag*) concluded between a trade union and an employer/an employer's organisation and a works agreement (*Betriebsvereinbarung*) concluded between a works council and an employer, where collective agreements take precedence. Overall, in the six countries, the relation between collective agreements at various levels and between collective agreements and other workplace agreements are determined by way of statute, collective bargaining, or case law on, for example, principles on the binding effect of the collective agreement, favourability, opening clauses, and derogations.

The national reports provide a systematisation and discussion of the national systems of collective bargaining in the care sector and existing collective agreements.[30]

EU law provides regulation on employee representation and influence and specific provisions on information, consultation, and employee participation in, for example, the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation. There is statutory regulation of employee representation and influence in the six countries, with complementary collective bargaining regulation in some countries (for example, in Sweden). The national models for employee representation and influence, as well as the regulation and its content, differ in the six countries. In a single-channel model, as in Sweden, employee influence is channeled only through trade unions. Here, trade unions both negotiate and conclude collective agreements on wages and other terms and conditions of employment at various levels, and take part in information, consultation, and co-determination at workplace level. In a dual-channel model, as in France, Germany, Italy, Poland, and Spain, employee influence is channeled both through trade unions and works councils (or similar bodies). In addition to trade unions, the following works councils or similar bodies take part in employee influence: social and economic committees in France, "Workplace Union Structure" (RSA)[31]

[30] In Sections 6 to 9 of this comparative report the discussion on national developments includes aspects of substantive collective bargaining regulation on working conditions.

[31] According to Italian labour law scholarship, the RSA is conceived as a single-channel representation, since it can be established upon employees' request, but only within the context of trade unions that have negotiated or concluded a collective agreement within the company.

or "Unitary Workplace Union Structure" (RSU) in Italy, and works councils in Germany, Poland, and Spain.

In France there has been a statutory reform of employee representation and works councils, and in Poland, the impact and activities of works councils are limited. In countries with dual-channel models of employee influence the relation between trade unions and works councils at company-level can differ and be characterised either by collaboration or by competition and conflict. This in turn may impact on trade union activity and strength, and company-level collective bargaining.[32]

Whistleblowing can fill an important function in the care sector to bring attention to problems, risks, and signs of corruption and breaches of the law, which in turn may impact negatively on the quality of care and on the protection and quality of working conditions of care workers and on the rights of care recipients and care workers. In addition to international, EU/European, and national-constitutional protection of freedom of expression, EU law provides some whistleblowing protection through the Whistleblowing Directive, which has been implemented in national law. In some countries, for example, in France and Sweden, additional protection for whistleblowers is offered by statute and/or by case law principles on the employee's right to criticise the employer, whistleblowing about health and safety at work, and by general employment protection.

6. Employment Status, Flexible Forms of Employment, and Employment Protection

Employment status, and the legal notion of an employee, is of key importance, as it defines the scope of labour law protection. EU law, and the personal scope of EU Directives, relate in differing ways to the autonomous EU notion of a worker, to the national notions of an employee, and to the new "hybrid" notion of worker (Section 3). There is extensive labour law scholarship on the employment status, and critical debate on the relevance of the employment status and the need to extend the scope of labour law to cover precarious and vulnerable groups of workers.[33]

There is a statutory definition of the notion of an employee in France, Germany, Italy, Poland, and Spain, whereas the definition is only case-law-based in Sweden. According to the national reports, care workers are mainly employees in all six countries. At the same time, in some countries, there is debate on "bogus self-employment" in parts of the care sector and on the employment status of certain categories of care workers. In Germany, for example, there is debate on

[32] See Rönnmar et al. "Trade Union Participation," 211–38.

[33] See e.g. Bernd Waas and Guus Heerma van Voss, edited by, *Restatement of labour law in Europe.* Volume I, *The concept of the employee* (Oxford: Hart Publishing, 2017), Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford: Oxford University Press, 2011), and Guy Davidov and Brian Langille, edited by, *Boundaries and Frontiers of Labour Law. Goals and Means in the Regulation of Work* (Oxford: Hart Publishing, 2006).

the employment status of care workers in the live-in-care sector. In Poland, care workers can be both employees and self-employed and there is current concern about the incidence of "bogus self-employment" in the care sector.

EU law regulates flexible forms of employment through a number of EU Directives. Part-time, fixed-term, and temporary agency work are frequent forms of flexible employment, both in the labour market as a whole, and in the care sector and in care work. The Part-Time Work Directive, Fixed-Term Work Directive, and Temporary Agency Work Directive are linked to the EU flexicurity discourse and combine the promotion of flexible employment with protection of flexible employees. At the same time, these forms of flexible employment also have specific characteristics. Part-time work, in the six countries studied and in the European labour market in general, is also—and perhaps more importantly—closely connected to the gendered governance of labour markets and gendered care work practices. In EU gender equality law, these gendered patterns of part-time work have over the years, and in landmark judgments from the Court of Justice of the European Union, successfully been legally challenged as indirect sex discrimination.[34] In some of the countries, for example, Italy, part-time work is, from a legal-systematic perspective, viewed as working time regulation. The Directive on Transparent and Predictable Working Conditions, which is more recent, adds to these three Directives, and aims at increasing the protection for precarious groups of flexible employees, including on-demand workers, workers with zero-hours contracts, and digital platform workers.

The national reports present rich information and discussion on the regulation and labour market incidence of these flexible forms of employment. There is a major element, and high incidence, of these flexible forms of employment in the care sector in all six countries. The national statutory regulation varies in content and "legal strictness" as regards the access to these flexible forms of employment. In several countries, collective bargaining regulation complements the statutory regulation. Furthermore, in some countries, for example, in Sweden, the legal regulation, by way of statute, collective bargaining, or case law principles, allow for on-demand work and zero-hours contracts. In Italy, collective agreements may regulate, as mandated by law, specific aspects of flexible forms of employment, and for instance specify the grounds on which an employer may enter into a fixed-term employment contract with an employee. Here, flexible employment contracts are subject to the same economic and regulatory provisions as those applicable to standard employment contracts, to the extent that they are compatible. In Spain, a regulation adopted in 2021 has resulted in a considerable reduction in the number of fixed-term employment contracts. In Sweden, temporary agency work is covered by collective bargaining and well-integrated into the labour law and industrial relations system. Temporary agency work is utilised in the Swedish care sector, especially as regards nurses and medical doc-

[34] See e.g. Case C-96/80 *Jenkins* [1981] ECR 911 and Case C-170/84 *Bilka-Kaufhaus* [1986] ECR 1607. See also further CARE4CARE WP3.

tors. However, there is current debate on this use of temporary agency work and on whether it is an effective way to address staff shortage, talent management, and labour market inclusion in the care sector.

EU law only partly regulates employment protection, for example, by way of the Fixed-Term Work Directive, the Directives on Transfers of Undertakings and Collective Redundancies, and various non-discrimination directives, which ban discriminatory dismissals.[35] Employment protection regulation is also underpinned by a fundamental rights framework, including the ILO Termination of Employment Convention No 158, Article 24 of the Council of Europe revised European Social Charter, and Article 30 of the EU Charter of Fundamental Rights.

In all six countries, there is statutory regulation of employment protection, with complementary collective bargaining regulation in some countries. The national reports provide rich information and discussion on the main elements of the employment protection regulation. There is varying regulation on summary dismissals, dismissals for personal reasons, dismissals for reasons of redundancy, and collective dismissals. The employer obligations in the context of dismissals differ and relate to the strictness and interpretation of the just cause-requirement for dismissal, the obligation to provide alternative work, training, and rehabilitation, and the obligation to apply selection criteria, including e.g. seniority principles, in dismissals for reasons of redundancy and collective dismissals. In France, for example, there are extensive employer obligations in the context of dismissals and different rules apply in the public (civil service) and private sector. In Italy, varying rules apply depending on the size of the enterprise and whether it is public or private. In the case of individual employers and home-caregivers some employer obligations are less strict. In Poland, the employer obligations are rather extensive, and in Sweden a major recent employment protection reform, where legislation and collective bargaining interact in interesting, and debated ways, has partly re-shaped the regulation of dismissal for personals reasons and of redundancy. The form and strength of employee influence in dismissal situations differ between the countries and are also linked to the single- or dual-channel model of employee representation and influence in the country (Section 5).

7. Wages and Benefits

The national reports provide rich information on the regulation of wages and various benefits in the care sector, including wage levels and minimum wage levels for care workers and various care occupations, as well as information on the national minimum wage regulation and debate and impact of the Directive on adequate minimum wages in the European Union.

[35] See also Mia Rönnmar, "Fixed-term and zero-hours contracts," in *Oxford Handbook of the Law of Work*, edited by Guy Davidov, Brian Langille, and Gilian Lester (Oxford: Oxford University Press, forthcoming) and Bernd Waas, edited by, *Restatement of labour law in Europe*. Volume III, *Dismissal protection* (Munich: Beck, 2023).

In the six countries, there is statutory, collective bargaining or employment contract regulation of wages and other benefits, or a combination of these forms of regulation, and various processes of wage formation and wage coordination. In Italy, the Constitution forms a legal basis upon which collective bargaining and employment contracts regulate wages and other benefits. In Spain, statutory, collective bargaining, and employment contract regulation wage regulation interact. The statute sets the key wage concepts and recognises the right to a minimum wage, and collective agreements regulate the wage structure and wage levels. The collective agreement is binding on the employment contract, and provisions in the employment contract can improve on wages and benefits in favour of the employee. In Sweden, the so-called "industry mark" links wage increases in the labour market to wage increases set by national, sectoral collective agreements in the industrial export sector, and functions as a cross-sectoral mechanism for collective-bargaining coordination. However, the "industry mark" is criticised from the perspective of gender (in)equality by scholars and trade unions in female-dominated sectors, including the care sector.[36]

The national reports confirm previous research and concerns that wage levels and minimum wage levels for care workers in Europe are low (Sections 3 and 4). This also relates to ongoing policy and labour law scholarly discussion on the working poor in the EU and the ways in which minimum wage regulation and other measures can effectively address this problem.[37]

In France, Germany, Poland, and Spain there is statutory regulation of minimum wages, and in Italy and Sweden there is collective bargaining regulation of minimum wages (however, in Sweden, not all collective agreements contain minimum wage provisions). In France, statutory minimum wage was introduced in the 1950s. In Germany, despite a traditional strong emphasis on collective bargaining autonomy, statutory minimum wage was introduced in 2015 as a response to industrial relations developments and an "erosion of collective bargaining".

The Directive on adequate minimum wages in the EU establishes a framework for setting adequate levels of minimum wages and access of workers to minimum wage protection and includes provisions on measures to promote collective bargaining. Although the Directive includes guarantees for national systems of industrial relations built on autonomous collective bargaining, such as Italy and Sweden (cf. Article 1.1.–1.3.), the proposal was strongly opposed by, for example, Sweden and Denmark, where it was seen as a threat to the autonomous collective bargaining system.

[36] See Mia Rönnmar and Andrea Iossa, *CODEBAR. Comparisons on Decentralised Bargaining: Towards New Relations between Trade Unions and Works Councils? Swedish Country Report* (2022), <https://researchportal.hkr.se/ws/portalfiles/portal/46623344/codebar_sweden_website_version.pdf> (Accessed Month June 25, 2024).

[37] See e.g. Luca Ratti, edited by, *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Alphen aan den Rijn: Kluwer Law International, 2022; Bulletin of Comparative Labour Relations 111).

The national reports reflect the varying debate on and legal and industrial relations impact of the Directive in the six countries.[38] At the beginning of 2023, a proposal was made in Italy to introduce statutory regulation of minimum wages. However, this proposal, linked to discussions on the implementation of the Directive, opposed by the government, was rejected by the parliament following also a negative opinion of the National Economic and Labour Council (CNEL). In Sweden, a Government Inquiry set to review measures to implement the Directive has concluded that Swedish law basically fulfils the requirements of the Directive and that no introduction of statutory minimum wages or other legal reforms are necessary.

8. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

Working time, leave, and health and safety represent core aspects of job quality and working conditions. There is important EU law regulation, by way of EU Directives, in these areas, and dynamic development in the case law of the Court of Justice in recent years, specifically in relation to working time regulation and the fundamental right of fair and just working conditions in Article 31 of the EU Charter of Fundamental Rights.[39]

The national reports provide rich information and discussion on regulatory and practical aspects on these topics, both in the labour market in general and in the care sector in particular, in the six countries. There is statutory and collective bargaining regulation on working time and leave in the six countries. The current, and sometimes contentious, discussion in various national contexts relates to issues, such as working time allocation, including daily and weekly rest, on-call work, and inconvenient hours, part-time work, and over-time work. In the area of leave, statutory and collective bargaining regulation specify rights and legal and practical conditions of, for example, annual leave and parental, maternity, and paternity leave. In France, labour inspection plays an important role in enforcing working time regulation. The working time regulation in Italy entails some particular provisions and limitations for home caregivers. In Sweden, working time aspects of daily rest are high on the agenda, and collective bargaining regulation, for example, in the public care sector, has undergone reform in response to a legal challenge from the European Commission and claims that Swedish collective agreements contravened the Working Time Directive.

There is statutory and collective bargaining regulation on health and safety in the six countries. EU and national health and safety regulation aims at the elimination of risk and at proactive measures to ensure the safety and health of

[38] See also Luca Ratti, Elisabeth Brameshuber, and Vincenzo Pietrogiovanni, edited by, *The EU Directive on Adequate Minimum Wages. Context, Commentary and Trajectories* (Oxford: Hart Publishing, 2024).

[39] See e.g. Alan Bogg and Michael Ford, "Article 31," in *The EU Charter of Fundamental Rights: A Commentary*, edited by Steve Peers et al. (Oxford: Hart Publishing, 2021[2]), 875–922.

workers. The national reports provide rich information and discussion on the regulation of health and safety, including employee influence, employer obligations, physical and psychosocial work environment risks, violence and harassment at work, stress and workload, and proactive measures. The regulation and practices of employee influence play a key role in health and safety and there are varying forms of employee influence in the countries, for example, through local health and safety representatives, trade union representatives, or works council representatives. In Germany, for example, there is also an involvement of health and safety specialists. The current discussion in various national contexts relates to health and safety aspects, such as stress, workload, long working hours, and violence and harassment. The risk of violence and harassment is prevalent especially in domestic care work and live-in-care (Section 4). Here, there are important links between health and safety regulation and non-discrimination regulation, and the ILO Convention on Violence and Harassment No 190 may play an important role. In Spain, statutory health and safety protection was recently extended to domestic workers and there are widespread risks of violence and sexual harassment in the Spanish domestic care sector.

The COVID-19 pandemic had an important impact on the care sector and care workers. The national reports discuss the short-term and long-term implications of the COVID-19 pandemic for working conditions and job quality of care workers. Care workers were negatively affected by the COVID-19 pandemic in multiple ways and there are some remaining effects in the care sector, such as staff shortage and stress.[40] In France, one effect of the COVID-19 pandemic is a future focus on health and safety risk assessment and prevention of spread of infection. In Italy and Germany domestic care workers were excluded from some protections in the COVID-19 pandemic.

The social partners, social dialogue, and collective bargaining played a major role in the handling of the COVID-19 pandemic in Sweden, a moderate role in Italy (e.g. in establishing COVID-19 health protocols), and a minor role in France, Germany, Poland, and Spain. In Sweden, for example, quick and flexible adaptations to national, sectoral collective agreements were made in the pandemic and crisis management agreements were put in place in the public health-care sector.[41]

Training and competence development is of key importance not only for the job quality in care work but also for the quality of the care provided. There are multiple perspectives of training and competence development and crucial links to the general educational system, to life-long learning, active labour market policy, and job transitions, and to rights of competence development and training on the job within the framework of the employment contract.

Training and competence development also relate to the current debate on skills and staff shortage and the overall, and important role of education, train-

[40] See also, for example, ILO, *Social Dialogue Report 2022* and Rönnmar and Hayter, *Making and Breaking Gender Inequalities*.

[41] See Rönnmar and Iossa, *CODEBAR*.

ing and competence development for general talent management and recruitment in the care sector. There is statutory and collective bargaining regulation of training and competence development in the six countries and rich information in the national reports on various national traditions and practices in this area.

9. Social Security Coverage and Benefits

Labour law and social security law have close links. Social security has developed as part of industrial society and is complementary to, and dependent on, wage work. Social security provides protection against risks and maintenance in situations in which a person is unable to earn a living through wage work, owing to, for instance, old age, sickness, unemployment or childbirth.[42]

In the EU, the substantive content of social security is, in principle, a matter for the respective Member States and national legislation. However, the coordination of social security in the EU and between the Member States was implemented early on as a way to facilitate the free movement of workers.[43] Through soft law and the open method of coordination, various welfare state, social policy, and social security aspects are also being coordinated, for example, as regards health care, long-term care, and pensions.

The six countries present a variety of welfare state and social security systems. All countries but Sweden reflect a family-based welfare model. Furthermore, France, Germany, and Poland mainly represent the Bismarck system, Italy and Spain represent a mix of the Bismarck and Beveridge systems, and Sweden represents the Scandinavian system (Section 2).

The national reports contain rich information and discussion on the regulation of social security, including the main characteristics of the national social security system, the social security coverage, a number of social security benefits, including pensions, sickness insurance, unemployment insurance, and parental benefits, and the complementary role of collective bargaining.

In principle, the social security coverage is extensive in all six countries. However, for example, in Italy, the coverage is somewhat limited for home caregivers. In Spain, the coverage of the unemployment insurance was recently extended to domestic workers as a result of case law from the Court of Justice. In the landmark judgment *CJ v Tesoreíra General de la Seguridad Social (TGSS)*[44] the Court of Justice found that the exclusion of domestic workers from access to Spanish statutory unemployment benefits was contrary to EU law and constituted indirect discrimination on grounds of sex according to Article 4(1) of Directive on

[42] See Anna Christensen, "Normativa grundmönster i socialrätten," *Retfaerd* 78 (1997), and Anna Christensen, "Normative Patterns and the Normative Field: A Post-Liberal View on Law," in *From Dissonance to Sense. Welfare State Expectations, Privatisation and Private Law*, edited by Thomas Wilhelmsson and Samuli Hurri (Aldershot: Ashgate, 1999).

[43] See Regulation 883/2004 (OJ [2004] L 166/1). See also Frans Pennings, *European Social Security Law* (Antwerp: Larcier Intersentia, 2022[7]).

[44] See *CJ v Tesoreíra General de la Seguridad Social (TGSS)*, Case C-389/20.

gender equality in matters of social security.[45] This is an important judgment on rights of domestic workers and domestic care workers also from a general perspective. It illustrates how EU gender equality law can be used to challenge the exclusion of domestic workers from social security and labour law protection. In addition, there is an important interplay between EU and international law in this area. In his Opinion, Advocate General Szpunar explores the link to the international legal framework, and explicitly refers to the ILO Domestic Workers Convention No 189 (para. 104).[46]

Social security regulation in the six countries include benefits in the areas of pensions, sickness insurance, unemployment insurance, and parental benefits. However, the qualification requirements, benefit levels, and lengths of payment periods vary depending on the national regulatory framework.

In Sweden, collective bargaining has a major and complementary role in social security. Collective agreements regulate various social security benefits, including, for example, pension, sickness, and parental benefits, and collective bargaining often improve upon statutory levels of compensation. In France, Germany, Italy, Poland, and Spain, collective bargaining has a minor role in social security. In France, collective bargaining provides some supplementary coverage as regards health and retirement, in Germany, collective bargaining is relevant around occupational pensions, and in Italy, collective bargaining plays a minor role, and this is especially the case as regards individual employers and small businesses.

10. Concluding Remarks

This comparative report analyses job quality and inclusive working conditions of care workers in France, Germany, Italy, Poland, Spain, and Sweden. The focus of the comparative analysis is on labour law, but also includes aspects of industrial relations, policy, and labour market characteristics, and the interplay between national law and EU/European and international law.

The analysis highlights core labour law topics and a multitude of similarities and differences between the six countries as regards care work and domestic care work (Section 4), legal and policy frameworks (Section 3), industrial relations, collective bargaining, and employee influence (Section 5), employment status, flexible employment, and employment protection (Section 6), wages and benefits (Section 7), working time and health and safety (Section 8), and social security (Section 9).

[45] Directive 79/7/EEC.

[46] See also Mia Rönnmar, "Court of Justice of the European Union (Third Chamber) CJ v Tesoreíra General de la Seguridad Social (TGSS), Case C-389/20," *International Labour Law Reports* 42 (2023): 59–72 and Elisa Chieregato, "The role of EU law in challenging the unjustified differential treatment of domestic workers: An analysis of the Court of Justice decision in CJ v Tesorería General de la Seguridad Social (TGSS) (C-389/20)," *European Law Review* 47, 6 (2022).

The international and EU/European legal and policy framework forms an important common basis for the labour law regulation of the care sector and various aspects of care work. High-level policy discussion on the care economy, in and after the COVID-19 pandemic, has highlighted the importance of care work. Developments in the ILO connected to the fundamental right of occupational safety and health and the Conventions on domestic work and violence and harassment at work have further highlighted challenges in care work and domestic care work and improved national regulation. Similarly, EU law regulation, and important case law developments in the Court of Justice, in the areas of, for example, fundamental rights, flexible forms of employment, working time, minimum wage, and gender equality, have challenged national regulation and practices and resulted in increased protection and improved working conditions for domestic care workers and care workers.

The comparative analysis reveals current debates and future challenges for the care sector and care workers in the six countries, including, for example, staff and skills shortage, health and safety concerns, risks of exploitation, discrimination and vulnerability of domestic care workers, live-in care workers, and care workers in undeclared work, low rates of trade unionisation, fragmentation and low coverage of collective bargaining in some parts of the care sector, high incidences of flexible, often precarious, forms of employment, and low wage levels.

At the same time, national developments and the overall discussion highlight a number of best practices and potentials for innovation in the improvement of working conditions of care workers. Furthermore, the analysis displays how national developments, regulation, and policy are closely interconnected with the characteristics of labour law and industrial relations systems, welfare state and social security systems, and care sector dynamics, and follow patterns of path dependency.

The comparative analysis confirms the crucial role of the care sector and care work in light of ongoing societal transformation.

One key area in moving forward is the promotion of employee representation and influence for care workers and the strengthening of collective bargaining and social dialogue at both EU and national levels.

Another key area is effective enforcement of care workers' protection and working conditions. In this context, the characteristics of the national systems of labour law, industrial relations, and social security must be taken into account, and processes of industrial relations, administrative, and judicial enforcement be combined.[47]

Lastly, the development of digitalisation, AI, and new technology, involving aspects, such as E-health and remote care, presents both an important future potential and challenge for the care sector and for care work. In order to promote

[47] See Jonas Malmberg, "Effective Enforcement of EC Labour Law: A Comparative Analysis of Community Law Requirements," *European Journal of Industrial Relations* 10, 2 (2004): 219–29.

improved working conditions, job quality, and care quality in this context, it is imperative to engage employers, care workers, social partners and other social actors, and to take health and safety concerns into account.

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CHAPTER 2

French Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Isabelle Daugareilh, Guillaume Santoro, Haoussetou Traore

1. Introduction

1.1 Characteristic Features of the Law Applicable to Employment Relationships in France

French law is marked by the distinction between public law and private law, the former governing relations between the State, its employees and users, the latter applying to relations between natural and/or legal persons, including those between companies and their employees. As *care* workers may be employed by both public and private establishments, we will present the features of labour law (1.1.1) and those of civil service law (1.1.2) in turn, even if we come to emphasize the strong similarities between the two types of legislation.

1.1.1 Essential Features of French Labour Law

Labour law in France has several characteristics. It is codified (1.1.1.1); its personal scope of application is limited and variable (1.1.1.2). Historically, labour law has been imperative and protective of employees, but today it has been deconstructed in favour of contractual arrangements in the interests of companies (1.1.1.3). *Care* workers occupy an unfavourable position in the Labour Code, compensated for by a body of conventional law that is admittedly complex, but which compensates for the legislator's lack of interest in these workers, who were nonetheless considered essential not so long ago during the pandemic (1.1.1.4).

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1.1.1.1 A Codified Legislation Characterised by Strong State Interventionism and a Plurality of Sources

Codified labour law[2] brings together laws, regulations and decrees covering virtually every aspect of the employment relationship.[3] It is a law that stems from strong State interventionism, with the law being the primary source of workers' rights. However, it is made up of various sources subject to the principle of hierarchy and public social order. In addition to the law (including the Constitution and the Labour Code), the other sources of law are: collective labour agreements internal regulations, custom and the employment contract. These sources are governed by the principle of hierarchy, according to which an inferior source cannot, in principle, derogate—*in peius*—from a superior source unless authorised by a special law. The French legal system is monistic. Consequently, as soon as international standards are ratified, they are automatically incorporated into the domestic legal system. France (the second-largest ILO member state in terms of conventions ratified—130 out of 191, including 10 out of 11 fundamental conventions) has not ratified International Convention 189 on domestic work. It has just ratified Convention 190 on violence and harassment at work.

1.1.1.2 A Limited Personal Scope and Variable Geometry

It is a legislation with a limited personal scope.[4] It applies to paid employment relationships. Certain parts of the Labour Code are also applicable to staff of public legal entities employed under private law conditions. Public law contractual employees and civil servants are governed by civil service law (see below). This will therefore be the case for workers employed by a public health and social care establishment (EPHAD for the elderly, for example). All other *care* workers are governed by the Labour Code and the collective agreements to which their company is subject.

It's a binary legislation with variable geometry. French employment law operates on the basis of a binary distinction between salaried work and self-employment. There is no 3rd category or third status. To this end, labour law governs the relationships arising from an employment contract between employers and employees, whose position of weakness/inequality calls for a specific regime. The purpose of employment law is therefore to provide a framework for the relationship of legal subordination between an employee and an employer, by limiting the imbalance between the parties to the employment contract—while legitimising the employer's powers, in the name of freedom of enterprise and property rights in particular.

[2] All references to a Code in this report refer to French Code.

[3] The Code is divided into 8 parts: 1. Individual employment relations, 2. Collective employment relations, 3. Working hours, pay, profit-sharing and employee savings schemes. 4. Health and safety at work, 5. Employment, 6. Lifelong vocational training, 7. Provisions specific to certain professions and activities, 8. Monitoring the application of labour legislation.

[4] Article L.1111-1 of the Labour Code: private-sector employers and their employees.

There is, however, a Part VII of the Labour Code devoted to certain professions and activities, including those of domestic employees and personal services in Titles II and III of Book II of Part VII respectively. Title III defines personal services as follows: "childcare; assistance for the elderly, disabled or other people who need personal help in their own home or mobility assistance in the local environment to help them stay at home". The Borloo law clarified and extended the scope of personal services by defining an exhaustive list of 21 activities set out in the decree of 29 December 2005. The main aim of the Borloo law was to create jobs while improving working conditions and employee qualifications in the personal services sector, while simplifying access to the services on offer (support and development of national brands to make it easier to match supply and demand and creation of the national personal services agency; simplification of the approval procedure, etc.) and the creation of new services and tax benefits (CESU). The Borloo law has also encouraged the social partners to open negotiations on working conditions and access to vocational training (job descriptions, recognition of new jobs, contribution to vocational training, acceleration of VAE, etc.).

Associations that place workers with individuals who are employers and carry out administrative formalities and social security and tax declarations relating to the employment of these workers on behalf of these individuals only act as agents, as the individuals are the sole employers of the workers.[5] These organisations must obtain authorisation from the competent administrative authority to carry out these provision of services activities; they must carry out this activity on an exclusive basis. The system of compulsory authorisation for agent organisations created by law no. 2002-2 of 2 January 2002 was simplified by law no. 2005-841 of 26 July 2005 on the development of personal services and various measures to promote social cohesion (JO no. 173 of 27 July 2005), known as the Borloo law. Following this law, article 4 of Ordinance no. 2005-1477 of 1st December 2005 relating to the right of option, various provisions relating to procedures for admission to social assistance and social and medico-social establishments and services puts an end to the procedures relating to the quality approval (Labour Code) and authorisation required of home help service providers (assistance for families, the elderly and the disabled: CASF). From now on, these services will have the right to choose between the two systems, and authorisation will be equivalent to approval if the condition of exclusive activity is met and certified by the President of the General Council. This relaxation of the authorisation system has the effect of distorting the analysis of the home help sector by increasing competition between the various structures involved in the care sector, i.e. associations, for-profit companies and direct employment by private individuals.[6]

[5] Cass. soc. 23 November 2005, *RJS* 281 (2006): 167; *Dr. soc.* 2 (2006): 217, *obs.* Gauriau.

[6] According to Bernard Ennuyer, "Allowing companies wishing to support frail populations to opt out of the compulsory authorisation mechanism introduced by the 2002-2 law by introducing a right of option between authorisation and quality accreditation (2005

The rules on minimum wage apply to home workers employed by private individuals; this is not the case for the legal rules on working hours (including the definition of actual work) covered by the national collective agreement for private individuals and home workers. The only applicable rules of the Labour Code are those relating to moral harassment, May Day, paid leave and leave for family events, family solidarity and caregiving, medical surveillance, the employer's safety obligations and undeclared work. In addition, Title IV of this same section of the Labour Code applies to self-employed workers using an electronic contact platform. In reality, apart from the reminder of the right to freedom of association and trade union action, the text excludes these workers from the protection of employment law.[7]

Individual disputes arising from employment contracts are settled by a specialised court, the Conseil des prud'hommes (industrial tribunal) in the first instance, and then by the social divisions before the Court of Appeal and the Court of Cassation. The Conseil des prud'hommes is a court made up of lay judges elected by their peers every 4 years on a trade union list. It is made up of sections, one of which, called "Various activities", will receive claims from workers and employers in the care sector.

1.1.1.3 A Historically Imperative and Protective Legislation Now Deconstructed in Favour of Company's Interests

In very broad terms, after a long period of construction and continuous progress generally in favour of workers (from 1841 to 1981), labour law went through a period of extension of the role of collective bargaining to company level (Auroux laws 1981-2000) and at the same time of flexibilisation of working and employment conditions (1990-2000) to end up undergoing a period of deconstruction (2002 to the present day) during which several legal reforms, in the name of modernising the labour market and reducing the cost of labour and social expenditure, have reduced public order and reduced the areas in which the law is imperative, leaving room for collective agreements at company and/or branch level. This process of deregulation/re-regulation has not been without social conflict and massive resistance organised as a unit by the trade unions (2006 against the CPE, 2016 against the El Khomri law, 2017 against the Macron ordinances, 2022 against pension reform). One of the areas hardest hit by this process is undoubtedly that of working hours and working time (laws of 20 August 2008 and 8 August 2016).

Ordinance) has created a distortion in the control of services for frail people by the public authorities, since authorisation gives the latter, in this case the General Council, the power to charge for the service and therefore to control its budget"; cfr. B. Ennuyer, "Les services de maintien à domicile et le métier d'aide à domicile, quel bilan après la loi Borloo de 2005," *Gérontologie et Société* 35, 142 (2012/3): 143–56.

7 Only self-employed mobility platform workers are covered by the provisions on social dialogue.

Not a year has gone by since 2013 without a major reform systematically affecting the system of sources of labour law in an inexorable trend towards strengthening conventional law at the expense of statutory law, with an irreversible trend towards decentralising collective bargaining to company and establishment level.[8] What can be said of this legislative activism except that it has succeeded, *step by step,* in imposing a reversal of sources within conventional law, while the law remains the determining factor in this rearrangement of sources. The ambition of recent governments is to renovate labour law. The Copernican revolution announced by President Macron is in fact the end of a long transformation process begun in 1982 with regard to collective bargaining, and for quite different reasons at the time.[9] What was labour law criticised for? That it was inefficient and unsuited to the challenges of globalisation, digital technology and professional transitions, according to the advocates of these reforms. Yet French labour law has been constantly evolving[10] in all its facets since the 2000s. On the other hand, the Macron reforms underpin the idea of reordering the functions and purposes of labour law not around the protection of the weaker party to the contract, but around the enhancement of competitiveness, competition and the market, in short replacing the centrality of protection—of the employee—with that of economic rationality—of the company. Labour law has always had this ambivalence, but now it should be geared towards the interests of the company and collective bargaining should be placed at the service of the employer, even if this means having agreements that are not negotiated, but proposed by the employer—in very small companies.

The laws passed during this period make substantial references to collective bargaining at cross-industry, industry or company level. Examples include, but are not limited to working time, employee savings schemes, Sunday work, Predictive management of jobs and skills (GPEC), gender equality, the generation contract, vocational training, mobility, job retention and job protection plans. If we add to this the obligations to negotiate at company or branch level, which have also multiplied, almost nothing now escapes collective bargaining. But it is not so much this extension to the entire employment relationship as the relationship between sources of law that is now problematic. As the rule of the State becomes more and more suppletive, leaving an unconstrained space for the rule

[8] Act of 14 June 2013 on securing employment, Act of 5 March 2014 on vocational training, employment and social democracy, Act of 17 August 2015 on social dialogue and employment, Act of 8 August 2016 on work, modernising social dialogue and securing career paths, and the Ordinance of 22 September 2017 - Ordinance no. 2017-1385 on strengthening collective bargaining, Ordinance no. 2017-1388 containing various measures relating to the framework for collective bargaining and Ordinance no. 2017-1718 supplementing and harmonising the provisions adopted pursuant to the Act of 15 September 2017 adopting measures to strengthen social dialogue, all ratified by the Act of 29 March 2018. The ordinances of autumn 2017 were followed by the law of September 2018 on mobility and will be followed by a reform of training and apprenticeship in 2019.

[9] See G. Géa, "Avant-propos," *Droit social* (2017): 996, sp. 999.

[10] Géa, "Avant-propos," 996, sp. 999.

of collective bargaining, company bargaining has in turn emancipated itself from the law and from the collective bargaining framework of the branch. The arrangement of the sources of law and the principle of favour which historically governed it are in fact being called into question. Perrulli[11] speaks of a trend towards the "corporatisation"[12] of industrial relations systems, profoundly affecting the traditional system of sources of labour law, causing an inversion of the pyramid of standards and a radical transformation of the historical function of collective bargaining, which was to improve the lot of workers and to provide legal support for innovations in support of social progress.

Collective labour agreements apply to all employees of companies that are members of the employers' organisations that are signatories to the agreement or collective agreement. These agreements are contractual in nature and legally binding. When the agreement is extended by the Ministry of Labour, it applies to all employees of all companies within the scope of the agreement. It then takes on regulatory status.

1.1.1.4 Remarks on the Research Methodology

The concept of *care* worker does not exist in French law; it is not a legal category. It covers two types of activity covered by the Labour Code: domestic work and personal service and assistance in the field of care. *Care* work therefore corresponds in part to domestic work when it is carried out in the home of the person receiving the service and corresponds to article 1 of ILO Convention 189 "work done in or for one or more households", a Convention not ratified by France.

The place of work is a determining criterion of the applicable legal provisions. If the work is carried out at the beneficiary's home or in a private institution, employment law will apply unless otherwise stipulated. If the work is carried out in a public institution or by public employees at home, civil service law will apply.

Employment relationships in the private *care sector* are governed by 6 national collective conventions (NCC). Here again, the place where the activity is carried out is decisive: the beneficiary's home or an institution. As far as the home is concerned, there are 3 national collective conventions (NCC) in force: one for the NCC for individual employers and home-based employment of 15 March 2021 (extended) and the other 2 applicable to legal entities pursuing a profit-making aim, the NCC for personal services companies (extended) of 20 September 2012, and, for non-profit establishments, the NCC for the home help, support, care and services sector (extended) of 21 May 2010. This distribution, the result of collective autonomy, state interventionism and the unique nature of these activities, is not common to the industrial model. The last three collective agreements have

[11] A. Perulli, "Observations sur les réformes de la législation du travail en Europe," *RDT* 3 (2015): 170–180.

[12] A neologism used by Perulli, "Observations sur les réformes de la législation du travail en Europe," 170–180, to describe the trend towards making the company a central and increasingly autonomous level for creating rules.

been extended; they therefore have regulatory status, which means that they apply to all employees of all employers within the scope of application, whether or not they are members of the signatory employers' organisations. With regard to activity in institutions, there are still 3 national collective conventions in force: the NCC for Private Non-Profit Hospitalisation, Care, Cure and Custody Establishments of 31 October 1951, which has not been extended, the NCC for Private Hospitalisation of 18 April 2002, which has been extended, and the NCC for Establishments and Services for maladjusted and disabled Persons of 15 March 1966, updated to 15 September 1976, which has not been extended.

Although company agreements have become the norm in labour law, this report will only examine the law and industry-level collective agreements. A study of company agreements would have required a different timeframe and would, in any event, have been non-exhaustive.

1.1.2 Characteristic Features of Civil Service Employment Law

Until recently, the law applicable to employment relations in the civil service was radically different from labour law. Since 2021, however, the two have been moving closer together. Some authors consider that labour law has been a direct source of inspiration for the reforms of civil service law, and some speak of the "labourisation" of the civil service. Certain parts of the Labour Code are directly applicable in the civil service (see below the section on health and safety at work). However, this approximation by attractiveness or by mimicry does not erase important differences, including those relating to status, recruitment methods or job stability. Civil service law has now been codified (1.1.2.1) and is in the process of being partly contractualised (1.1.2.2).

1.1.2.1 A legislation recently codified

French civil service law has seen a major event with the ordinance of 24 November 2021 establishing the legislative part of the General Civil Service Code. It has been announced many times since the 1983 law, but has been abandoned time and again. Since 1983, civil service law has consisted of a "pediment" law of 13 July 1983 on the rights and obligations of civil servants and three "legislative columns" covering the State civil service (law of 11 January 1984), the local civil service (law of 26 January 1984) and the hospital civil service (law of 9 January 1986). Together, these constituted the general status of civil servants in France. With the ordinance of 24 November 2021 on the General Civil Service Code, it is almost the equivalent of the Labour Code that has been adopted for the three civil services. For the time being, however, this Code only consists of its legislative part; the regulatory part therefore remains to be integrated, which is bound to raise difficulties, as it is well known that the devil is in the detail. This Code came into force on 1st March 2022; but some of its provisions, in particular those relating to staff representation bodies, did not come into force until 1st January 2023. This is a codification of the law as it stands.

The Civil Service Code applies to all civil servants who hold civil service status and to contract staff. As the number of contract staff is increasing, the risk of a "civil service bis" is avoided. This explicit extension (art. L. 5) to contract staff applies insofar as the principles and standards set out are applicable to them. The Code spells out which workers are excluded from its scope (art. L. 6). The Civil Service Code is therefore not limited to the general status of civil servants, but has a broader scope by including contractual employees. Like the Labour Code, the Civil Service Code is organised thematically into 8 Books.[13] Books II, VI, VII and VIII echo Parts II, III and IV of the Labour Code.

As this is a general code, the special statutes and employment frameworks of the State, regional and hospital civil services have been excluded from both the legislative and regulatory sections. This does not preclude the coexistence, alongside common standards, of rules specific to one of the three civil services, particularly with regard to social dialogue bodies.

The competent court in the event of a dispute between a public employee and his establishment is the administrative court (Tribunal administratif and Conseil d'État).

1.1.2.2 A Legislation Now Fully Open to the Collective Bargaining

The introduction of collective bargaining into civil service law has been a gradual process. The Act of 13 July 1983 on the rights and obligations of civil servants was the starting point for an extension of the social dialogue tools introduced in 1946 with the Act on the status of the civil service. The Act of 5 July 2010 on social dialogue in the civil service broadened the scope of matters that could be the subject of negotiation and also laid down the rules governing the legal validity of the resulting agreements. Nevertheless, the Conseil d'Etat remained faithful to its case law, according to which memorandums of understanding had no legal value.[14] Despite a burgeoning culture of discussion and negotiation, few agreements were concluded.[15]

The law of 6 August 2019 on the transformation of the civil service paved the way for the government to take significant steps to promote negotiated agreements in the civil service at national and local level. This was the purpose of the Ordinance of 17 February 2021 on collective bargaining and agreements in the civil service. The 2021 law contains three essential elements relating to an exhaustive list of subjects for negotiation, the level of negotiations and the legal scope of agreements.

[13] These are Book 1st relating to rights, obligations and protection, Book II relating to the exercise of trade union rights and social dialogue, Book III relating to recruitment, Book IV relating to the principles of organisation and management of human resources, Book V relating to careers and professional development, Book VI relating to working time and leave, Book VII relating to remuneration and social action and Book VIII relating to prevention and protection in terms of health and safety at work.

[14] CE 22 May 2013, no. 356903, Fédération Interco CFDT, Lebon.

[15] The memorandum of understanding of 31 March 2011 on securing career paths, the memorandum of understanding of 8 March 2013 on professional equality between women and men in the civil service, the 2015 agreement on career paths, careers and pay.

Firstly, the text establishes that negotiations on pay and purchasing power can only take place at national level between representative national trade unions and government representatives. The exclusivity of the national level is undoubtedly explained by budgetary reasons and respect for the principle of equal treatment between public servants.

Secondly, collective bargaining on the subjects listed exhaustively at[16] may take place at national or local level between representative trade unions of civil servants and administrative and territorial authorities. With regard to the relationship between the national and local levels, the Act of 13 July 1983, which has been incorporated into the Civil Service Code, stipulates that "an agreement at a lower level may only specify a national-level agreement or improve its general structure, while respecting the essential stipulations". The legislator is here repeating what was a general principle that prevailed in labour law before the reforms of the last two decades. This is one of the major differences that remains with labour law. A second difference is that there is no obligation to negotiate in the new civil service law.

Thirdly, the 2021 text stipulates that majority agreements reached in the areas listed are legally binding.[17] This is a first, indeed a Copernican revolution in civil service law. The collective labour agreement thus becomes an autonomous source of law in many areas, those that do not fall within the scope of the Staff Regulations,[18] it acquires binding force.

The 2021 reform

> puts an end to the previous paradoxes of a norm that is valid but devoid of any legal scope, but has certainly not crossed the Rubicon of opening up the field of the Staff Regulations to negotiation. On the other hand, this reform accentuates the dual role of the civil servant, who has become both a servant of the general interest and a "worker" within EU law as a result of previous reforms. The place of the negotiated norm among the sources of civil service law now marks this duality; it echoes the contemporary face of the public servant.[19]

[16] These include working hours, teleworking, quality of life at work, commuting arrangements, the impact of digitisation on the organisation and conditions of work, social support for service reorganisation measures and the implementation of measures to combat climate change, the preservation of resources and the environment and the social responsibility of organisations, apprenticeships, collective profit-sharing and procedures for implementing compensation policies, changes in professions and forward-looking management of jobs and skills, supplementary social protection.

[17] Agreements concluded in areas open to negotiation may include provisions enacting regulatory measures, as well as clauses by which the administrative authority undertakes to undertake specific actions not involving the enactment of regulatory measures.

[18] It should be noted that these areas include the duration and organisation of working hours, even though the Conseil d'État had ruled that these were statutory rules, CE 9 October 2002, no. 238070 and 238138 Fédération des personnels des services des départements et des régions CGT-FO, Lebon.

[19] E. Marc, "L'ordonnance du 17 février 2021: extension substantielle et maîtrisée de la négociation collective," *AJFP* (2021): 133.

The 2021 ordinance therefore marks the end of the specific nature of civil service law in France, during which collective agreements were legally treated as mere declarations of intent. That said, this reform, which has only recently come into force—on 1st January 2023—will only have a significant impact once the social partners and government departments have adopted this new tool. At present, two collective agreements have been concluded, one on teleworking and the other on supplementary social protection, which will be the only one used in our research.

1.2 The Industrial Relations System in France

Freedom of association. Long enshrined in France by the Waldeck Rousseau law of 1884, applies to all those who exercise a profession, not just salaried employees. Employers, the self-employed, civil servants and the liberal professions are all entitled to form and join trade unions.

The purpose of the union is to represent the collective interests of the profession. It has legal personality and powers, including the right to put forward candidates for elections to set up staff representative bodies in companies and the right to negotiate and conclude collective labour agreements if it is representative. The 2008 reform replaced the representativeness attributed by the public authorities with proven representativeness.

Trade union representativeness. French law recognises the specific powers of the most representative trade unions. The law of 20 August 2008 provides a framework for trade union representativeness. In companies, it is reserved for trade unions that have obtained 10% of the votes in professional elections. At branch and/or cross-industry level, it requires a threshold of 8% of votes. These thresholds, combined with the other conditions, have not led to a reorganisation of the trade union landscape.

The structuring of trade unionism. French trade unionism is structured on a geographical and professional basis. Geographically, there are the local and departmental unions of each confederation. On a professional level, unions exist in the form of federations based on a trade (corporation) or on a branch of industry or economic activity (broader solidarity). French trade unionism has opted for branch-based unionism; there are very few trade unions.

French-style trade union pluralism. The French trade union movement is the product of an eventful history of splits and mergers in line with the ideologies that have run through it. There are 5 confederations: the CGT (Confédération Générale du Travail, founded in 1895, a reformist union); the CFTC (Confédération Française des Travailleurs Chrétiens, a Christian union), founded in 1919; the CGT-FO (Confédération Générale du Travail - Force Ouvrière, a free union), founded in 1947; the CGC (Confédération Générale des Cadres, a category-based union), founded in 1948; and the CFDT (Confédération Démocratique Française du Travail, a self-managing union), founded in 1964. Recent years have seen the creation of two other organisations, the Union syndicale Solidaires, founded in 1981, and the UNSA (Union nationale des syndicats autonomes), founded in 1993. Although this very marked trade union pluralism in France rhymes with trade union divi-

sion, it is sometimes supported by quite remarkable collective action units, attesting to a real vitality and a strong audience for the trade union movement in France.

A trade union movement in crisis. The unionisation rate has been falling steadily since the late 1990s: 11% of subordinate workers are union members (including civil servants) and 9% of private sector employees (DARES 2016). This is half the rate of 25 years ago and three times lower than in 1950. However, 90% of employees in France are covered by a collective agreement (trade unions negotiate on behalf of all employees, not just their members, and social security, unemployment insurance and vocational training are available to all, whether or not they are union members). The unions are also involved in the management of the major social bodies. They retain important means of influence and are able to mobilise and move forward in a unified way on certain issues (such as pensions).

Employers' unions. At national and inter-professional level, there are 3 representative organisations, the MEDEF (Mouvement des entreprises de France), the CPME (Confédération des petites et moyennes entreprises) and the U2P (union des entreprises de proximité which brings together the UPA, Union professionnelle artisanale and the UNAPL, Union nationale des professions libérales). MEDEF represents over 70% of all employees in companies represented in collective bargaining.

Domestic workers acquired the right to belong to a trade union organisation with the law of 1884, but the right to conclude (and extend) collective labour agreements was not recognised until the law of 11 February 1950. A first agreement was signed on 1st June 1951, but was not extended because the federation of employers of domestic staff was not representative. It was not until 8 May 1980 that the national collective agreement for private employers in France (FEPEM) was signed and extended on 26 May 1982. According to Sophie Nadal, the question of the representativeness of employers' organisations was used by the Ministry of Labour to reject requests for extension. Subsequently, the restructuring of the branches launched by the government led to the conclusion of a single agreement for individual employers on 26 March 2021, which was extended on 6 October 2022.[20]

1.3 The Welfare State Model

In this section, we present the general features of social security legislation (1.3.1) and the role of long-term care risk (1.3.2).

[20] The first collective agreement was replaced by the national collective agreement for employees of private individual employers of 24 November 1999. This was subsequently replaced by the NCC for private employers and home-based employment of 15 March 2021, resulting from the convergence of the branches of maternal assistants and employees of private employers. There used to be a specific collective agreement for the profession of childminder, whose place of work is in the childminder's own home and who is directly employed by a private individual to look after a child. S. Nadal, "Régulation négociée du travail domestique: la construction des "branches" et la détermination des droits conventionnels des salariés tributaires de l'action publique," *Droit Social* 9 (2022): 686.

1.3.1 General Presentation of Social Security Legislation

The notion of the welfare state refers to a social and political form of the concept of the state. Equated with the social state or the redistributive state, the welfare state is characterised by its interventionism in social relations, the production of collective goods and the provision of public services.

In France, the origins and stages in the construction of a "social state", understood as the state regulating social life and the economy and guaranteeing high-quality public and social services for all, date back to the end of the 19th century.[21] The first social insurance schemes were created in 1928-1930. But it was not until the aftermath of the 2nd World War that a social security system of the Bismarckian or professionalist type was introduced.[22] The right to social security is not enshrined in the Constitution as such. It includes: the duty to work and the right to obtain employment (para. 5); The Nation guarantees to all, in particular to children, mothers and old workers, protection of health, material security, rest and leisure. Every human being who, by reason of age, physical or mental condition or economic situation, is unable to work has the right to obtain from the community an adequate means of subsistence (para. 11).

The right to social security is linked to the exercise of a professional activity—whether salaried or self-employed. A general scheme was set up for salaried workers,[23] while special schemes (for the non-agricultural working population)[24] were maintained—initially on a provisional basis—and were later to be absorbed by the general scheme and the definitive maintenance of an agricultural scheme. Based on the Bismarckian tradition, the French system is made up of insurance schemes financed mainly by social security contributions, supplemented by assistance schemes financed by taxation. The social insurance funds are managed by the social partners (paritarianism).

Nevertheless, the system has evolved towards generalisation, or even universalisation, of benefits. This is the case for family allowances and health benefits, which are granted to anyone residing in France on a stable and regular basis. France has ratified ILO Convention 102 on social security. The French welfare state is based on the principles of solidarity, universality and redistribution, and includes a social security system, social assistance and public policies for social inclusion.[25]

[21] See, for example, the law on accidents at work of 9 April 1898 and the law on workers' and farmers' pensions of 5 April 1910.

[22] The ordinances of 4 and 19 October 1945 created a social security system that merged the old insurance schemes (sickness, retirement, etc.) and guaranteed that, under all circumstances, everyone would have the means to support themselves and their families in decent conditions.

[23] The scheme comprises 4 branches (sickness, maternity, invalidity, death; accidents at work and occupational diseases; old age; family).

[24] State and local authority civil servants have their own pension schemes.

[25] For example, the creation of the CMU in 2000, which became the PUM in 2016 and the CSS in 2019; see also the Disability Act of 2005, the LASV of 2015, the provisions of the Labour Code relating to the fight against discrimination and for equal treatment, etc.

Since social insurance schemes do not cover all risks, supplementary schemes have been introduced. These include supplementary pension schemes, which have been compulsory since 1972, and supplementary provident schemes, which include compulsory health cover for employees, supplementary health protection as part of universal health cover (CMU) and optional company pension and retirement savings schemes.

In terms of funding, the model is essentially based on compulsory levies (social security contributions and taxes) to meet health and social expenditure. The ratio of compulsory deductions to gross domestic product (GDP) has risen steadily, from 30% in 1960 to 45.4% of GDP in 2022.[26] As social spending continues to rise, this welfare state model is now in crisis and has become too costly, to the point where some people are wondering whether it might not be jeopardising the competitiveness of businesses and undermining the dynamism of the economy.[27] The social protection system is currently burdened by the economic crisis, the demographic crisis of special occupational schemes, the ageing of the population, and so on.

It is a system that practices policies of activation of social spending. These policies are based on the idea that the unemployed should not only be passively compensated, but also actively helped to find a job. Unemployment insurance in France is governed by labour law, not social security law.

Social security law is a state-based right subject to the principle of territoriality for liability and entitlement to benefits, operating on the principle of equality and non-discrimination. Foreign nationals must have regular and stable residence in order to be affiliated to a social security scheme and receive social security benefits.

1.3.2 Coverage of Dependency Risk Under French Social Security Law

One institution: the Caisse Nationale de Solidarité pour l'Autonomie (French national fund for independent living - CNSA).

Created in 2004, since 2021 it has been responsible for managing the new autonomy branch of the social security system. It is a "fund" that finances the social and medico-social establishments and services that care for the frail elderly and the disabled, and helps to finance the benefits intended for these groups, i.e. the APA and the PCH, as well as the cost and operation of the departmental centers for the disabled.

Distribution of responsibilities in the area of dependency.

Although France is a centralised country in which the State is responsible for social welfare legislation, since the decentralisation laws the départements

[26] Source v. Institut national de la statistique et des études économiques (INSEE), *Tableaux de l'économie française*, édition 2024, <https://www.insee.fr/fr/statistiques/2381412> (accessed January 20, 2026).

[27] P. Rosanvallon, *La crise de l'État-providence* (Paris: Seuil, 1992), 184, spec. 7.

have been given powers in the area of personal independence. The département is responsible for areas conferred on it by law, including personal independence. It is responsible for the general coordination of social action within its area. It draws up the social and medico-social organisation plan, in particular for establishments and services working in the disability and loss of independence sectors, coordinates the elderly sector and organises integration policies at departmental level. As for the municipalities, they have lost their own powers in the area of social assistance. However, they remain an essential link in the delivery of social assistance.

Two joint institutions for the elderly and disabled have been created: the Departmental Council for Citizenship and Autonomy (CDCA) and the Departmental Autonomy Centres (MDA).

Services:

- Personalised autonomy allowance (APA)
  This benefit is not means-tested, but the amount varies according to the income of those concerned and their degree of dependency. Managed by the départements, it is funded by the départements, old-age insurance schemes and part of the CSG (general social contribution). The law of 28 December 2015 sought to improve the situation of elderly people losing their independence, in particular by providing them with better support throughout their lives (development of independent living residences and service residences, increase in the APA at home, recognition of a right to respite for carers, etc.).
- Home help
  Health insurance cover for care prescribed by a doctor (100% for long and/or costly illnesses), the increase for a third person provided by the social security funds and the personalised allowance (or disability compensation benefit for people under 60) provided by the département. Other assistance: exemption from employers' contributions on the salary of a home help hired by an elderly person or tax deductions.

Reception facilities

Accommodation: there are various types of establishment: independent residences for able-bodied elderly people, retirement homes, establishments for dependent elderly people (EHPAD), etc.

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

2.1 Characteristics of the Care Sector

The care sector is characterised by a range of heterogeneous and complementary activities (2.1.1), with an increase in home working (2.1.2), a low level of undeclared work (2.1.3) and an absence of subcontracting (2.1.4).

2.1.1 The Care Sector, a Heterogeneous and Complementary Field of Activity

In France, the care sector covers a very broad and heterogeneous field of application, including medical and social players whose aim is to meet people's needs, restore a state of complete physical, mental and social well-being, or help them regain their autonomy. The different types of structure can be divided into health structures and medico-social structures, which can be classified according to activities or objectives, public or private sector and place of operation.

The health sector is made up of institutionalised players, town-based medicine and hospital establishments. Ambulatory structures are responsible for so-called "town care" or town medicine; they are steered by the Regional Health Agency (ARS) to provide initial access to care. Medical and paramedical professionals, both self-employed and salaried, work individually in practices, in groups or in coordinated fashion in health centers (general practitioners and specialists, pharmacists, nurses, physiotherapists, etc.). These are private structures with few salaried employees. Hospitals provide general care (medicine, surgery, obstetrics) and more specialised care (psychiatry and mental health, for example). They are also involved in emergency medicine, with emergency medical services (SAMU) located throughout the country. Administratively, hospitals fall into 3 main categories: public hospitals, private for-profit clinics and private community establishments.

The medico-social sector is made up of establishments that include homes for the dependent elderly (EHPAD) and facilities for the disabled. Their mission is to provide support and care for people in precarious situations, who are excluded, disabled or dependent. They operate in both the public and private sectors.

Alternatives to traditional hospitalisation or accommodation have been developed[28] at the initiative of the public authorities and for the benefit of patients and residents themselves, and even their families. These alternatives include home hospital care (HAD), which, under certain conditions, makes life more comfortable for patients and their families; home nursing services (SSIAD), which provide medical supervision and other hygiene and paramedical care; and home help services, which are mainly for the elderly and disabled. They enable people who need help with everyday tasks to remain at home.

Funding for residential institutions for the frail elderly is currently shared between the health insurance system, which covers the cost of medical care, the general councils (Département), which cover the cost of personal expenses linked to the loss of independence, and the users, who mainly cover the cost of accommodation and food.

2.1.2 The Role of Domestic Work in Care Work

Home care occupies a special place between community care and medico-social establishments that provide medical accommodation. Current care pro-

[28] Cour des Comptes, *Les services de soins à domicile. Une offre à développer dans une stratégie territorialisée de gradation des soins* (Paris: Cour des Comptes, 2021).

vision is still predominantly geared towards residential care.[29] This is why the Ministry of Solidarity and Health and the Caisse nationale de solidarité pour l'autonomie (CNSA) want to develop these services as opposed to facilities offering full-time group accommodation. The aim is to respond to the desire of the French (85%) to keep dependent people in their own homes with the support of home helpers.[30]

The aim of home care services is to provide care that is adapted to the person's state of health, in the comfort of their own home, and to prevent loss of autonomy in order to avoid or delay admission to a health care establishment (EHPAD, independent residence, etc.). By providing home help, people who are losing their independence can maintain their social ties and relieve the pressure on family members. It is a response to changing family structures, where all the adults (men and women) work and are less available to look after the older members of the family.

Home nursing care services (SSIAD) are subject to the regulations of the social action and family Code.[31] They provide, on medical prescription, nursing care services in the form of technical care or basic and relational care, to: sick or dependent people aged 60 and over; adults under 60 with a disability; adults under 60 with chronic disabling conditions or a condition requiring prolonged treatment and particularly costly therapy. The SSIAD comprises salaried care assistants, medical and psychological assistants, nurses and a nurse coordinator. The nurse coordinator is responsible for coordinating the internal workings of the service, i.e. welcoming people and their families, assessing their care needs by visiting them at home in order to draw up and implement individual care plans, and coordinating the professionals involved. The nurse coordinator is the keystone of the home nursing care system, according to a circular dated 28 February 2005.[32] He or she

> draws up and implements individualised care plans for each person being cared for [...]. He/she organises the work of care assistants, medical-psychological assistants and nurses employed by the service.

His duties also include the administration and management of the service and the participation of the SSIAD in the activities carried out by the local information and coordination centre.

Multi-purpose home help and care services (SPASAD) combine the functions of an SSIAD with those of a home help and support service. The aim of these services is to promote the coordination of services provided to patients, and to pool the work done to develop individual assistance, support and care plans.

[29] Cour des Comptes, *Les services de soins à domicile*.

[30] Odoxa, *Aide et soins à domicile: les attentes des Français* (Paris: Odoxa, 2021).

[31] Article L. 312-1 6° and 7° of the Social and Family Action Code.

[32] Circular DGAS/2 C n° 2005-111 of 28 February 2005 relating to the conditions for authorising and operating home nursing care services.

The services on offer are considered to be too fragmented, between home help and home care, and not easy to understand, leading to complex procedures and sometimes encouraging people not to use them. This is why new services called Services Autonomie à Domicile (SAD) Autonomy at Home Services were created in July 2023[33] to provide a more transparent and coordinated service with a real care pathway approach tailored to the needs of the person being cared for. This reform will be implemented gradually until 2025. The sector will be restructured by merging existing services (SAAD, SSIAD, SPASAD).

The purpose of Social Support Services (SAVS) and Medical-social Support Services for Disabled Adults (SAMSAH) is to help disabled adults achieve their life goals by providing them with appropriate support to maintain or restore their family, social, educational, university or professional ties, and to facilitate their access to all the services offered by the community. SAMSAHs also provide care services.

Hospitalisation At Home (HAH) covers all medical care delivered at the home of a patient whose condition does not justify staying in a hospital. However, HAH is not simply a home service, but a way for health establishments to carry out their missions. This is why HAH is included in the Public Health Code as a healthcare activity subject to authorisation in its own right.

2.1.3 Undeclared Work

The concept of "illegal employment" was legally enshrined in the Act of 2 August 2005.[34] It covers a range of offences against public social and economic order as defined by the Labour Code:[35] concealed work, bargaining, illegal lending of staff, employment of a foreigner without a work permit, irregular plurality of employment and fraud involving replacement income.

With regard to personal services, a Dares study[36] states that the proportion of undeclared work fell between 2011 and 2017, mainly as a result of the extension of the tax credit and reduced VAT rates.[37] Despite the development of these financial incentives, undeclared work remains and the study estimates it at 20% in 2017.[38]

[33] Decree no. 2023-608 of 13 July 2023 relating to home autonomy services mentioned in article L. 313-1-3 of the Code de l'action sociale et des familles and home assistance and support services covered by 1o and 16o of I of article L. 312-1 of the same code.

[34] Law no. 2005-882 of 2 August 2005 in favour of small and medium-sized enterprises.

[35] Articles L. 8211-1 to 8291-3 of the Labour Code.

[36] M. Beltzung and L. Malard, "Services à la personne. Baisse du travail non déclaré en 2017," *Dares Résultats* 70 (2021).

[37] France Stratégie. *Le travail non-déclaré* (Paris: France Stratégie, 2019).

[38] It is difficult to estimate the amount of undeclared work carried out by private employers because of the inviolability of the private home, which hinders URSSAF checks.

The Directorate General for Labour has unveiled a national plan to combat illegal employment in May 2023. The plan recommends targeting controls on the sectors most affected, depending on the territory, taking preventive action, combating false status and modernising monitoring and assessment tools.

2.1.4 Outsourcing Practices in the Healthcare Sector

In France, the healthcare sector does not use subcontracting.

2.2 The Notion of Carer

3 care professions were chosen for this study: nursing, nursing auxiliary and home care. The interest of this choice lies in the possibilities of analysis and comparison that it is possible to carry out, as these professions are practised in the public service and in the private sector, in health establishments, but also in the homes of dependent persons. It is also interesting to be able to analyse the working conditions of professions whose objective is purely health-related (nursing), while others have a medico-social aspect (home help).

Nurses and nursing assistants are classified as medical auxiliaries in the French Public Health Code. The profession of nurse is subject to specific regulations in the Public Health Code.[39] Thus,

> any person who usually provides nursing care on medical prescription or advice, or in application of the role assigned to him or her, is considered to be practising the profession of nurse. Nurses take part in a variety of activities, particularly in the fields of prevention, health education, training and supervision.[40]

The profession of nurse may only be practised by persons holding a diploma, certificate or the authorisations provided for in the Public Health Code.[41]

Care assistants work in collaboration with nurses in health establishments or home services and may provide care within the respective limits of the qualifications recognised as a result of their training. When the nurse is not present, the care assistant may carry out routine daily care related to a stabilised state of health or a stabilised chronic pathology which could be carried out by the person themselves if they were autonomous or by a career.[42] The profession of care assistant is carried out by holders of the diplôme d'État d'aide-soignant, the certificat d'aptitude aux fonctions d'aide-soignant or the diplôme professionnel d'aide-soignant.[43]

[39] Articles L. 4311-1 to L. 4314-6 of the French Public Health Code.
[40] Article L. 4311-1 of the French Public Health Code.
[41] Article L. 4311-2 of the French Public Health Code.
[42] Article R. 4311-4 of the French Public Health Code.
[43] Article L. 4391-1 of the French Public Health Code.

Homecare professions are part of the medico-social sector. The French national fund for independent living (Caisse nationale de solidarité pour l'autonomie -CNSA) has a broad definition of these professions,[44] which include: home help, social auxiliary, care assistant, social and family intervention technician, etc. Home helpers are professionals who assist people who need help in their own homes. To work as a home carer, you need to have a diploma (Diplôme d'État Accompagnant éducatif et social or Auxiliaire de vie sociale, Bac Pro accompagnement, soins et services à la personne).

These professions are likely to be practised in the public and/or private sectors. The professions differ depending on whether they are practised in a hospital environment or at home. While professions in the health sector are mainly carried out in health establishments, medical-social professions are carried out in the homes of the people to be cared for. They also vary according to the public concerned. The professions in the medical-social and home services sectors are mainly aimed at young and adult disabled people, dependent people or people in difficulty, and the elderly.

2.3 The Impact of Domestic Work in Care and the Care Sector

2.3.1 Regulations Applicable to Care Workers

As mentioned *above*, Part VII of the Labour Code provides specific legislation for care workers, taking 2 situations into consideration: The employee of an individual employer is characterised as someone who carries out family or household work in the private home of the employer.[45] However, the provisions of the Labour Code applicable to them are limited to those relating to harassment, 1st May Day, paid holidays, entitlement to leave for family events and medical surveillance of employees.[46] The exclusion of the protective provisions of the Labour Code would be justified by the fact that the employer, who may be a dependent and non-professional person in employment, cannot be considered as the strong party to the employment contract.[47] The silence of the Labour Code refers to collective bargaining. The employment relationship is therefore governed by the NCC for individual employers and home-based employment of 15 March 2021. This agreement replaces the French Labour Code. On certain points, it incorporates the provisions of the Labour Code and makes them applicable to domestic employees, thereby bringing their status closer to that of employees under ordinary law. In addition, it puts in place provisions to meet the specific challenges of the sector and its uniqueness, and ensures that employees' social rights are properly implemented.

[44] Caisse nationale de solidarité pour l'autonomie (CNSA), *Les chiffres clés de l'aide à l'autonomie 2023* (Paris: CNSA, 2023).

[45] Article L. 7221-1 of the French Labour Code.

[46] Article L. 7221-2 of the French Labour Code.

[47] S. Maillard. "Travail domestique." In *Répertoire de droit du travail* (Paris: Dalloz, 2017).

The Labour Code also provides a framework for personal services activities, which include childcare, assistance for the elderly, the disabled or other people who need personal help in their own homes or mobility assistance in the local environment to help them stay in their own homes, and services for people in their own homes to help with family chores.[48] In addition to these provisions of the Labour Code, there is the conventional law already mentioned: the NCC for personal services companies of 20 September 2012, the NCC for the home help, support, care and services of 21 May 2010 and the NCC individual home employers of 15 March 2021, all three of which have been extended.

2.3.2 The Impact of Ilo Convention 189 on Domestic Workers

ILO Convention no. 189 on domestic workers, 2011, has not been ratified by France. The government believes that there is no real point in ratifying it on the grounds that there is a fairly well-developed Labour Code and collective agreements. For the trade unions, it would be necessary to ratify this convention in view of the steady increase in the workforce in this sector. However, the inorganisation of workers in this sector means that it is not possible to establish a balance of power through the trade union movement.

2.4 Labour Market Characteristics of Care Workers

It is difficult to characterise the labour market for care workers, because studies are rare and incomplete, and workers do not belong to the same categories: public or private sector, care or medico-social sector, home or hospital. Here are a few points for diagnosis.

Nurses. In 2022, there were 632,644 nurses working in France. 64% of them were employed in hospitals, 19% were self-employed, and 17% were employed in other types of facilities. 87% were women and 13% were men, and their average age was 40.8 years.[49] In France, healthcare establishments are one of the sectors in which employees make the most use of sick leave, with an average of 10 days' absence declared due to illness per year, compared with 7.9 days in all sectors. The number of days of absence due to illness is equivalent in private and public hospitals with a comparable workforce structure and working conditions.[50]

Care assistant. In 2021, the public and private hospital sector had 230,605 nursing assistants, 93% of whom were women. Their average age was 41.4 years.

Home help. Around 249,000 people work in the home help sector as employees of associations (153,000) or for-profit private companies (96,800).[51] The

[48] Articles L. 7231-1 to L. 7234-1 of the French Labour Code.

[49] Source: Ordre national des infirmiers/INSEE.

[50] DREES - Direction de la recherche, des études, de l'évaluation et des statistiques, *Arrêts maladie dans le secteur hospitalier: les conditions de travail expliquent les écarts entre professions* (Paris: Ministère des Solidarités et de la Santé, 2017; Études et Résultats 1038).

[51] Source: URSSAF Caisse nationale, 2021 annual report based on APE code 8810A.

majority of personal services workers (employed directly by an individual or through an organisation) are women (87.3% in 2015), with an average age of 46 compared with 41 for the population as a whole (in 2015). People born outside France are over-represented among the sector's employees in this occupation (14.5% compared with 5.5% of the population in employment in 2015).[52] Vulnerable individual employers employ 547,536 home workers.[53]

2.5 The Overall Regulatory Framework for the Care Sector

As explained *above*, French law is governed by the principle of the hierarchy of standards, and the healthcare sector is no exception. Like all sectors of activity, the care sector has seen a great deal of collective bargaining activity at both company and branch level, as is the case for the 6 collective agreements applicable to our study. It is worth noting, however, that very little litigation relating to homeworkers has been brought before the courts. Finally, as mentioned *above*, France has not ratified ILO Convention 189.

2.6 The Main Debates on Working Conditions

The shortage[54] of care staff in the care professions is one of the main points of discussion on the subject. The shortage of carers became apparent to the general public during the health crisis, but tensions had already been building since 2016 and continue to this day, particularly in the nursing and home care professions.[55]

The decline in attractiveness stems from the deterioration in working conditions in the various care professions. Carers work in a particularly pathogenic environment due to increasingly poor working conditions. These constraints are particularly marked in the hospital sector.[56]

The shortage of carers means that the workload is transferred to other carers, resulting in long working days, irregular and staggered working hours, night and weekend work, and little rest time. This affects all professional families[57] in the hospital sector, but also in home care services.

[52] DARES - Direction de l'Animation de la Recherche, des Études et des Statistiques, *Les salariés des services à la personne : comment évoluent leurs conditions de travail et d'emploi ?* (Paris: Ministère du Travail, 2018; DARES Analyses 38).

[53] Observatoire de l'emploi à domicile, *Rapport annuel sectoriel, édition 2023,* <https://www.fepem.fr/observatoire/rapports-annuels> (accessed January 14, 2026).

[54] P. Pora, "Près d'une infirmière hospitalière a quitté l'hôpital ou changé de métier après 10 ans de carrière," *Drees* 1277 (2023); Y. Croguennec, "Aides-soignants: de moins en moins de candidats à l'entrée en formation et une baisse du nombre d'inscrits," *Drees*, Études et résultats 1135 (2019).

[55] M. Niang, F. Chartier and F. Lainé, "Les tensions sur le marché travail en 2021. Lainé," *Dares*, Résultats 45 (2022).

[56] J. Pisarik, "L'exposition à de nombreuses contraintes liées aux conditions de travail demeure, en 2019, nettement plus marquée dans le secteur hospitalier qu'ailleurs," *Drees* 1215 (2021).

[57] C. Parent, "Crise sanitaire: à l'hôpital, la surcharge de travail a touché l'ensemble des familles professionnelles," *Drees* 1235 (2022).

The care professions are also characterised by their intensity and the physical hardship of the work[58] due to heavy loads, prolonged standing positions and long and frequent journeys for home carers. This leads to fatigue and the risk of physical injury.

Healthcare workers work in a demanding environment. Firstly, there is exposure to specific biological risks (patient infections, toxic products), but also the obligation to comply with standards and protocols. The work environment (patient suffering, death, relations with families, etc.) is also likely to generate an emotional charge. The intensity of working with patients sometimes results in ethical suffering with regard to the job in question, as well as stress and anxiety that can lead to depression.[59]

The lack of attractiveness is also due to the fall in salaries.[60] However, in the branch of individual employers and home based employment, the social partners are determined to ensure that the minimum wages in the classification grid are always 3% above the minimum wage. In addition, very active collective bargaining on this issue has led to the signing of 8 wage endorsements since 1 January 2022, in order to take account of increases in the SMIC due to inflation.

Lastly, the deterioration in working conditions is reflected in resignations, staff turnover and absences, leading to work disorganisation and a deterioration in the quality of care.

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

3.1 Fundamental Trade Union Rights, Collective Bargaining and Collective Action

French law recognises various modes of action for care workers in the private and public sectors. Firstly, there is the constitutional right to organise (3.1.1), followed by the right to collective bargaining, which has been used extensively to develop domestic labour law (3.1.2) and, finally, the right to strike, which is sometimes restricted because of the special nature of the sector of activity requiring a degree of continuity (3.1.3).

3.1.1 Freedom of Association

Freedom of association[61] is recognised as a constitutional right enshrined in the preamble to the 1946 Constitution, to which the preamble to the 1958

[58] S. Benallah and J.-P. Domin, "Intensité et pénibilité du travail à l'hôpital. Quelles évolutions entre 1998 et 2013," *Travail & Emploi* 4 (2017): 5–31.

[59] C. Parent, "À l'hôpital, une prévalence accrue de la dépression et de l'anxiété liée aux conditions de travail," *Drees*, Études et résultats 1270 (2023).

[60] C. Dixte and R. Bour, "En 2019, le salaire net moyen dans la fonction publique hospitalière diminue de 0,8 % en euros constants," *Drees*, Études et résultats 1205 (2021).

[61] G. Auzero, D. Baugard and E. Dockès, *Droit du travail*, (Paris: Précis Dalloz, 2024[37]), 1397 et seq.

Constitution refers, which states that "Everyone may defend their rights and interests through trade union action and join the trade union of their choice".

The Labour Code allows

> trade unions or professional associations of persons exercising the same profession, similar or related professions contributing to the production of specific products or the same liberal profession [to] freely form.[62]

The freedom to form is subject to a derogatory provision concerning private individuals employing domestic staff. Although the latter are not employment professionals, the law authorises them to "form trade unions for the defence of their common interests as employers and employees".[63]

Freedom of association has both an individual and a collective dimension. The result is the right to join the trade union of one's choice, not to join or to withdraw from the trade union[64] and the prohibition of discrimination based on membership or non-membership of a trade union.[65] Any trade union may be summoned or may itself take the initiative to take legal action to defend its own interests, the collective interests of the profession or the defence of individual interests through a substitution action.[66] The collective agreements studied[67] all include provisions relating to freedom of association. They set out the principles and protective measures provided for by law and specify the exercise of trade union rights.

In the public sector, public employees are also guaranteed the right to organise.[68] Trade unions can be set up completely freely, in accordance with the procedures laid down in the Labour Code, in particular article R. 131-1. The difference lies in the union's obligation to inform the administration of its existence and the names of its officers. If it fails to do so, the union cannot be represented on a body set up by that administration.[69] The General Civil Service Code recognises the same rights for civil servants, who "may freely set up trade union organisations, join them and exercise their mandates".[70]

Trade unions representing civil servants may institute legal proceedings and appeal to the competent courts against regulatory acts concerning staff regulations and against individual decisions affecting the collective interests of civil servants.[71]

[62] Article L. 2131-2 al. 1 of the French Labour Code.
[63] Article L. 2131-2 al. 2 of the French Labour Code.
[64] Article L. 2141-1 of the French Labour Code.
[65] Article L. 1132-1 of the French Labour Code.
[66] Article L. 2132-3 al. 1 of the French Labour Code.
[67] See *above*.
[68] Article L. 113-1 of the French Civil Service Code.
[69] C.E. 26 June 1991, *Syndicat des hospitaliers d'Epernay CGT-FO*.
[70] Article L. 113-1 of the French Civil Service Code.
[71] Article L. 113-2 of the French Civil Service Code.

3.1.2 The Right to Collective Bargaining

French labour law provides for 3 different levels of negotiation leading to agreements. The inter-professional level enables collective agreements to be signed between employers' organisations and representative employee organisations[72] on working conditions and social guarantees for employees in several sectors of activity. These agreements generally represent advances in social matters that are often ratified by subsequent legislation (e.g. the ANI of 9 December 2020 on enhanced prevention and a renewed offer in occupational health and working conditions). At industry level, collective agreements are concluded between employers' and employees' organisations representing a specific sector of professional activity[73] (e.g. the NCC for Private Hospitalisation of 18 April 2002). At company and establishment level,[74] the employer and the organisations representing employees may conclude "company agreements or conventions"[75] on specific issues relating to working conditions. In addition to this main typology of negotiation levels, the Labour Code provides for an accessory typology which can be classified from a geographical point of view by stipulating that the territorial scope of application of branch agreements and professional agreements may be national, regional or local.[76]

Initially, collective bargaining occupied a secondary place after legislative or regulatory texts in the main sources of French labour law. Its sole purpose was to improve the situation of employees through the creation of additional benefits resulting from negotiations. Then, labour law was gradually transformed into negotiated labour law. This was reflected in the retreat of the law in favour of collective bargaining, the facilitation of collective bargaining in the absence of union representatives, the primacy of company agreements to the detriment of branch agreements, the generalisation of the majority requirement for company agreements in order to strengthen their legitimacy, and the facilitation of the use of referendums to validate a minority company agreement. The branch level, which for a long time was the central level for collective bargaining, has gradually been overtaken by company bargaining through a succession of reforms since 1982[77] and completed by the Ordinance of 22 September 2017,[78] which unquestionably established the primacy of company agreements over branch agreements, with the exception of certain areas expressly provided for in article L. 2253-1 of the French Labour Code.

As far as the civil service is concerned, collective bargaining could see a real boost with Law 2019-828 of 6 August 2019 on the transformation of the civil service, which authorised the government to take action in this direction. This

[72] Articles L. 2232-1 to L. 2232-4 of the French Labour Code.
[73] Articles L. 2232-5 to L. 2232-10-1 of the Labour Code.
[74] Articles L. 2232-11 to L. 2232-29-2 of the Labour Code.
[75] Article L. 2232-11 al. 2 of the French Labour Code.
[76] Article L. 2232-5 al. 1 of the French Labour Code.
[77] Law no. 82-957 of 13 November 1982.
[78] Ordinance no. 2017-1385 of 22 September 2017 on strengthening collective bargaining.

was the purpose of the Ordinance of 17 February 2021[79] on collective bargaining and agreements in the civil service, the provisions of which are codified in the General Civil Service Code and the Decree of 7 July 2021.[80] Civil service law, traditionally governed by statute, is taking a contractual turn with the introduction of collective bargaining.

3.1.3 The Right to Collective Action

Workers can also take collective action to defend their rights by going on strike.[81] The preamble to the 1946 Constitution states that "the right to strike shall be exercised within the framework of the laws which regulate it". In the absence of legislative provisions, case law has defined a strike as "a collective and concerted stoppage of work in support of professional demands".[82] However, the Labour Code contains certain provisions relating to the exercise of the right to strike.[83]

In the private sector, strikes can be called at any time and employees do not have to give notice. However, the healthcare sector is a special case, and where the staff of public or private companies, bodies or establishments are responsible for managing a public service,[84] concerted stoppage of work must be preceded by advance notice issued by a representative trade union organisation at national level, in the professional category or in the company, body or sector concerned. The notice must specify the reasons for the strike.[85]

Civil servants are liable to disciplinary action if they go on strike without complying with the provisions of Articles L. 2512-1 to L. 2512-5 of the Labour Code. As far as the public hospital service is concerned, there is a principle of permanence and not simply regular operation. The provision and continuity of care impose certain constraints on the exercise of the right to strike in such a context. It is up to the director of the public health establishment to ensure continuity of care, the organisation of which is made more complex during this period. He or she has the power to issue summonses, or "requisitions", which go beyond the mere continuity of care.

3.2 The Social Partners in the Care Sector

Trade unions have a strong presence in the care sector. Each confederation is organised into specialised federations to meet the specific needs of the sector (3.2.1).

[79] Ordinance no. 1021-174 of 17 February 2021 on collective bargaining and agreements in the civil service.

[80] Decree no. 2021-904 of 7 July 2021 on the procedures for negotiating and concluding collective agreements in the civil service.

[81] Auzero, Baugard and Dockès, *Droit du travail*, 1951 et seq.

[82] Cass. soc. 23 October 2007, no. 06-17.802, *D.*, 2008, p. 662, note A. Bugada.

[83] Articles L. 2511-1 to L. 2512-5 of the French Labour Code.

[84] Article L. 2512-1 of the French Labour Code.

[85] Article L. 2512-2 of the French Labour Code.

The rate of unionisation among care workers (3.2.2) is high in the public sector and needs to be developed among homecare workers. The sector as a whole is facing a major shortage of workers due to the low attractiveness of the professions (3.2.3).

3.2.1 Trade Unions and Employers' Organisations

A study of collective agreements in the care sector revealed the signatory federations within the employers' organisations: Fédération des établissements hospitaliers d'assistance privée à but non lucratif; Fédération des particuliers employeurs de France; Syndicat national des établissements, résidences et services d'aide à domicile privés pour personnes âgées; Fédération des services aux particuliers; Fédération des services à la personne et de proximité; Aide à domicile en milieu rural; Union nationale de l'aide, des soins et des services aux domiciles; Fédération nationale des associations de l'aide familiale populaire; Fédérations d'employeurs du secteur de l'aide et des soins à domicile; Fédération de l'hospitalisation privée; Union nationale des associations de l'aide, des soins et des services aux domicile; Fédération nationale des associations de l'aide familiale populaire; Fédération des syndicats nationaux d'employeurs du secteur de l'enfance inadaptée. As far as employee trade unions are concerned, all the trade unions (CGT, CFDT CFTC, FO, UNSA, CFE-CGC, SUD) are organised into "health and social", "services", "inter-collectivity" and "home help" federations in the public and private sectors.

3.2.2 Trade Union Density Among Nursing Staff

According to a 2019 study,[86] 10.3% of employees say they are union members and 3.6% say they are union supporters. The unionisation rate in the civil service is 18.4%, more than twice as high as in the private sector (7.8%). However, the figures for union membership are not exhaustive and it is difficult to establish a precise figure.

Union membership among hospital civil servants fell by 1.3 points to 15.6%. The proportion of union members in the public sector care professions, three quarters of which are in the hospital sector, fell by 2.5 points in 2019, whereas the unionisation rate was slightly below average in 2013.[87]

In the private sector, employees in health and social work (combined with education) have a unionisation rate close to the average at 8%.[88]

3.2.3 The Main Challenges Facing Trade Unions in the Care Sector

As part of the so-called "nursing project", the CGT, FO, SUD and UNSA are continuing to demand the opening of negotiations based on the demands

[86] M.-T. Pignoni, "Légère reprise de la syndicalisation en France entre 2013 et 2019: dans quelles activités et pour quelle catégorie de salariés?" *Dares Analyses* 6 (2023).

[87] Pignoni, "Légère reprise de la syndicalisation".

[88] Pignoni, "Légère reprise de la syndicalisation".

of employees and the needs of users, i.e. an increase in salaries, recruitment and training are demands that must be met as a matter of urgency in order to halt the deterioration of the health and social care system, which is taking place and accelerating. For the unions, the transformation of nursing training is being used to reduce "labour costs" and cut public health spending.

The home help sector is facing a structural problem of underfunding. That's why trade unions such as the CGT and CFDT are calling for support for the mobility of homecare professionals, who have to travel long distances to visit beneficiaries' homes. They are calling for non-consecutive journeys to be paid for, and for the full and systematic reimbursement of the expenses of staff who work with the most vulnerable members of the public in the départements.

FO has denounced Rider 33 of 22 February 2023 relating to the classification and remuneration of jobs in the NCC for Private Hospitalisation of 18 April 2002. Rider 33 provides for the integration of the allowances resulting from the "Ségur 1 and 2" negotiations into the minimum annual level pay. However, in the short term, for low salaries, these bonuses will be absorbed by increases in the minimum wage and, in fact, in the current context of inflation, the gain from these allowances will disappear. The disappearance of the point value will also prevent any general increase in salaries. Employers will be able to increase one level without increasing the others.

3.3 Employees Collective Representation In Company

Under French labour law, employee representation is achieved by setting up a social and economic committee[89] (CSE) since the Ordinance of 22 December 2017,[90] which merged the existing staff representation institutions (staff delegates, works council and health, safety and working conditions committee). It must be set up in companies with at least 11 employees, but the law distinguishes between companies with more or less than 50 employees as regards its prerogatives.

The CSE is the result of professional elections, the organisation of which is the responsibility of the employer. It must inform the staff and the trade union organisations in order to negotiate a pre-electoral agreement and draw up the lists of candidates. The composition of the CSE is bipartite in companies with fewer than 50 employees: the employer or his representative and elected staff representatives. In companies with more than 50 employees, it becomes a tripartite body with the addition of a trade union representative on the CSE. In principle, the term of office is four years, unless it is shorter.

In companies with fewer than 50 employees, the CSE deals with individual or collective requests relating to pay and the application of labour regulations. It promotes health, safety and the improvement of working conditions. It car-

[89] Auzero, Baugard and Dockès, *Droit du travail,* 1621 et seq.

[90] Ordinance no. 2017-1386 of 22 December 2017 on the new organisation of company social and economic dialogue and promoting the exercise and enhancement of trade union freedoms.

ries out investigations into accidents at work or occupational illnesses. It exercises the right to alert in the event of infringement of personal rights and in the event of serious and imminent danger. Committee members may refer to the Labour Inspectorate all complaints and observations relating to the application of labour regulations.[91]

In companies with at least 50 employees, the CSE has general powers to ensure the collective expression of employees' interests so that they are taken into account in decisions relating to the management and economic and financial life of the company, the organisation of work, vocational training and production techniques. The CSE also plays an important role in the field of health, safetý and working conditions. The CSE is informed and consulted on issues relating to the general organisation, management and running of the company, in particular on measures likely to affect the size or structure of the workforce; changes to its economic or legal organisation; employment and working conditions, in particular working hours and vocational training; the introduction of new technologies and major developments altering health and safety conditions or working conditions; measures taken to make it easier to get to work, get back to work or stay at work, in particular the reorganisation of workstations.[92] In addition to these general powers, the Labour Code provides for recurring consultations and information[93] and specific information[94] organised according to the following triptych: public policy, scope for negotiation and supplementary provisions.

The CSE also has powers in the areas of health, safety and working conditions. It analyses the occupational risks to which workers may be exposed. It contributes to facilitating women's access to all jobs, to resolving problems linked to maternity, and to adapting and adapting workstations. It can promote any initiative it deems useful and, in particular, proposes actions to prevent moral harassment, sexual harassment and sexist behaviour.[95] The CSE also carries out health, safety and working conditions inspections and conducts surveys.[96] From 300 employees onwards, the CSE is obliged to set up a health, safety and working conditions committee, which is delegated all or some of the CSE's powers relating to health, safety and working conditions.

As far as information for the CSE is concerned, an economic, social and environmental database brings together all the information required for consultations and recurring information that the employer makes available to the social and economic committee. This information includes all the indicators relating to professional equality between men and women, in particular differences in pay and distribution between men and women among senior executives and mem-

[91] Article L. 2311-5 of the French Labour Code.

[92] Article L. 2312-8 of the French Labour Code.

[93] Articles L. 2312-17 to L. 2312-36 of the French Labour Code.

[94] Articles L. 2312-37 to L. 2312-58 of the French Labour Code.

[95] Article L. 2312-9 of the French Labour Code.

[96] Article L. 2312-13 of the French Labour Code.

bers of management bodies. The information provided to the committee on a regular basis is made available to its members via the[97] database.

The 2017 ordinance[98] also provided for the creation of local representatives within the CSEs. These are staff representatives with a more limited remit than that of the CSE that appointed them. This will prevent staff representative bodies from merging too much and unifying the scope of staff representation, which would result in excessive concentration of representation at company level.

It is possible to introduce co-decision *via* the Works Council once a majority agreement has been reached on the subject. It can also be set up by means of an extended branch agreement for companies without a trade union delegate.[99] The Works Council then exercises all the powers of the CSE and is competent to negotiate, conclude and revise company or establishment agreements,[100] although it is rarely set up.

Of the collective agreements studied,[101] only the NCC for the home help, support, care and services of 21 May 2010 has been amended to incorporate the new provisions relating to the Social and Economic Committee.

In the civil service, social dialogue on occupational health has been reshaped[102] by the law of 6 August 2019,[103] which reorganised staff representative bodies,[104] in particular by merging technical committees and health, safety and working conditions committees into a single body: the social committee. It was created to develop an integrated vision of human resources policies and working conditions alongside other existing bodies.

Local works councils are provided for in article L. 315-13 of the Social action and family for social and medico-social establishments and in article L. 6144-3 of the Public Health Code for public-sector hospitals. The parity rule does not apply to social committees. Their composition varies according to the number of public-sector employees: permanent staff, trainees and contract staff, under both public and private law. All employees are therefore eligible to vote. The CSE is chaired ex officio by the director of the establishment. The CSE only has consultative powers, but must be consulted on the establishment's project, budget, accounts and employment table, the creation, abolition and transfor-

97 Article L. 2312-18 of the French Labour Code.

98 Article R. 1432-116 et seq. of the French Labour Code.

99 Article L. 2321-2 of the French Labour Code.

100 Article L. 2321-1 of the French Labour Code.

101 In the branch of individual employers and home-based employment, the provisions relating to the CSE do not apply since employment is direct between an employee and his private employer, who is not a company.

102 L. Clouzot, "Le dialogue social en matière de santé au travail après la loi de transformation de la fonction publique," *AJFP* 1 (2023): 25–9.

103 Law no. 2019-828 of 6 August 2019 on the transformation of the civil service.

104 M. Cochereau, "Les compétences des nouvelles instances représentatives du personnel: le visage du dialogue social," *AJFP* 1 (2023): 16–20.

mation of medical structures, and the criteria for distributing certain bonuses and allowances.[105]

Where there are at least 200 full-time employees, a health, safety and working conditions committee must be set up within the social committee of public hospitals.[106] These committees are governed by the rules set out in the French Labour Code, but also by specific legislation.[107] Article L. 4111-1 of the Labour Code has extended the provisions relating to staff representatives on the CHSCT to public health establishments, excluding permanent civil servants from the scope of this extension. The CHSCTs must analyse and promote the prevention of occupational risks, which are very specific to public health establishments.[108]

The joint administrative committees[109] represent active parity within the hospital civil service. They are made up of "equal numbers" of representatives of public health employers and representatives of organisations representing civil servants, medical staff or management staff. They are consulted on matters of an individual nature concerning members of the bodies and jobs within their remit, for the most part within the framework of the management guidelines established by the management of the establishment to which they are assigned.[110]

3.4 The Legal Framework for Collective Bargaining

The Labour Code lays down certain conditions of validity common to the various collective bargaining standards.

With regard to the conditions relating to the parties at company level, the ability of employers to negotiate and sign is not subject to a condition of representativeness. As far as the employees are concerned, in principle the text must be signed by one or more representative employee trade union organisations which have received more than 50% of the votes cast in the first round in order to be valid (majority agreement). By way of exception, the text is also valid if it is signed by one or more representative employee trade union organisations with more than 30% of the votes cast in the first round of elections, and if it has been approved by a majority in an employee referendum.[111] Collective agreements are open contracts to which any representative trade union or employers' organisation may subsequently sign up.

The text of the agreement must contain certain mandatory elements (the timetable for negotiations, a preamble, the form and deadline for any renewal,

[105] A. Taillefait, *Droit de la fonction publique* (Paris: Précis Dalloz, 2022), 839 et seq.
[106] Article L. 251-12 of the General Civil Service Code.
[107] Article L. 4612-1 of the French Labour Code.
[108] Taillefait, *Droit de la fonction publique*, 840 et seq.
[109] Article L. 261-8 et seq. of the General Civil Service Code.
[110] Taillefait, *Droit de la fonction publique*, 838 et seq.
[111] Article L. 2132-12 of the French Labour Code.

the form and deadline for any revision, a monitoring clause, review clauses)[112] and comply with certain formal and publicity requirements.

The aim and effect of collective bargaining standards is normally to improve the situation of employees.[113] However, in certain cases, as legal texts are of absolute public policy, the collective agreement cannot modify their provisions, even in a manner favourable to the employee.[114] It is also possible for an agreement concluded at company or establishment level to include one or more stipulations that are unfavourable to employees compared with an industry-level agreement, based on the fact that Ordinance no. 2017-1385 of 22 September 2017 expressly provided that the primacy of company agreements over industry-level agreements becomes the principle. However, the legislator has set a limitative list of 13 mandatory topics in which branch agreements take imperative precedence over company agreements unless at least equivalent guarantees are provided by the latter[115] and a limitative list of four topics that the branch agreement may lock in.[116] The new structure of the Labour Code also allows certain collective bargaining standards to override legal or regulatory rules. In fact, in a growing number of areas, the Labour Code is now divided into three parts: public policy provisions setting a legal minimum from which a company agreement cannot derogate, provisions relating to the scope of collective bargaining and, finally, suppletive provisions establishing rules applicable to the employer in the absence of agreement-based standards.

Agreements must be in writing, otherwise they are null and void. They must be filed with the administrative and judicial authorities. These formalities are essential and condition the entry into force of the agreements. They are also published on a national database. Both employees and staff representatives must be informed of the collective bargaining standards applicable in the company or establishment and of any changes made to these standards.

Compulsory industry-level bargaining was radically reformed by the Ordinance of 22 September 2017, which completely rewrote the provisions of the Labour Code devoted to compulsory bargaining. The Code stipulates that negotiations must be conducted seriously and fairly, which implies that trade union organisations must be provided with the information they need to negotiate in full knowledge of the facts. Organisations bound by a branch agreement are

[112] Articles L. 2222-3 to L. 2222-6 of the French Labour Code.

[113] Article L. 2251-1 of the French Labour Code.

[114] Article L. 2251-1, 2nd sentence of the French Labour Code.

[115] In the areas that interest us in this study, the industry agreement can define guarantees in the following areas: minimum wages, classifications, measures relating to working hours, professional equality between men and women, and the conditions and duration of renewal of the trial period.

[116] Prevention of the effects of exposure to occupational risk factors, professional integration and job retention for disabled workers, the number of employees above which trade union delegates may be appointed, their number and the enhancement of their trade union career, as well as bonuses for dangerous or unhealthy work.

obliged to meet every four or five years to negotiate on certain issues. In order to give the social partners greater flexibility, the legislator has allowed them to conclude "adaptation agreements"[117] under which they can modulate their obligations within a broader framework. In the absence of an adaptation agreement, supplementary legal provisions relating to the precise definition of negotiation topics and frequency will apply.[118]

Several reports have criticised the fact that there are too many branches (687 branches in 2015) and that employees are concentrated in a small number of branches. They have also deplored the existence of numerous cross-cutting branches specific to certain categories of professionals or even certain trades. In this context, the restructuring[119] of professional branches, including a reduction in their number, was presented by the public authorities as a means of revitalising this level of collective bargaining. Three of the NCC studied have been restructured: the NCC for Establishments and Services for maladjusted and disabled Persons of 15 March 1966. By order of 5 August 2021, the scope of the collective agreement for accommodation and social rehabilitation centers was merged with this agreement. The NCC for Private Hospitalisation of 18 April 2002. By agreement dated 14 March 2019, the scope of the national collective agreement was merged with that of the national private hospital collective agreement, designated as the connecting branch. The NCC for the sector of individual employers and home employment is the result of the merger of the national collective agreement for employees of private individual employers and the national collective agreement for maternal assistants of private individual employers.

The public authorities can modify the initial scope of application of an industry standard agreement. This is done by means of an extension order issued by the Minister of Labour, after obtaining the opinion of the National Commission for Collective Bargaining, Employment and Vocational Training (Commission nationale de la négociation collective, de l'emploi et de la formation professionnelle). The effect of extension is to extend the application of a collective bargaining standard to employees in all companies located within its initial professional and territorial scope, thereby making it compulsory in companies that were neither signatories nor members. On the other hand, extension modifies the initial territorial scope of a branch agreement (geographical extension) or its professional scope (professional extension); but extension can only concern agreement texts which have previously been the subject of an extension

[117] Article L. 2241-4 of the French Labour Code.

[118] Article L. 2241-7 of the French Labour Code.

[119] The techniques used to restructure the branches consist of mergers, broadening the scope of application, refusal of extension by the Minister of Labour, refusal to draw up a list of representative employers' organisations and trade unions, which prevent negotiation and the conclusion by the social partners of a scope agreement aimed at establishing a conventional scope combining that of several existing agreements. Article L. 2261-32 of the French Labour Code.

procedure.[120] Four of the agreements studied have been the subject of an extension order (see *above*).

With regard to civil service law, the ordinance of 17 April 2021 opens up the possibility of concluding collective agreements.

The players involved in negotiations differ according to the subject and level of negotiation concerned. Trade union organisations are representative if they have at least one seat: either on the Conseil commun de la fonction publique (CCFP), the Conseil supérieur de la fonction publique de l'État (CSFPE), the Conseil supérieur de la fonction publique territoriale (CSFPT) or the Conseil supérieur de la fonction publique hospitalière (CSFPH); or on the comité social d'administration (CSA), territorial (CST) or établissement (CSE) placed under the competent administrative or territorial authority, or on a body exercising the powers of the social committees. In the case of public-sector employers, representatives of the government, territorial public-sector employers and hospital public-sector employers are entitled to take part in negotiations on pay and purchasing power. For other negotiations: the administrative or territorial authority competent to conclude the agreement is that which is competent to take the regulatory measures it contains, where applicable, or to undertake the specific actions it provides for.

The Staff Regulations do not lay down a general obligation to negotiate; collective bargaining is optional. However, public employers and representative trade unions are obliged to negotiate on a number of issues: the revision of management guidelines, working time derogations and the framework for exercising the right to strike in the case of local public employers, and the organisation of work and the social project in the case of hospital establishments.[121]

The initiative for collective bargaining rests with the public employer. However, representative trade union organisations may, at their level and provided they have received at least 50% of the votes cast, ask the competent administrative or territorial authority corresponding to that level to open negotiations in one of the 14 areas listed in article 8 ter I of Ordinance no. 2021-174 of 17 February 2021. Article 8 ter II also stipulates that the representative trade unions of civil servants and the competent administrative and territorial authorities are also entitled to take part in negotiations in any other area.

The Ordinance of 17 February 2021 specifies that collective agreements concluded on the areas listed

> may include, under the conditions mentioned in Article 8e, provisions enacting regulatory measures, as well as clauses by which the administrative authority undertakes to undertake specific actions not involving the enactment of regulatory measures.

The ordinance did not retain the principle of favour that exists in labour law. For the Conseil d'Etat, there is a general principle of labour law "according to

[120] Articles L. 2261-15 et seq. and R. 2261-1 et seq. of the French Labour Code.

[121] Article L. 6143-3 of the French Public Health Code.

which a collective agreement may always include provisions more favourable to employees than those of the laws and regulations in force".[122]

4. Employment Status, Flexible Forms of Employment, and Employment Protection

If there is one area in which there are still major differences between labour law applicable to the private and public sectors, it is employment. This is why we will examine the particularities of forms of employment in the private sector in turn (4.1), followed by those in the public sector (4.2).

4.1 Specific Features of Forms of Employment in the Private Sector

In terms of employment relationships, a distinction is traditionally made between those resulting from a typical employment contract (i.e. a full-time, open-ended employment contract) (4.1.1) and those resulting from atypical employment contracts (4.1.2). Finally, the arrangements for amending and terminating the contract will be examined (4.1.3).

4.1.1 The Typical Employment Contract

Open-ended contracts are the normal form of recruitment for care workers in France.[123]

4.1.1.1 Recruitment Conditions

The choice of recruitment is a matter for the employer. However, the employer must comply with a certain number of rules or general principles of labour law and civil service law, such as the rule of non-discrimination in recruitment or equal opportunities.[124] However, collective bargaining law may include additional requirements for employee recruitment in the healthcare sector.[125] By way of illustration, the national collective agreement for establishments and services for the maladjusted and disabled stipulates that

> companies shall offer newly recruited employees without qualifications to undertake, within 2 years, a training course leading to a qualification in the sector, at least level V, taking into account their career plans. For employees

[122] CE, 8 July 1994, no. 105471, *Confédération générale du travail*.

[123] NCC for personal services companies, Part II, chap. 1, section 1; NCC for home help, support, care and services branch 2010, titre IV, chap. 3, art 10, al. 1; NCC for private non -for-profit hospital care and nursing establishment, art. 04.02.

[124] Article L. 332-21 of the General Civil Service Code; article of the Labour Code.

[125] See in particular article 04.05.2 of the NCC or private non -for-profit hospital care and nursing establishment; article 11 of the NCC Establishments and Services for malajusted and disabled (conditions of recruitment).

> without qualifications who are already in post, the employer undertakes to offer training leading to a qualification in the sector, at least level V, or to facilitate the employee's commitment to a process of validating the experience acquired in order to obtain a minimum level V diploma. Employees who have obtained a level V qualification within this framework will be given priority consideration for any corresponding position available in the company if they apply for the position concerned. This includes professionals covered by appendices III, IV, IX and X as well as the following jobs: housekeeper, qualified night supervisor and family assistant.[126]

Generally speaking, in both the private and public sectors, the conditions for recruitment as a carer are those relating to the applicant's physical abilities, proof of a qualification or diploma and qualification and/or success in a public service competition.[127]

4.1.1.2 Specific Clauses in Individual Employment Contracts in the Care Sector

Almost all the national collective agreements studied[128] emphasise the "special setting" of the home (of the employer/user) as the place where the worker is employed, the duty of accountability and the requirement of loyalty on the part of staff, in particular against abuse of the weakness of people receiving care. Confidentiality and professional secrecy clauses can be found in most collective agreements applicable to care workers.[129] The regulations are more geared towards protecting users than carers.[130]

In addition, all NCC for public or private hospitals, whether commercial or not-for-profit, emphasise "the needs of the service" or "the requirements of the service" in order to provide for additional constraints or particular hardships (organisation of working hours, timetables and distribution, duty roster with notice period) for employees, sometimes in return for compensation in the form of compensatory rest or allowances (such as weekly rest days or additional days of holiday).[131] Failure to comply with these special clauses may result in penalties that are often particularly severe.[132]

[126] Article 13 of the NCC Establishments and Services for malajusted and disabled Persons.

[127] See *below*.

[128] Excluding the NCC for private non -for-profit hospital care and nursing establishment.

[129] Section 3 of the NCC for personal services companies; title IV, chap. 2, article 1 and 2 - article 8, para. 2 of the NCC for home help, support, care and services; article 05.02.1 of the NCC for private non-for-profit hospital.

[130] On this subject, see Title IV, Chapter 2, Article 8, paragraphs 3 and 4 of the NCC for home help, support, care and services.

[131] Thus, Title IV, article 31 of the NCC for private non-for-profit hospital; article 05.01.2 of the NCC Establishments and Services for maladjusted and disabled Persons (not extended).

[132] Article 05.02.2 of the NCC for private non-for-profit hospital (extended): Miscellaneous prohibitions.

In the public sector, entire chapters (Chapter II, Book Ist, Title II) are devoted to the issue of preventing conflicts of interest and criminal offences (art. L122-1 to L122-25), as well as to the issue of employee liability (Chapter V of the same title: art. L125-1 to L125-2).

4.1.1.3 The Legal Regime Governing the Trial Period

The length of the trial period (4.1.1.3.1) and the conditions governing its termination (4.1.1.3.2) are governed by law.

4.1.1.3.1 Length of Probationary Period (Including Renewal)

The trial period is an integral part of the employment contract. Consequently, its duration and the possibility of its renewal must be mentioned in the employment contract and cannot be presumed. As the main purpose of the trial period is to assess the employee's suitability for the proposed position, any absence on the part of the employee, for whatever reason, will automatically suspend and extend the trial period.

The length of the trial period depends on the employee's professional category and the nature of the contract. Regardless of the professional category, the trial period may be renewed once for a period not exceeding that of the initial period, subject to the written agreement of the parties before the end of the trial period.

4.1.1.3.2 Breach of the Probationary Period (Requirement for a Period of Notice and Penalties)

During the trial period, both parties may terminate the contract at any time without notice or compensation. The very purpose of a trial period is to enable the employer to assess the employee's qualities and the employee to assess the working environment.

If either party wishes to terminate the relationship during the trial period, they must comply with the conditions laid down by law and by collective bargaining agreements to avoid abuse. Some national collective agreements in the care sector simply refer to ordinary law. For example, article 43.2 of the NCC for Private Hospital governs the notice period, distinguishing according to the form of contract (permanent or fixed-term) and whether the termination is initiated by the employer or the employee. Thus,

> in accordance with article L. 1221-25 of the Labour Code, when the trial period is terminated by the employer and until the end of the trial period, the employee is notified within a period that may not be less than: - 24 hours less than 8 days' presence; - 48 hours between 8 days and 1 month's presence; - 2 weeks after 1 month's presence; - 1 month after 3 months' presence. If this period is completed, the employee concerned will be entitled to 2 days' paid job-seeking leave during the month. Each day corresponds to the employee's normal working day. These time limits apply to the termination of a fixed-term or open-ended contract

> throughout the trial period. However, in the case of a fixed-term contract, no notice period is required if the trial period is less than 1 week.[133]

Conversely, when the trial period is terminated by the employee, he must give 48 hours' notice. This notice period is reduced to 24 hours if the employee has been with the company for less than 8 days. These notice periods apply to the termination during the trial period of a fixed-term or open-ended contract.[134]

4.1.2 Atypical Employment Contracts

Under French law, atypical employment contracts are fixed-term employment contracts (4.1.2.1), part-time employment contracts (open-ended or fixed-term) (4.1.2.2) and temporary employment contracts (4.1.2.3).

4.1.2.1 Fixed-Term Contracts

The use of fixed-term contracts and other atypical contracts is authorised under certain conditions that are strictly and exhaustively listed in the law.[135] With regard to the reasons for using fixed-term contracts, most national collective agreements refer to legal law. For example, while they reiterate that the principle is recruitment under an open-ended employment contract, the national collective agreement for personal services companies (extended) emphasises that

> the particular nature of personal services activities is based on the organisation of work in the form of interventions with private individuals receiving services, the duration and frequency of which vary greatly. Fixed-term contracts may be concluded: in the cases provided for by law for the replacement of one or more employees; in the cases provided for by law for the reason of a temporary increase in activity; in the other cases provided for by the provisions of this agreement.[136]

According to the NCC Establishments and Services for maladjusted and disabled people Persons, "employees hired on an intermittent or temporary basis benefit from the provisions included in this agreement". With regard to fixed-term employment, article 14 of the same collective agreement states that

> temporary staff are hired for a specific full-time or part-time job of a temporary nature, in particular to replace the absent holder of a permanent post or to carry out work of an exceptional nature. The temporary nature of the job and its duration must be stated in the letter of recruitment.[137]

[133] Article 43.2 of the NCC Private hospital.

[134] Article L. 1221-26 of the French Labour Code.

[135] Titre IV, chapitre 3, article 10, al. 2 de la NCC for home help, support, care and services domicile; Article 04.02 de la NCC for private non-for-profit hospital.

[136] Part II, Chapter 1, Section 1 of the NCC for personal services companies.

[137] Article 5 of the NCC Establishments and Services for maladjusted and disabled people Persons.

In principle, workers hired under fixed-term contracts have the same rights as permanent workers, in terms of pay and other social benefits linked to the employment contract. They benefit from the same social security cover as the company's permanent employees. In addition, at the end of the fixed-term contract, the employee is entitled under the French Labour Code to a bonus intended to compensate for the precarious nature of the contract and amounting to 10% of the total gross remuneration received during the contract.[138] This bonus is paid when the fixed-term contract comes to an end and is not immediately continued under an open-ended contract.

The fixed-term contract can evolve into a permanent contract (CDI) or even a temporary permanent contract created in 2014 (CDII).

4.1.2.2 Part-Time Work

Legal recognition of part-time work by the law of 27 November 1973, which allowed "the employer to arrange, on a permanent or temporary basis, reduced working hours applicable only to employees who so request". At the time, switching a full-time employee to part-time work was the only option envisaged, the initiative for which was given exclusively to the employee. Since the Act of 28 January 1981, employers have also been able to offer reduced working hours to employees and jobseekers on their own initiative, provided that priority is given to employees and jobseekers who so request.

The extent to which employees have control over the form and conditions of their employment depends on the framework in which they place their initiative. No less than five legal mechanisms can be mobilised depending on the need for a reduction in working hours that the full-time employee intends to satisfy. In addition to the general framework provided by article L. 3123-2 of the Labour Code, which covers all personal needs, the education of young children, caring for someone at the end of their life, looking after a dependent relative, or a business start-up or takeover project are all covered by dedicated schemes which, when compared, give employees varying degrees of control over the decision to reduce their working hours and the arrangements for doing so. However, since the national inter-professional agreement (ANI) of 11 January 2013 and the law of 14 June 2013, the system seems to have stabilised. It is true that the Labour Act of 8 August 2016 made its contribution by redefining the role of the players in the production of standards, but it did not call into question the trade-off between the different interests.

Are these opposing rationales? The 1981 Act has undergone a number of reforms, all of which have sought to reconcile approaches that at first glance appear to be at odds with each other. How, at the same time, can a (primarily) employee-oriented rationale of individual aspiration be translated into legal terms, and a company-oriented rationale of flexibility and development of competitiveness?

[138] Articles L. 1243-8 to L. 1251-32 of the French Labour Code.

The equation seems difficult to resolve, to say the least, especially if we add to it considerations linked to employment policy or family policy, which lead to part-time work being seen as a way of sharing jobs (two part-time jobs for one full-time job) or reconciling work and family life.

However, the legal provisions on part-time working do not apply to employees of "private individuals as employers", and this has been confirmed on several occasions by the Cour de cassation. It has ruled that, by way of derogation, the provisions of the Labour Code on the content and form of part-time contracts do not apply to employees of "private individuals". The presumption of full-time work for part-time employees who do not have a written contract therefore does not apply where the Chèque Emploi Service Unique (CESU) method is used and a written contract is not mandatory. Thus, the High Court refused an employee of a private employer the benefit of Article L. 3123-14 of the French Labour Code relating to the form and content of part-time employment contracts, and in particular the rule whereby in the absence of a written employment contract, or in the absence of the compulsory information in the contract concluded on a part-time basis, the employment is presumed to be full-time.[139]

Another feature of part-time contracts and fixed-term contracts is that they are reserved for certain care activities only. It is likely to modify the working hours of employees. In such cases, they give rise to compensation, particularly in terms of pay.[140] Finally, following the law, the collective agreement provides for equal rights for part-time and full-time employees.[141]

4.1.2.3 The Temporary Employment Contract

Temporary work has a significant impact on the healthcare sector in France. These are temporary contracts between temporary workers and temporary employment agencies, which then make them available to healthcare establishments. The duration of these contracts can vary according to requirements, but is generally limited to 18 months.[142]

Healthcare establishments, such as hospitals and clinics, often use temporary workers to cope with fluctuations in staffing demand, whether due to holidays, temporary work overload or one-off requirements. What's more,

[139] Cass. soc., 11 March 2009, no. 07-44.013. See also Cass. soc., 7 Dec. 2017, no. 16-12.809, no. 2603 FS - P + B; Cass. soc., 8 July 2020, no. 18-21.584, no. 677 FS - P + B: The minimum working time of 24 hours in the case of part-time work does not apply to employees of a private individual employer.

[140] Article 2.5 of the NCC for personal services companies, Special provisions for certain fixed-term contracts called "one-time or occasional mission" (resumption of Article L. 1242-2, 3° of the Labor Code).

[141] Title IV, chapter 3, article 10, paragraph 3 of the NCC for home help, support, care and services: "Part-time employees benefit from the same rights as those granted to full-time employees".

[142] See article L. 1251-12-1 of the French Labour Code for the different durations.

temporary work offers invaluable flexibility in meeting immediate staffing needs. Temporary staff can be mobilised quickly to cover absences or urgent requirements.

The impact of temporary work in the care sector is also apparent from the point of view of employment regulations. In France, temporary work is strictly regulated. Temporary employment agencies must comply with labour laws on wages, working hours, holiday pay and other workers' rights. Temporary workers enjoy the same rights as permanent workers. Temporary workers are paid according to their qualifications, the establishment where they work and the type of assignment. They receive an hourly wage which may be similar to that of permanent workers. The Labour Code prohibits any difference in treatment between temporary workers and other workers. However, because of the precarious nature of their employment, the Labour Code provides, as it does for fixed-term contracts, for a precariousness allowance at the end of the assignment that is identical to the bonus paid at the end of a fixed-term contract. As for the various social benefits, temporary workers are entitled to social security benefits such as health insurance, unemployment insurance and pensions, which are managed by the temporary employment agencies. As far as training is concerned, temporary workers can receive specific training to prepare them for their assignments, particularly in the care sector where special skills are often required.

Temporary work is an important component of employment in the healthcare sector in France, offering a flexible solution to meet the staffing needs of healthcare establishments. However, it is governed by strict regulations designed to protect the rights of temporary workers in principle and to guarantee their equal treatment with permanent workers.

4.1.3 Modification and Termination of Contracts and Job Protection in the Private Sector

The Labour Code distinguishes between substantial changes to the employment contract, such as a significant reduction in working hours, duties, place of work, job classification or pay, and changes to working conditions. As the employment contract is a bilateral contract (agreement between the parties), any substantial change to the elements of the contract requires the employee's agreement. If the employee refuses these changes, the employer may consider terminating the contract on its own initiative. On the other hand, simple changes to working conditions are binding on the employee, as they fall within the employer's power of direction. If they are refused, the contract will be terminated for good reason.

In France, the modification and termination of employment contracts for care workers are subject to specific rules due to the sensitive nature of the job and the protection of employees as a weaker party to the employment contract. Most contract terminations, whether by resignation or dismissal, require a notice period, the length of which varies according to seniority and the type of contract.

Employment contracts in the healthcare sector can be terminated in a number of ways. A typical contract or open-ended contract may be terminated at the

initiative of the employer, the employee or both parties. Firstly, the employer may dismiss an employee for specific reasons, such as disciplinary action or failure to fulfil contractual obligations, particularly in the case of serious misconduct or professional inadequacy. The grounds for dismissal may also relate to the employer's economic difficulties or technological developments. Generally speaking, employees benefit from specific guarantees to protect their jobs and can contest their dismissal. All dismissals must be justified by a real and serious reason and follow a well-established formal procedure (requirement for a letter of dismissal, invitation to a preliminary interview, time limit, etc.). Failing this, the employer is liable to penalties for unfair or invalid dismissal, when the dismissal is based on a prohibited ground, in particular because of the employee's pregnancy, occupational illness or accident, or when the dismissal is based on any other discriminatory ground. In the event of invalid dismissal, the employee may be reinstated in the company (in principle, the employer may not oppose this), with payment of remuneration and redundancy pay (amount and ceiling on damages in the event of unfair dismissal since the Macron ordinances). Dismissed employees may also register as jobseekers and receive back-to-work benefit under the unemployment insurance scheme. They retain their health insurance rights for up to 1 year after termination of their employment contract.

Termination of the employment contract at the employee's initiative is a resignation. The employee may resign from his post. However, a notice period must be observed, unless there is a legitimate reason for immediate resignation or the employer agrees to waive the notice period.

Since law no. 2008-596 of 15 June 2008, employment legislation has authorised termination of the employment contract by mutual agreement of the parties, also known as the conventional termination.[143] In this case, the employee and employer can agree to an amicable termination of the employment contract by means of a conventional severance agreement approved by the Labour Inspectorate. This option offers an alternative to dismissal (the settlement agreement prevents the employee from contesting the agreement) or resignation (access to unemployment benefit rights). The employee is entitled to severance pay at least equal to the redundancy pay.

In addition, carers may be employed on fixed-term contracts, which automatically end on the agreed date. No notice is required to terminate a fixed-term contract when it expires.

4.2 The Particularities of the Commitment of Public Servants

The particularities of the status of public servant are characterised by specific forms of commitment (4.2.1) but also in the modification and termination thereof (4.2.2).

[143] Article L. 1231-1 of the French Labour Code.

4.2.1 Forms of Commitment by Public Employees

The ordinance of 24 November 2021[144] unified the general rules for civil servants in the three civil services, establishing a common general status. There are three types of civil servant. Firstly, permanent employees or civil servants. Article L. 311-1 of the General Civil Service Code sets out the principle that

> permanent civil service posts in the State, regions, departments, municipalities and their public administrative establishments are filled either by civil servants governed by this Code, or by civil servants in parliamentary assemblies, judicial magistrates or military personnel under the conditions laid down by their status.

It follows that public sector employees are civil servants. In principle, these employees are recruited by competitive examination and appointed to the posts to be filled.[145]

A second way of entering the public sector is through the recruitment of contract staff for permanent positions. Recruitment by contract is provided for in Articles L. 331-1 to L. 334-3 of the General Civil Service Code. Since 2019 and the law transforming the civil service, a reform has introduced new recruitment possibilities to meet permanent or temporary needs in both the local civil service[146] and the hospital civil service. Public administrations and establishments can now recruit permanent contract staff if there are no civil servants available to carry out the corresponding functions,[147] to carry out functions requiring highly specialised technical knowledge[148] or for temporary needs to replace part-time civil servants or civil servants who are unavailable due to duly granted leave.[149] At the end of this period, the contract may only be renewed by express decision for an indefinite period.[150]

Notwithstanding the principle set out in article L. 311-1 of the General Civil Service Code, it is also possible to recruit permanent contract staff either to meet temporary needs or to temporarily replace local or hospital civil servants.[151] The contract is concluded for a fixed term (1 year and 2 years maximum) until a civil servant is recruited. It is renewable, by express decision, for the duration of the absence of the hospital civil servant to be replaced. To ensure continuity of service, public administrations and establishments may use permanent contract staff to meet temporary needs under certain conditions.

[144] Ordinance no. 2021-1574 of 24 November 2021 on the general status of the civil service.

[145] Article L. 320-1 of the General Civil Service Code.

[146] Article L. 332-8 to L. 332-14 of the General Civil Service Code/CDD of 3 years and 6 years maximum.

[147] Article L. 332-15-1° and L. 332-17 of the General Civil Service Code/CDD of 3 years and 6 years maximum.

[148] Article L. 332-15-2 of the General Civil Service Code.

[149] Articles L. 332-19 and 20 of the General Civil Service Code.

[150] Article L. 332-9 and 10 of the General Civil Service Code.

[151] Article L. 332-13, article L. 332-9 to L. 332-20 of the General Civil Service Code.

Similarly, local authorities and hospital establishments may recruit contract staff for non-permanent posts either in the event of a temporary increase in activity for a maximum period of 12 months[152] (or a seasonal increase in activity for a maximum period of 6 months)[153]; or as part of a project contract for a minimum period of 1 year and a maximum period of 6 years.[154]

Thirdly, public administrations and establishments may exceptionally use private-sector employees for functions requiring specialised technical skills.[155] In this way, they can benefit from the secondment of employees by signing an agreement with their employer,[156] or use temporary employment agencies under the conditions set out in the Labour Code.[157]

Part-time work is possible for public bodies.[158] However, this part-time work must be at least 50% and "hospital civil servants may be excluded from the benefit of part-time work, depending on the grade they hold, the post they occupy or the duties they perform".[159]

4.2.2 Modification and Termination of a Public Servant's Contract of Employment

In the event of reorganisation resulting in the loss or elimination of a job, the General Civil Service Code provides for the reassignment of civil servants following a change that deprives them of their job:[160] civil servants whose jobs are eliminated are assigned to a new job under the conditions set out in the statutory provisions governing the civil service to which they belong. In the local civil service, where a post is likely to be abolished[161] the local authority shall seek to find alternative employment for the civil servant concerned.[162] In addition, under the terms of article L. 542-4,

> a local civil servant whose post is abolished shall be kept on secondment for one year if the local authority or institution is unable to offer him a post of his grade in his own job category or, with his agreement, in another job category

(other alternatives: priority of employment, possibility of secondment or integration into an equivalent post in another job category or in one of the civ-

[152] Article L. 332-23-1° of the General Civil Service Code.
[153] Article L. 332-23-2 of the General Civil Service Code.
[154] Articles L. 332-25 and 26 of the General Civil Service Code.
[155] Articles L. 334-1 to L. 334-3 of the General Civil Service Code.
[156] Article L. 334-1 of the General Civil Service Code.
[157] Article L. 334-3 of the General Civil Service Code; Article L. 1251-1 of the Labour Code.
[158] Articles L. 612-1 to L. 612-15 of the General Civil Service Code.
[159] Article L. 612-15 of the General Civil Service Code.
[160] Articles L. 541-1 to L. 544-24 of the General Civil Service Code.
[161] In accordance with the conditions set out in article L. 542-2 of the General Civil Service Code.
[162] Article L. 542-1 of the General Civil Service Code.

il service branches.[163] In the hospital civil service, a hospital post may only be abolished after receiving the opinion of the establishment's social committee.[164] A hospital civil servant whose post is abolished will continue to work for his establishment if the latter is unable to offer him another post corresponding to his grade and if the person concerned is not entitled to an immediate and full retirement pension. The employee continues to be subject to the rights and obligations attached to his status as a civil servant and remains under the authority of the director of his establishment. However, they will be offered support in finding a new assignment corresponding to their grade in another body or employment category of at least equivalent level or, at their request, a job in the private sector,[165] or even professional retraining.[166]

In addition, the cases in which a civil servant's duties or employment are definitively terminated include resignation,[167] dismissal, particularly in the event of abandonment of post, refusal by the person concerned at the end of a period of availability of three posts offered with a view to reinstatement, for professional incompetence,[168] and termination by contract.[169] In particular, the procedure for contractual termination is similar to that applicable to employees under private law (interview with the administration, possibility of being assisted by an advisor appointed by a trade union organisation of the employee's choice, standard termination agreement, withdrawal period, fixing the amount of the termination indemnity according to seniority, entitlement to unemployment benefit,[170] etc.),[171] financial support managed by the Centre national de la fonction publique territoriale or the relevant management centre under the conditions set out in Article L. 5424-1 of the French Labour Code.[172]

In the case of contract staff, in the event of a change following territorial reorganisation,[173] or in the event of the transfer or regrouping of health or social activities,[174] the hospital staff member concerned is automatically made available to the establishment(s) or group(s) responsible for the continuation of these activities, by decision of the appointing authority following an agreement between the original establishment and the host organisation. In the event of the transformation

[163] Article L. 542-5 of the General Civil Service Code.

[164] Article L. 543-1 of the General Civil Service Code.

[165] Article L. 543-3 of the General Civil Service Code.

[166] Article L. 543-5 of the General Civil Service Code.

[167] Article L. 551-1 and 2 of the General Civil Service Code.

[168] Article L. 553-1 to 3 of the General Civil Service Code.

[169] Article L. 552-1 of the General Civil Service Code.

[170] On the special unemployment insurance scheme applicable to certain civil servants and public sector employees: article L. 557-1 to L. 557-1-1) of the General Civil Service Code.

[171] Breach of contract: what degree of control for the administrative judge? Ruling handed down by the Paris Administrative Court: 31-10-2022, no. 2103433/2.

[172] Article L. 542-24 of the General Civil Service Code.

[173] Article L. 443-1 of the General Civil Service Code.

[174] Article L. 444-1 and 2 of the General Civil Service Code.

of a private health or social care establishment into a public establishment, or in the event of the total or partial transfer of the activity of such an establishment) to one of the public establishments, the employees concerned may be recruited as hospital civil servants and, in this case, the age limits for access to the bodies and posts of the hospital civil service do not apply to them. Similarly, their service in the private sector may be taken into account for the purposes of reclassification and promotion in the recruiting body or post.[175] In the case of contractual employees, in the event of a transfer of activity between legal entities governed by public or private law, the public entity will offer these employees a fixed-term or open-ended public law contract, depending on the nature of the contract they hold,[176] and their service with the original public entity will be treated in the same way as their service with the host public entity. More generally, the new contract in principle incorporates the substantive clauses of the contract they hold, in particular those relating to remuneration.[177] If the contract employee refuses to accept the proposed contract, the current contract is automatically terminated.[178] The Minister concerned shall apply the provisions relating to redundancy pay.[179] Under certain conditions, contractual agents working in permanent positions or on contracts concluded to meet a temporary increase in activity may receive a termination payment when these contracts, which may be renewed, are for a period of less than or equal to one year and when the total gross remuneration provided for in these contracts is less than a ceiling.[180]

Lastly, the duties of a contract staff member may be terminated in the following circumstances: termination of a fixed-term contract, redundancy,[181] automatic termination of the contract, retirement either on reaching the age limit,[182] or early retirement due to exposure to asbestos at the request of the staff member who meets the conditions,[183] resignation,[184] contractual termination for staff on open-ended contracts,[185] death.

5. Wages and Benefits

Wages in the private healthcare sector will be examined in turn (5.1), followed by those in the public sector (5.2). Finally, an analysis of the possible impact of the minimum wage directive on French legislation will be presented (Section 3).

[175] Article L. 444-2 of the General Civil Service Code.
[176] Article L. 445-1 of the General Civil Service Code.
[177] Article L. 445-2 of the General Civil Service Code and article L. 1224-3 of the Labour Code.
[178] Article L. 554-1 of the General Civil Service Code.
[179] Article L. 554-2 of the General Civil Service Code.
[180] Article L. 554-2 of the General Civil Service Code.
[181] Article L. 553-1 to 3 of the General Civil Service Code.
[182] Articles L. 556-1 to L. 556-15 of the General Civil Service Code.
[183] Article L. 555-1 to 5 of the General Civil Service Code.
[184] Article L. 551-1 and 2 of the General Civil Service Code.
[185] Article L. 552-1 of the General Civil Service Code.

5.1 Wages in the Private Healthcare Sector

Labour law tends to consider as wages "any sum or benefit granted in connection with work carried out within the framework of the undertaking". Wages are food in nature and must be sufficient to ensure the worker's subsistence in decent conditions. Although the preamble to the Constitution does not expressly mention the right to a decent wage, the Universal Declaration of Human Rights and the European Social Charter do.

The NCC for Private hospital (extended) sets out the aims of remuneration, i.e. to enable hospital employees to earn a level of pay commensurate with their qualifications, the technical nature of their job and their personal contribution to the performance of their duties.[186]

The principle of equal treatment. The principle of equal pay for men and women for equal work or work of equal value[187] has long been established in French law, dating back to a law passed in 1972. Although the pay gap has narrowed steadily over the last 25 years (from 22.1% in 1995 to 15.5% in 2021 for comparable working hours and jobs), significant differences remain due to the fact that women are more frequently employed part-time, to the gendered distribution of professions and to lower-paid jobs.[188]

The 2002 NCC for Private Hospitalisation (extended) stipulates that companies shall ensure equal pay for men and women for the same work or for work of equal value, in accordance with the provisions of article L. 3221-2 of the French Labour Code. When examining economic trends and the employment situation in the sector, in application of article L. 2242-3 of the Labour Code, any situations revealed to be in contradiction with this principle will require appropriate measures to be defined in order to put an end to them.[189] More broadly, the[190] collective agreement incorporates the provisions of the Article L. 2223-57 of the Labour Code of the French Labour Code on the principle of professional equality on collective bargaining at company level. It also incorporates the principle of equal treatment between employees, regardless of their ethnicity, nation or race, which must be ensured in particular in terms of access to employment, training, professional promotion, pay and working conditions.

Remuneration, which is the consideration for salaried—subordinate—work, results in principle from the employment contract, subject on the one hand to compliance with the SMIC (Minimum Interprofessional Growth Wage) (5.1.1) and on the other hand to benefits resulting from collective labour agreements, company practices or unilateral undertakings by the employer. Collective agreements specify the elements making up the salary (5.1.2), the methods of pay-

[186] Title VII, article 72 of the NCC for private hospital.

[187] The notion of "equal value" is defined in article L. 3221-3 of the French Labour Code.

[188] See Insee Focus, March 2023, no. 292. Philippe Roussel, *Femmes et hommes, l'égalité en question* (Paris: INSEE, 2022).

[189] Article 78 of the NCC for private hospital.

[190] Articles 79 and 80 of the NCC for private hospital.

ment (5.1.3), the mechanisms for increasing the salary in the event of overtime (5.1.4) and conventional salary scales (5.1.5).

5.1.1 The Minimum Wage

The guaranteed interprofessional minimum wage in France was introduced by the law of 11 February 1950[191] initially to stimulate consumption and combat poverty. This wage is set by the government and can be raised through collective bargaining. Today, its purpose is to ensure that "employees with the lowest salaries are guaranteed: 1. purchasing power and 2. a share in the nation's economic development".[192] The guarantee of purchasing power "is ensured by indexing the minimum growth wage to changes in the national consumer price index established as a reference by regulation".[193]

The obligation to pay an employee at least the minimum growth wage is a general principle of law in France.[194] It is a principle of public policy that applies regardless of the terms of the contract. The legal provisions on the minimum wage apply not only to employees, but also to the staff of public industrial and commercial establishments and to the private-law staff of public administrative establishments.[195]

The minimum wage rate is set by regulation and is increased each year, usually in January. Collective bargaining agreements specify a minimum wage. Whether hourly or monthly, no gross wage may be lower than the collective agreement minimum wage in force, or the minimum wage in force if it exceeds the collective agreement minimum, which is sometimes specified in the agreements.[196]

The gross hourly wage is 11.75 euros, i.e. 10.12 euros net from 1st September 2023, or 1747.20 euros gross, i.e. 1383.08 euros net for a 35-hour week, i.e. 151.67 hours/month. Some authors believe that the level of the minimum wage in France is below the level that would ensure a decent minimum for its beneficiaries.[197] *A fortiori*, part-time workers in the lowest-paid jobs, including *care* work, who are single parents, find themselves in situations of poverty or even extreme poverty.[198] A study carried out on home helpers shows that this is a highly feminised job (95% women), 44% of which is held by employees aged over 50, 90% of whom have permanent contracts, but 77% of whom work part-time, 40% of whom work between half-time and 80% of the time.

[191] Became Smic - salaire minimum interprofessionnel de croissance - by the law of 2 January 1970.

[192] Article L. 3231-3 of the French Labour Code.

[193] Article L. 3231-4 of the French Labour Code.

[194] C 23 April 1982, Dalloz, 1983.

[195] Article L. 3231-1 of the French Labour Code.

[196] Cass. soc., 31 March 1982, no. 80-40.019. Article 144-1 of the NCC Individual employers and home based employment.

[197] See P. Concialdi, "Le salaire minimum en France: historique et débats," *Revue de l'Ires* 100 (2020/1): 145–77.

[198] P. Concialdi, "Les travailleurs pauvres," *Cahiers français* 390 (2016): 20.

5.1.2 Wages Components[199]

Collective agreements provide details of the salary components specific to their field of application.

In the NCC for home help, support, care and services (21 May 2010),

> each job […] is allocated a hierarchical minimum wage. This salary is made up of a basic salary calculated on the basis of category, level and step, plus additional remuneration components (ECR) (seniority, diploma, training and specific features of the work).[200]

The NCC for individual employer and home based employment of 15 March 2021 stipulates that as part of the new classification applicable since 1st April 2016, the social partners have abolished the increase for seniority applicable after 3 years and 10 years of work with the same employer. In return, they have strengthened the recognition of skills and professionalisation by creating a 4% and 5% increase in minimum wages for employees who have obtained a professional qualification in the sector of employees of private individuals working for private individuals registered with the RNCP.[201]

The NCC Establishments and Services for Maladjusted and Disabled Persons of 15 September 1976 (not extended) provides for the payment, in addition to wages, of a family bonus distinct from family benefits and allowances for particular hardship granted to certain categories of staff under special provisions concerning them. Seniority is a factor in calculating wages on recruitment and during the contract, for career progression purposes. This agreement provides for the payment of a differential allowance in the event of occupying a higher category position for a period exceeding 1 month,[202] on the understanding that this situation is limited to 6 months.

The NCC Private hospital provides for special hardship allowances.[203] These are for night work (between 7 p.m. and 8 a.m., with an increase of 15% of the hourly wage); for work performed on Sundays and public holidays: art. 82.2 (an allowance equal to 0.60 points per hour or fraction of an hour); for on-call duty: art. 82.3.1 (an allowance equal to one-third of the hourly wage); for work performed during on-call duty (double the hourly wage). These different allowances cannot be accumulated. If different hardships are superimposed, only the

[199] There is no clause on pay in the CLA for profit-making human services company of 20 September 2012.

[200] Article 11 (IInd part) of the NCC Establishments and Services for Maladjusted and Disabled Persons of 15 September 1966 (not extended).

[201] Amendment no. 1 to appendix 6 relating to the agreed minimum wages applicable to employees of individual employers and home based employment of 18 February 2022.

[202] Article 38 of the above-mentioned NCC of 15 September 1966. Conversely, the clause specifies that no compensation will be payable to an employee whose employment contract provides for the regular replacement of an employee in a higher professional category.

[203] Article 82 of the NCC Private Hospital.

most advantageous scale for the employee will be used. However, as an exception, allowances for work on Sundays and public holidays may be accumulated. The same agreement specifies that a temporary replacement in a lower-skilled position will not result in a change of qualification or a reduction in remuneration. On the other hand, a temporary replacement in a higher-skilled position will result, after a period of 15 days (continuous or discontinuous), in the payment of a differential between the two basic contractual salaries, from the first day of replacement. It should also be noted that if the position requires the incumbent to hold a diploma required by law (DAPAS, State nursing diploma, etc.), the substitute must meet the same conditions.[204]

The NCC Private non-for-profit hospital and nursing establishment of 1951 (not extended), establishes that staff remuneration is determined by a reference coefficient set for each group of professions; to this reference coefficient are added, in order to constitute the agreed base coefficient for the profession, any additional remuneration linked to supervision, qualifications and/or the profession itself. A seniority bonus is applied to this basic salary, plus any technicality supplement, any allowance to guarantee the agreed minimum salary and any promotion allowance. The collectively agreed minimum wage is determined by taking into account all the remuneration received by the employee in return for or in connection with his work, within the meaning of legal provisions and case law. The agreed minimum wage may not be less than the minimum wage, it being specified that the seniority bonus is not taken into account in this assessment.[205] Professional experience must be taken into account in determining the rate of the seniority bonus, at least 30% of the length of professional experience acquired previously, whether recruitment is for a skilled or unskilled trade. When an employee is promoted, he or she will receive a gross increase of at least 10%, excluding the decentralised bonus, between the old job and the new job. The provisions of the collective bargaining agreement do not preclude the granting of exceptional allowances justified by particular hardships or difficulties inherent in the service or the location of the establishment. The agreement sets out the terms and conditions for granting the differential replacement bonus in the event of a better-paid job (beyond a 15-day replacement), a replacement allowance representing a gross increase of at least 10% will be paid. This bonus is not payable when the replacement is provided for in the employment contract or when replacing an employee on leave. The same agreement includes provisions on accommodation, travel and meals. It specifies that there is no obligation to provide accommodation. However, accommodation may be provided in return for payment according to a scale established by agreement, or free of

[204] Article 76 of the NCC for Pivate Hospital.

[205] Articles 8-1 et seq. of the NCC private, for-non-profit hospital and nursing establishment. The determination of this conventional minimum wage and its impact on the various elements of remuneration are specified in the appendix to this amendment (Amendment no. 2009-03 of 3 April 2009).

charge (if provided for in the employment contract).[206] The agreement also includes clauses on meals (the possibility of feeding staff in return for payment in accordance with the rates set out in the wage agreements and appendices to the NCC) and on the dining rooms provided for this purpose in the establishment.

5.1.3 Wages Payment Arrangements

In France, wages have been paid on a monthly basis since the law of 19 January 1978; in particular, this makes it possible to neutralise the consequences of the unequal distribution of days between the months of the year.[207] However, the NCC for the sector of individual employers and home-based employment of 15 March 2021 provides for monthly pay "regardless of the number of days or weeks worked in the year. The monthly payment of wages guarantees a smoothing of remuneration".[208] This agreement contains another special feature: with the employee's agreement and the employer's mandate, the salary can be paid by CESU or PAJEMPLOI.[209]

When an employee is paid, a pay slip is issued. An action for payment or recovery of wages is time-barred after 3 years.

Wages are protected. Deductions from wages by employers are prohibited and punishable by law. Wages are among the privileged claims in the event of a company's safeguard, reorganisation or compulsory liquidation proceedings.

5.1.4 Wages and Overtime

Any overtime worked in excess of the legal working week (35 hours) or the working week considered to be equivalent is considered to be overtime and, in accordance with article L. 3121-28 of the French Labour Code, "entitles the employee to additional pay or, where applicable, to an equivalent compensatory rest period". Overtime is counted per calendar week, unless there is an agreement on the organisation of working time. In the absence of an agreement (at branch or establishment level), overtime pay is increased by 25% for each of the first 8 hours, with the following hours attracting a 50% increase.[210] This formerly mandatory legal rule is now (since the Macron ordinances of 22 September 2017) a suppletive provision. There are two ways in which it can be derogated from: by means of a collective agreement or a unilateral decision by the employer. In the case of a collective agreement, the increase may be different, but may not be

[206] The text specifies that enjoyment is precarious in the sense that it ceases with the contract. The NCC stipulates that housed staff have the individual freedom to leave the accommodation unless the job involves a residence obligation.

[207] However, the NCC for establishments for the disabled specifies that permanent part-time staff may be paid on a monthly or fortnightly basis, based on the hourly rate for their category.

[208] Article 52 of the NCC Individual employers and home based employment of 15 March 2021.

[209] Article 56-2 of the above-mentioned NCC.

[210] Article L. 3121-36 of the French Labour Code.

less than 10%. The increase in overtime pay may be replaced in whole or in part by compensatory rest if a company or branch collective agreement so provides (see chapter on working time).[211] In companies where there is no trade union delegate, the employer may unilaterally replace all or part of the overtime pay and additional payments by an equivalent compensatory rest period, provided that the Social and Economic Committee, if there is one, does not object, the CSE having a right of veto.[212] In the absence of a social and economic committee, the employer has full room for manoeuvre.

5.1.5 Collective Bargaining Wage Scales[213]

The addenda to the national collective agreements listed below have all been extended and are therefore applicable to all employees in all establishments falling within the scope of the national industry collective agreement.

The NCC for individual employers and home based employment of 2021 - Amendment no. 7 of 16 October 2023, extended by Ordinance of 15 January 2024. The social partners have decided to raise the hourly wage for level I (the lowest on the scale) to 1.01 SMIC.

Table 1 – Gross minimum contractual wages.

Level	Gross hourly wage	Gross monthly salary	% increase for professional certification	Gross hourly wage with certification premium	Gross monthly salary with certification bonus
I	11.75 euros	2,044.50 euros	4%	12.22 euros	2,126.28 euros
XII	16.95 euros	2,949.30 euros			

NCC for personal services companies de 2012 – Amendment of 5 octobre 2022 (extended)

Table 2 – Gross minimum contractual wages.

Domestic assistant - Level I	10.85 euros gross
Life assistant - level 2	11 euros gross
Life assistant - Level 3	11.25 euros gross

NCC for the home help, support, care and services sector of 2010 - Rider of 12 May 2023 extended. The partners point out that the successive increases in the SMIC in 2022 (0.9% then 2.6% and 2%) have had the effect of placing the conventional minimum wage below the Smic. They therefore undertake to ne-

[211] Article L. 3121-33 II and III of the French Labour Code.

[212] Article L. 3121-37 of the French Labour Code.

[213] We will give the salaries for the lowest and highest levels.

gotiate the conventional minimum wage each time the minimum wage is increased. Finally, the partners point out that the law of 16 August 2022 (Ségur de la santé) on emergency measures to protect purchasing power urges professional branches to raise minimum wages to at least the level of the Smic. They point out that in their industry the value of the point is set at €5.77.

Table 3 – Gross minimum contractual wages

Intervention channel: degree 1 employee			Intervention channel: level 2 employee		
Step 1	Step 2	Step 3	Step 1	Step 2	Step 3
Coef.291	Code 304	Coef.324	Coef.344	Coef.359	Coef.383

NCC for establishment and services for maladjusted and disabled persons of 1966 - Amendment of 22 February 2023 extended

Table 4 – Gross minimum contractual wages

Level	Benchmark jobs	Minimum annual remuneration
2	Hospital services employee	23,500 euros
5	AES	23,800 euros

5.2 Wages and Benefits in the Public Healthcare Sector

We will examine remuneration (5.2.1) and benefits (5.2.2) in turn.

5.2.1 Remuneration

The Civil Service Code includes a Title II devoted to protection and guarantees against discrimination and a chapter on professional equality between men and women. Following the example of the private sector, it introduces a legal obligation for public establishments and local authorities to introduce a multi-annual action plan including, in particular, measures to assess, prevent and, where appropriate, address pay differentials between women and men.[214]

The remuneration of civil servants is payable after service has been rendered. Civil servants are entitled to remuneration after service has been rendered, comprising: 1) salary; 2) residence allowance;[215] 3) family salary supplement;[216] 4) bonuses and allowances provided for by law or regulation.[217] A civil servant oc-

[214] Article L. 132-2 of the General Civil Service Code.

[215] It is set according to the place of residence of civil servants and the amount of their pensionable pay.

[216] It is based on the number of dependent children. The family supplement cannot be cumulated with a benefit of the same nature granted for the same child.

[217] Article L.712-1 of the General Civil Service Code.

cupying a post involving particular responsibility or technical expertise may be awarded a new index bonus.[218]

The remuneration of contract staff shall be fixed by the competent authority taking into account the duties performed, the qualifications required for the performance of those duties and the experience of the contract staff.[219]

The bonuses and allowances allocated to civil servants may take account of the duties performed, their professional results[220] and the collective results of the department to which they belong.[221] These compensation schemes are maintained for local authority civil servants during leave linked to parental responsibilities without prejudice to their modulation according to the professional commitment of the local authority civil servant and the collective results of the service. The deliberative bodies of local authorities and their public establishments set the compensation schemes for their employees within the limits of those available to the various government departments.[222] By way of derogation, local civil servants working in the medical and social sector, a list of which is set by decree, may benefit from a compensation scheme set by decree.[223] Collectively acquired benefits in the form of additional remuneration that local authorities and their public establishments introduced before 28 January 1984 are maintained for the benefit of all their civil servants; they may be maintained on an individual basis if the civil servant moves within the local civil service.[224]

A profit-sharing bonus may be introduced to take account of the collective performance of departments by the decision-making body of a local authority or public institution. Within the hospital civil service, a collective incentive bonus linked to the quality of the service provided may be awarded to hospital employees after consultation with the establishment's social committee. This bonus is paid in accordance with article L. 6143-7 of the French Public Health Code.[225]

The salary scales currently in force give the figures below:

- Territorial general care nurse (category A): step 1: 1,919.88 euros/step 11: 3,313.03 euros.
- Territorial nurse in general care, hors classe (category A): step 1: 2,077.41 euros; step 11: 35,554.25 euros.
- Territorial social worker - AST (Category C): step 1: 1,777.12 euros; step 11: 1,880.50 euros.

[218] Article L.712-12 of the General Civil Service Code.

[219] Article L.713-1 of the General Civil Service Code.

[220] In the local civil service, we talk about professional commitment rather than professional results.

[221] Article L. 714-1 of the General Civil Service Code.

[222] Article L. 714-4 of the General Civil Service Code

[223] Article L. 714-10 of the General Civil Service Code.

[224] Article L. 714-11 of the General Civil Service Code.

[225] Article L. 714-14 of the General Civil Service Code.

- Agent territorial - AST 2nd classe (Category C): step 1: 1,782.05 euros; step 12: 2,067.57 euros.
- Agent territorial - AST 1st classe (Category C): step 1: 1,811.458, step 10: 2,328.47 euros.
- Aide-soignant - (Collectivités) classe normale: step 1: 1,811.58 euros; step 11: 2,520.46 euros.
- Healthcare assistant - Local authorities: (higher grade): step 1: 1,880.50 euros, step 11: 2,732.14 euros.
- Community orderly (exceptional class) step 1: 1,811.58, step 10: 2,328.47 euros.
- Aide-soignant - Hôpital classe normale; step 1: 1: 1,811.58 euros; step 11: 2,520.46 euros.
- Aide-soignant - Hospital: senior class: step 1: 1,880.50 euros; step 11: 2,732.14 euros.

5.2.2 Miscellaneous Benefits and Reimbursement of Expenses

Local authorities may allocate housing free of charge or in return for a fee from the local authority, in particular because of the constraints associated with these jobs. The list of jobs is set by the local authority's decision-making bodies.[226] The same applies to hospital staff in certain positions requiring them to live in or near the establishment to which they are assigned, and they may receive benefits in kind. Hospital civil servants are entitled to free medical treatment and pharmaceutical products dispensed for their personal use by the hospital pharmacy in the hospital where they work, on prescription from the hospital doctor.[227] The cost of hospitalisation not reimbursed by the social security bodies to hospital civil servants is paid for a maximum period of 6 months by the establishment where the person concerned is working, provided that the hospitalisation takes place in this establishment or in another establishment under certain conditions (emergency, need recognised by the employing establishment's doctor).[228]

Public-sector employees' travel expenses are paid by their employer.

Irrespective of pay, grade, position or service, civil servants are entitled to individual or collective welfare benefits, which means that the beneficiary must contribute to the costs incurred; this contribution takes account of income.[229]

If the public employer cannot provide a catering service compatible with the place of work, meal vouchers may be awarded. Holiday assistance may also be granted in the form of holiday vouchers.

[226] Article L. 721-1 of the General Civil Service Code.
[227] Article L. 722-1 of the General Civil Service Code.
[228] Article L. 722-2 of the General Civil Service Code.
[229] Article L. 731-3 of the General Civil Service Code.

5.3 The Compliance of French Law With The European Directive 2022/2041 of 19 October 2022 on Adequate Minimum Wages

In this section, we will look at two elements which seem essential in the European text in the light of the national law in force in France: the purpose of minimum wages (5.3.1) and the means of ensuring these minimum wages (5.3.2).

5.3.1 The Purpose of Minimum Wages: to Ensure a Decent Standard of Living

As already emphasised in the introduction to this chapter, French law does not spell out the aims of minimum wages in a text. However, the preamble to the directive calls for this when it states that the primary purpose of minimum wages is to ensure a decent standard of living on the basis of full-time work (point 28) and gives as a reference "the basket of goods and services at real prices established at national level to determine the cost of living". The text explains that "In addition to basic necessities such as food, clothing and housing, the need to participate in cultural, educational and social activities could also be taken into account". The text recommends the ratio of 50 to 60% between the minimum wage and the average wage as a benchmark for "internationally agreed" values. Article 1 of the directive, paragraph 1, takes up the idea in the following terms: "the aim of adequate statutory minimum wages is to achieve decent living and working conditions".

Although the legal minimum wage is an "old institution" in France, it lacks a reflection that would carry the purpose spelled out by the European text and that could be the basis for a real and adapted revaluation of the level of the legal minimum wage to the needs of the human being, as a social being. It is true that article L. 3231-2 of the Labour Code explicitly attributes to the minimum growth wage the aim of guaranteeing purchasing power and participation in the economic development of the nation. Purchasing power is guaranteed by indexing the minimum growth wage to changes in the national consumer price index, which is set as a benchmark by regulation. As for the second aim, participation in the economic development of the nation, which is not defined by law, it reflects an economic orientation rather than the development and fulfilment of the human person in a given society. On this point, the directive adopts a more global—societal—stance and starts from the prism of the human person.

In addition, although both European and French law use full-time workers as the benchmark, it turns out that *care* workers are particularly affected by atypical part-time work. However, as the law and public policy currently stand at national level, there is nothing to take account of this fact, which is inherent in care work and consequently not chosen by the worker, to compensate for it financially, which contributes to placing these workers in a state of poverty, which is also detrimental to the attractiveness of jobs in this sector. In the same way, the physical hardship of working with beneficiaries and the emotional and psychological burden inherent in caring for someone who is deprived of autonomy are not taken into account. What's more, the vast ma-

jority of *care* workers are in low-skilled or unskilled jobs with very low wages, because the symbolic and real value of this work for individuals and society in general is not taken into account.

In addition, the European text refers to the need to regularly review the level of minimum wages and suggests a timeframe of two years. Under French law, the principle of revising the statutory inter-professional minimum wage is annual. As for collective bargaining on wages, this is at branch level and is compulsory at least once a year,[230] just as it is compulsory every three years to negotiate measures at branch or professional level to ensure equality between men and women.[231]

Finally, the European directive postulates a broad field of application, including workers in both the private and public sectors. In its preamble (point 21), the text refers to a list of workers including domestic workers, on-demand workers, intermittent workers, workers covered by voucher-based schemes (such as the chèque emploi service in France), platform workers [...] and other atypical workers, as well as bogus self-employed and undeclared workers. On this point, French legislation (private labour law and public labour law) is in line.

5.3.2 The Means of Setting Minimum Wages Recommended by the Directive

The European text addresses several aspects of this question. First and foremost, the European legislator distinguishes between legal minimum wages and contractual minimum wages. In so doing, it distinguishes between the legislative route for the former and the contractual route for the latter. This division of roles is the same as that which prevails in French law, as described above; moreover, it establishes a link between the law and collective bargaining which escaped the reforms on derogatory collective bargaining mentioned in the first introductory chapter of this report. The Directive refers on several occasions to the promotion of collective bargaining as a means of setting wages, while at the same time highlighting the risk of insufficient coverage of workers and calling on the Member States to remedy this situation. As seen above, French law has two very effective means of avoiding such disparities.

On the one hand, the legal minimum wage is interprofessional; set by decree, it therefore applies to all workers, whatever their administrative situation (legal or illegal in the case of foreign workers), whatever their gender, whatever their age, whatever their profession, whatever the sector of activity, the level of professional qualification or the position held. The rules on the statutory interprofessional minimum wage are a matter of public policy; they are mandatory in nature and apply automatically even if the collectively agreed minimum wage is lower. Moreover, most collective agreements applicable in the *care sector* in-

[230] Article L. 2241-8 of the French Labour Code.

[231] Article L.2241-11 of the French Labour Code.

clude a clause providing for this situation and stipulating automatic adjustment of the wages paid to the legal minimum wage.

On the other hand, the risk of disparities in collective agreement minimum wages is limited by two means. The first lies in the fact that collective bargaining on wages takes place at branch level and therefore applies to all employees of companies that are members of the signatory employers' organisation, or if they voluntarily sign the national agreement when it has not been extended, which is the case for the collective agreements for private commercial and non-profit hospitals. The second lever for covering all the employees of the companies concerned is the extension of the national collective agreement by order of the Minister of Labour. This is the case for the 3 collective agreements applicable in the care sector and that for establishments. In these branches, all home care workers are therefore covered by the minimum wage agreements.

6. Working Time, Health and Safety, Implications of the Covid-19 Pandemic, and Training and Competence Development

6.1 Work Time

Under French law, there is no such thing as a zero-hour employment contract. This would be contrary to one of the conditions for the validity of a contract, namely that its purpose must be fixed or determinable. Consequently, employment contracts of indefinite or definite duration are either full-time or part-time. Where part-time work is involved, whether the contract is concluded for an indefinite or definite period, it is an atypical employment contract and is therefore subject to specific regulations, some of the provisions of which relate to the links between working hours and the contract. This will be presented in 6.1.1. All the other sections of this chapter concern full-time employment contracts, whether open-ended or fixed-term. As working hours and working time are technically complex and are extensively regulated both by law and by collective agreements, we will present the provisions on working hours in 6.1.2, then in 6.1.3 the arrangements for organising working time, in 6.1.4 the provisions on night work and in 6.1.5 those on rest and leave.

The duration and organisation of working time in France is the preferred area for collective agreements and suppletive statutory law. It is also one of the areas in which the employer's power of direction is expressed. The length and organisation of working time mobilise several principles in a harmonious and/or conflicting manner: the right to health protection, quality of life at work, reconciling professional and personal life, professional equality and the right to training. These principles will sometimes be the subject of attention, sometimes by the legislator, sometimes by the social partners who are signatories to collective labour agreements, which will then be highlighted in the developments that follow. Notwithstanding the comparisons that have been made, and will be made in the future, between civil service law and private sector labour law, each section will distinguish the situation in each of these two sectors.

6.1.1 Links Between Working Hours and Employment Contracts: Part-Time Work

The particular nature of part-time work and its regulation in the private sector (6.1.1.1) and the public sector (6.1.1.2).

6.1.1.1 Part-Time in the Private Sector

In the private healthcare sector, the legal provisions governing part-time working (6.1.1.1.1) are supplemented by contractual standards specific to each area of activity (6.1.1.1.2).

6.1.1.1.1 The Law[232]

First of all, under French law, a part-time employee is one whose working time is less than either the legal or collectively agreed weekly working time, or the legal or collectively agreed monthly working time, or the legal annual working time (1607 hours) or the collectively agreed annual working time.[233]

The provisions relating to overtime and compulsory time off in lieu apply to hours worked in excess of the legal or collectively agreed working time.[234] Part-time employees benefit from a minimum weekly working time in order to limit the effects of casualisation and the risk of poverty. The law sets this threshold at 24 hours per week or the equivalent per month or per year.[235] Employees have the right to request, in writing, a shorter working week to enable them to work full time in the case of multiple jobs, or to work the minimum 24 hours per week.

The employment contract must be in writing and must include compulsory information, including the weekly or monthly working hours, the distribution of working hours between the days of the week or the weeks of the month, except for employees of home help associations and companies and except for part-time employees covered by a collective agreement on the organisation of working hours.[236]

[232] We will deal here only with the links between contract and working time. For further details on part-time work, see chapter IV of this report.

[233] Article L. 3123-1 of the French Labour Code. French law recognises the intermittent employment contract, which is a special form of annualised part-time work: it is an open-ended contract concluded to fill permanent jobs which, by its very nature, involves alternating periods of work and non-work. The written contract must specify the minimum annual working time, the work periods and the distribution of hours over these periods. Such contracts may only be concluded in companies covered by an agreement or collective agreement providing for them. No collective agreement in the care sector provides for this particular form of employment.

[234] Article L. 3123-2 of the French Labour Code.

[235] The NCC for help home, support, care and services of 21 May 2010, as extended, stipulates that working hours may not be less than 70 hours per month, 200 hours per quarter or 800 hours per year. When the situation does not allow for 70 hours per month, 200 hours per quarter or 800 hours per year, employment contracts of a shorter duration may be concluded after consultation with staff representatives, if any.

[236] Article L. 3123-6 of the French Labour Code.

The written document must also specify the cases in which this distribution may be modified, as well as the nature of this modification; the terms and conditions according to which the working hours for each working day are communicated in writing to the employee must also be written down. In home help associations and companies, the working hours are communicated to the employee in writing each month; in the absence of such communication, the contract is deemed to be concluded on a full-time basis.[237] The employee must be given 7 days' written notice of any change in the working hours. The employee may refuse a change in the distribution of working hours, without this constituting grounds for sanction or dismissal, if the cases and nature of such changes have not been specified in the contract, or if this is incompatible with his or her overriding family obligations or with attending school or with completing a period of activity set by another employer or with a self-employed professional activity.[238] This is also the case when timetables are changed during the day. The number of interruptions during the day is set at one and may not exceed 2 hours.

Finally, the written agreement must specify the limits within which overtime may be worked in excess of the contractual number of hours. Overtime that does not result in the weekly working time exceeding the legal or contractual working time is subject to additional pay. The number of overtime hours may not exceed one tenth of the contractual working time. The employee may refuse to work overtime in excess of that stipulated in the contract. If an employee works more than 2 hours of overtime per week or month for more than 12 consecutive weeks, the contractual working hours must be changed, subject to 7 days' notice and the employee's not objecting. Overtime is increased by 10% for up to 10 hours of overtime and by 25% for each hour of overtime worked in excess of this. The monthly working time of a part-time employee may not be reduced by more than one third by the use of a credit of hours in respect of a representative mandate.

The legal provisions on the minimum working week, the quota of overtime hours, the rate of increase for overtime hours, breaks during the day and the notice period for changes in the distribution of working hours are of a suppletive nature. They therefore only apply in the absence of a company or branch agreement or collective agreement and may be revised downwards under the conditions laid down by law and set out below.

6.1.1.1.2 Collectively Agreed Part-Time Working Arrangements

An agreement or collective agreement may provide for the introduction of part-time working at the initiative of the employer and/or at the request of employees. In the *care* sector, it should be noted that the NCC for private non-for-profit hospital and nursing establishment of 1951 is silent on part-time working,

[237] Cass. soc. 20 February 2013, *Dalloz actu*, 13 March 2013, obs. Fraisse.

[238] Article L. 3123-12 of the French Labour Code.

as is the NCC Individual employers and home based employment of 2021. This does not prevent employers in companies falling within this scope from deciding to conclude collective company agreements or to decide unilaterally to implement part-time working. Company or branch agreements and collective bargaining agreements can be derogatory (*in peius*) on the following subjects:

- The minimum weekly, monthly or annual working hours; in this case, guarantees must be provided as to how the employee will be able to combine several activities so that he or she can work full time or reach the legal minimum of 24 hours. In addition, there must be clauses setting out the arrangements for grouping working hours into regular full days or half-days.
- The rate of increase may not be less than 10%.
- Additional hours may be set by rider (up to 8 per year). The law lays down a minimum threshold: additional hours worked over and above those set by the rider are subject to a 25% increase in pay.
- Interruptions during the day: if the agreement provides for more than one interruption or more than 2 hours, the agreement must define the working hours and provide for compensation.[239]
- On the notice period for changes in allocation, which may be less than 7 days, but must be at least 3 days. In home help associations and companies, this period may be shorter in urgent cases defined by agreement or extended branch agreement or company agreement.[240] Agreements providing for periods of less than 7 days must provide for compensation.[241]

[239] This is the case with the NCC for establishment and services for disadapted and handicaped persons, Titre IV: non étendue (article 20-5), which stipulates the possibility of 2 interruptions per day of up to 2 hours, with a maximum working day of 11 hours.

[240] This is the case with the NCC for personal services companies (at home or at a place chosen by the beneficiary) of 20 September 2012 (extended), which defines the cases justifying the reduction of the notice period to 3 days: unscheduled absence of a colleague, worsening of the beneficiary's health, death of the beneficiary, hospitalisation or medical emergency of a beneficiary, unscheduled emergency arrival of a beneficiary, illness of the child, illness of the usual care provider, shortage of the usual care method, unscheduled absence of an employee working with an elderly or dependent public. The NCC for home help, support, care and services branch (BAD) of 21 May 2010, which has been extended, stipulates that the number of unpaid interruptions to work in any one day may not exceed three. The total duration of these interruptions may not exceed 5 hours. Exceptionally, the total duration of interruptions may exceed a maximum of 5 hours for 5 days over 2 weeks.

[241] The NCC for personal services companies of 20 September 2012 (extended): "In return for a notice period of less than 7 days for changes to working hours, in compliance with the periods of unavailability that must imperatively appear in the employment contract, the employee has the possibility of refusing 7 times per calendar year to change his working hours, without these refusals constituting misconduct or grounds for dismissal and without these hours being deducted in any way whatsoever". "Any refusal to change working hours must be confirmed in writing by the employer to the employee. This confirmation must include the proposed hours of work refused, the number of refusals recorded by the employer during the calendar year and the contractual periods of unavailability". The NCC of the home help, support, care and services branch (BAD) of 21 May 2010. The parties agree, in the contract or in the amendment to the contract, to one of the following conditions: - the daily working

6.1.1.2 Part-Time Work in the Public Sector

Part-time work is governed by articles L. 612-1 to L. 612-15 of the General Civil Service Code. As in the private sector, part-time work requires a minimum working week of at least half-time. Applications must be submitted for authorisation, which is granted subject to the requirements of continuity and operation of the service, taking into account the possibilities for reorganising work.[242] Reasons must be given for any refusal and an interview must be held. The Civil Service Code provides for full authorisation to work part-time (from 50% to 80%) in the following cases: on the occasion of each birth, up to the child's third birthday; on the occasion of each adoption, up to the expiry of a period of three years from the arrival in the home of the adopted child; to care for a person with a disability requiring the presence of a third party, or who has suffered a serious accident or illness, if that person is the civil servant's spouse, partner in a civil solidarity pact, dependent child or ascendant; if the civil servant falls into one of the disability categories mentioned in 1°, 2°, 3°, 4°, 9°, 10° and 11° of article L. 5212-13 of the French Labour Code, on the advice of the occupational physician.[243]

In the civil service (Articles L. 612-9 to L. 612-11), certain grades, certain jobs or certain functions defined by decree of the Conseil d'Etat exclude any possibility of part-time working. The amount of part-time work may be adjusted provided that the weekly service resulting from this adjustment comprises either a whole number of hours or a whole number of half-days, in accordance with the conditions laid down by decree of the Conseil d'Etat.[244] The same possibility exists under the same conditions in the local civil service.[245]

The General Civil Service Code also provides for the possibility of holding permanent non-full-time posts. In the local civil service, this may apply to nurses who may, where justified by the nature of their duties or the needs of the service, be authorised to occupy a permanent, non-full-time post or to perform duties involving incomplete service.[246] Permanent non-full-time posts are created by decision of the board of directors of the departmental fire and rescue service. This decision sets the weekly working hours for each post. The local civil servants concerned may hold another permanent non-full-time post covered by the aforementioned Code or engage in a self-employed professional activity. Hospital civil servants belonging to bodies mentioned in a decree of the Conseil d'Etat

time does not exceed 11 hours; - the employee benefits from 2 additional days off per calendar year; - travel time that would have been necessary between each location if the work had been consecutive is treated as actual working time.

[242] Article L. 612-3 of the General Civil Service Code.

[243] Article L. 612-2 of the General Civil Service Code.

[244] Article L. 612-10 of the French Civil Service Code.

[245] Article L. 612-14 of the French Civil Service Code.

[246] Article L.613-7 of the French Civil Service Code.

may be appointed to permanent non-full-time posts of a duration greater than or equal to the duration mentioned in article L. 332-16.

6.1.2 Working Hours (Daily, Weekly, Annual)

Previously regulated exclusively by public-order legislation of an imperative and social nature, working hours have been the subject of a vast deregulation and flexibilisation drive since the end of the 90s. Today, public policy provisions in this area have become the exception rather than the rule, while suppletive rules have become virtually the rule, giving way to collective bargaining at company or industry level (which is rarely required to be extended) and, in the absence of agreement, to unilateral action by the employer. That said, the organisation of working time is a matter for the employer to decide, as set out in a number of collective labour agreements, including the agreement for the home help, support, care and services sector (BAD) of 21 May 2010 (extended). Among the general principles governing working hours, this agreement establishes the need to reconcile employees' professional and personal lives, specifically recommending that employers should not combine the different ways of organising and arranging working hours provided for in the agreement. However, this concern does not translate into anything other than compliance with maximum daily and weekly working hours, daily and weekly rest periods and holidays, which are governed by public policy laws.

The regulations on working hours and working time resulting from the adoption of the General Civil Service Code are largely based on, or even refer to, the Labour Code (6.1.2.1). This is why we will limit ourselves to mentioning, where they exist, the remaining specificities in the public sector (6.1.2.2).

6.1.2.1 Working Time Law in the Private Sector

The law on working hours is based on 3 elements: actual working hours (6.1.2.1.1), maximum working hours (6.1.2.1.2) and overtime (6.1.2.1.3).

6.1.2.1.1 Actual Working Hours

Effective working time is defined by article L. 3121-1 of the French Labour Code as "the time during which the employee is at the employer's disposal and complies with the employer's instructions without being free to pursue personal interests". This legal definition also applies to the public sector (including all civil services), as Article L.611-1 of the General Civil Service Code expressly refers to the Labour Code. The same definition is used almost systematically in the sector's collective agreements. This definition plays an important role for several reasons. It is used to calculate rest periods, holidays, overtime, pay and social security contributions. It makes it possible to distinguish between time that is paid and time that is not, even if the employee is in the company. This means that a whole range of time will not qualify as actual working time. For example,

travelling time to the place of performance of the employment contract (home-workplace) is not actual working time.[247] In principle, breaks and meal times are therefore not actual working time unless the employee is, as the definition indicates, "at the employer's disposal". The legislator treats dressing and undressing time differently: if this is required by law, agreement, internal regulations or the employment contract, and if these operations must be carried out in the company, then this time is subject to compensation, either in the form of rest or in financial terms. In the absence of an agreement on meal times, breaks and dressing/undressing, the employment contract may provide for compensation.

The treatment of actual working time varies greatly depending on whether the activity takes place in an institution or at the beneficiary's home. In the first case, the agreements are relatively laconic. For example, the national collective agreement for establishments and services for the maladjusted and disabled, Title IV (not extended), states that "when the employee is unable to leave his or her workstation during the break, the break is nevertheless paid, particularly for employees responsible for the safety and continuity of care for users". On the other hand, collective agreements in the home care sector are very detailed, taking into account the specific features of the way work is organised, both from a quantitative perspective in terms of counting working hours and from a qualitative perspective in terms of the moral investment required of the employee.

For example, the NCC for personal services companies of 20 September 2012 (extended) provides that for people working at home or at a place chosen by the beneficiary, the time spent preparing for any service at the place of work, including putting on appropriate clothing, is treated as actual working time. Catering time is treated in the same way as under the French Labour Code: if the employee remains at the workplace "where the service is required at the same time", this is working time. Commuting time becomes working time if it lasts more than 45 minutes (return journey) or covers a distance of more than 30 km. Financial compensation of not less than 10% of the hourly rate will be paid for travelling time in excess of this. The time spent travelling between the places of work is working time when the employee cannot be self-sufficient. If the employee uses his own vehicle, he is entitled to an allowance of at least 35 cents/km. The time between 2 interventions is taken into account as follows: in the event of an interruption of less than 15 minutes, the waiting time is paid as working time; in the event of an interruption of more than 15 minutes (excluding the journey between the 2 interventions), the employee has regained his freedom and can go about his personal business without any particular instructions from the employer, in which case the time is neither counted as working time nor paid. According to the above-mentioned NCC, a working day may not comprise more than 4 interruptions, 2 of which may not each exceed 2 hours. If there are more than 3 interruptions each lasting more than 15

[247] Article L. 3121-4 paragraph 1 of the French Labour Code.

minutes, flat-rate compensation is paid for the 4th in an amount not less than 10% of the hourly rate.[248]

This is also the case for the NCC for individual employers and home based employment of 15 March 2021 (extended), which stipulates three working regimes in terms of working hours: regular, irregular and "responsible presence hours" during the day. Employees in the benchmark jobs in the "Adult" field defined in appendix 7 of the collective agreement may, within the framework of the working hours defined in the employment contract, work "responsible daytime presence hours". Within the framework of the timetable defined in the employment contract, these employees may carry out hours of actual work, but also hours of responsible daytime presence. These responsible daytime presence hours are those when the employee can use his time for himself (reading, resting, etc.) while remaining vigilant to intervene, if necessary. The number of hours depends on the composition of the family and/or the state of health of the employer, who is disabled or losing his autonomy. The collective agreement determines the legal status of these hours: they are not counted as normal working hours. One hour of responsible presence is equivalent to 2/3 of an hour's actual work. The hours of responsible presence during the day must therefore be converted into actual working hours when calculating the actual weekly working time. The respective number of hours actually worked and hours of responsible presence must be specified in the employment contract (or in the letter of engagement). If the employee is required to work on a recurring basis, the hours of responsible presence will be reclassified as actual working hours. If this is the case, an amendment to the contract will have to be agreed between the parties.

Another example is provided by the NCC for home help, support, care and services of 21 May 2010, which has been extended and which sets out in detail the contractual arrangements for working hours in order to reposition working time with regard to the specific features of the organisation of work involving travel, on the one hand, and of the profession and its related effects in terms of the quality of life at work, on the other. To this end, the NCC focuses on three points.

- First of all, the NCC clarifies the definition of the legal period of effective working time, some of which are educational for both the employee and the employer. The following in particular are therefore considered to be actual working time support time; internal consultation or coordination time; consultation and summary time with professionals from outside the company; time spent drafting assessments; "dead time" in the event of the user's absence for the duration of the planned intervention, whenever the absence is not reported; travel time between two consecutive periods of actual work; time spent organising and distributing work; time spent on continuing professional training as part of the training plan, with the exception of training carried out outside working hours, in particular as part of the individual right

[248] All these clauses apply exclusively to people working in the home or at the location chosen by the beneficiary.

to training; time spent on occupational health check-ups and additional examinations; meal times when the employee remains at the employer's disposal and is unable to attend to personal matters; time spent on the right of expression as part of the provisions of the collective bargaining agreement; time spent on delegations to staff representative bodies.

- Secondly, as the activity carried out in the beneficiary's home involves travel by the worker, the NCC includes several clauses on the equivalence between travel time and working time. The NCC includes clauses on travel, which is an integral part of their professional practice and is paid for on the basis of the following provisions: 1 half-day is made up of either: - the afternoon/evening, which begins with the first shift after the lunch break and ends at the end of the last shift. The travelling time required between two successive periods of actual work during the same half-day is considered as actual working time and paid as such, as long as they are consecutive. When the successive periods of actual work during the same half-day are not consecutive, the travelling time between these two periods is reconstituted and considered as actual working time and paid as such. The employer may use tools to facilitate the recording and monitoring of such travel time. However, these tools must not prevent time and mileage from being verified on the basis of the actual time worked. The same rules apply to employees who work at night. Naturally, the NCC includes clauses on compensation for travel expenses and on insurance cover for the employee's vehicle if it is the one used to carry out his or her duties.[249]
- Thirdly, it is the only agreement that expresses the will to integrate working hours as an element of the quality of life at work: "The organisation of work plays an essential role in the quality of life and health at work. To enable feedback on situations encountered in the home, the employer must organise at least 8 hours a year of discussion time for employees in the intervention sector and for employees in charge of planning. These exchange times may be: support times (psychological support, analysis of practice) up to a maximum of 11 hours per year and per employee; work organisation and distribution times up to a maximum of 11 hours per year and per employee. On its own initiative, the employer may decide, depending on the employee's mission or complex cases, to supplement the time for organising and distributing work referred to above with time for consultation or internal coordination, up to a limit of 40 hours per year per employee. The employer organises this time either collectively or individually. With regard to the organisation and distribution of work, the employer gives priority to organising these times collectively. These times are scheduled at least once a month to encourage as many employees as possible to take part."[250] The NCC expresses a concern to ensure that the length of time worked is consistent with the purpose of the work (quality of life at work): Art. 4 "The minimum duration of the in-

[249] Article 14-1 et seq. of the NCC for home help, support, care and services of 21 May 2010.
[250] Article 3 - Title V, Chapter 1 of the above-mentioned ADB NCC.

> tervention must allow it to be feasible in order to ensure, in compliance with official recommendations on good treatment, quality services for users and good working conditions for employees. The question of the minimum duration of the intervention is the subject of consultation with the works council or, failing that, the staff representatives, if they exist, at least once a year.

The Labour Code regulates the special time spent on call, which is customary in the healthcare sector. This is a period during which the employee, without being in the workplace and without being permanently and immediately available to the employer, must be able to intervene to carry out work for the employer: this is actual working time.[251] This period is compensated either financially or by time off. It is taken into account when calculating the minimum rest period. It is the responsibility of the company or branch agreement or convention to set up standby duty, the way it is organised, the arrangements for providing information, the notice periods and the compensation in the form of either money or time off. Failing this, the decision will be taken by the employer after consulting the Social and Economic Committee and informing the Labour Inspectorate. On-call duty is covered by collective bargaining agreements.

The NCC for private non-for-profit hospital and nursing establishment of 31 October 1951 (not extended) provides for a system of on-call duty at home or in the establishment.

> When the continuity of care and safety services so requires, certain staff, the list of whom is drawn up in each establishment after consultation with the works council or, in the absence thereof, the staff representatives, may be called upon to perform on-call duty at home.

The frequency of such on-call duty may not exceed 10 nights per month per employee, as well as one Sunday and one public holiday per month. Staff performing on-call duties at home are remunerated as follows. If the on-call duty is performed during the day, except if it is performed on a Sunday or public holiday, 1 hour of on-call duty is equivalent to 15 minutes of work at the normal rate; - if the on-call duty is performed at night and on Sundays and public holidays, 1 hour of on-call duty is equivalent to 20 minutes of work at the normal rate.

> If, during an on-call period, the employee is called upon to do actual work, this time will be remunerated as actual work with the application of the corresponding supplements, provided that the legal and regulatory conditions giving entitlement to these supplements are met.[252]

The NCC for personal services companies of 2012 (extended) provides for the possibility of on-call duty, which it defines as a legal right, specifying that

[251] Article L. 3121-9 of the French Labour Code.

[252] Article 05.07.2.1 of the NCC of private non-profit hospitalisation.

> the possibility of being subject to on-call duty and the compensation granted to employees must be included in the employment contract. The compensation will take the form of compensatory rest. This compensation will be 2.5 hours of compensatory rest for every 24 hours of on-call time, where applicable in proportion to the duration of the on-call period. This compensatory rest may be replaced by at least equivalent financial compensation with the agreement of the parties…

The NCC sets limits on the use of on-call duty: it must be used in accordance with the employee's unavailability, it must be strictly reserved for daily or weekly rest periods, it must be limited in terms of the number of hours and the possibility of exceeding the limits set must be open only on a voluntary basis.

The NCC for home help, support, care and services of 2012 which has been extended, also sets out arrangements for on-call duty, which it defines in the same way as the law. Employees may refuse to work 1 Sunday or 1 public holiday no more than twice a year, without their refusal constituting misconduct or grounds for dismissal. The NCC takes into account the impact of standby duty on employees' personal lives, providing a relatively protective framework in terms of predictability and planning. All employees may be required to be on call at or near home, including on Sundays and public holidays. As far as possible, and in order to enable each employee to reconcile his professional and personal life, the employers draw up a quarterly schedule given to each employee indicating his days or periods of on-call duty. Changes to this schedule may not be made within a period of less than 1 month, except in the case of replacing a colleague who is unavoidably absent, in which case the employee may be notified within a period of less than 3 days. The employer shall set up an organisation enabling employees to be contacted at any time when they are on call. If on-call employees are called to work, their working time is effective working time, including the time spent travelling to and from work. Effective working time during on-call time is cumulated with the on-call allowance. A Sunday worked or public holiday cannot be followed by an on-call Sunday or public holiday. In addition, the NCC makes on-call duty a subject for consultation with staff representative bodies and sets precise quantitative limits: After consultation with the works council or, failing that, staff representatives if they exist, the number of on-call periods per month is limited to: - either 8 on-call periods of 24 hours or 16 on-call periods of 12 hours; - for SSIADs, CSIs and management staff, on-call periods may be split into periods of up to 150 hours per month spread over a maximum of 5 days per week. Under no circumstances may the time actually worked during on-call duty have the effect of: - to reduce the daily or weekly rest period laid down by the provisions of the law or collective bargaining agreement. Employees on call are entitled to an additional element of remuneration (ECR) defined in article III-19.2 of the said agreement.

6.1.2.1.2 Maximum Working Hours and Overtime

6.1.2.1.2.1 Maximum Working Hours

The maximum daily working time may not exceed 10 hours (public policy), unless a derogation is granted by the labour inspector, in an emergency or

under a company or branch agreement in the event of increased activity or for reasons relating to the organisation of the company, provided that this does not exceed 12 hours. The maximum weekly working time is 48 hours over one week (public policy provision) or 44 hours (or 46 hours under a company or branch agreement) over 12 consecutive weeks; exceptions may be made with the authorisation of the Labour Inspectorate, provided that they do not exceed 60 hours. These daily and weekly maximums are combined with compulsory rest periods, which are also a matter of public policy. As soon as the actual daily working time reaches 6 hours, the employee is entitled to a break of at least 20 consecutive minutes (public policy).

In most cases, collective bargaining law incorporates and clarifies legal provisions on working hours. For example, the NCC for establishment and services for maladjusted and disabled persons of 15 March 1966, Title IV (not extended) provides that the uninterrupted rest period between 2 working days is set at 11 consecutive hours. However, when the needs of the service so require, this period may be reduced to not less than 9 hours, under the conditions laid down in the industry agreement of 1st April 1999. The maximum daily working time is 10 hours, day or night. However, in order to respond to specific situations, it may be extended to 12 hours in accordance with legal provisions. In the event of discontinuous work, when the nature of the activity so requires, this duration may include 3 working sequences of a minimum duration of 2 hours.

The NCC for private non-for-profit hospital and nursing establishment of 31 October 1951 (not extended) includes the legal texts relating to the 35-hour working week and weekly rest periods. However,

> Taking into account the needs of the service and after consulting the works council or, in its absence, the staff representatives, the organisation of the working week is established in accordance with the provisions of articles 05.05.2 to 05.05.5. Working hours shall be allocated in such a way as to cover all requirements resulting from the organisation of services and the need to ensure continuity of care, safety and well-being of users, including at night, on Sundays and public holidays.

Staff required to ensure continuity of service must be able to take at least 1 Sunday every 3 weeks as part of their 2 consecutive days off.

> Subject to a different organisation of work defined by company or establishment agreement concluded in compliance with legal and regulatory provisions, in each establishment, staff are employed in accordance with the indications of a duty roster specifying for at least 2 weeks the distribution of working days and hours. The provisional duty roster shall be drawn up at the initiative of the employer or his representative and brought to the attention of the staff by posting it in the various workplaces, in principle 1 week—and in any event no later than 4 days—before its application. Where the organisation of working time is not established over 2 weeks, the working hours must be brought to the attention of employees in compliance with the legal and regulatory provisions, particularly with regard

> to posting. Any change in the initially planned distribution of working hours and days shall give rise to a rectification of the duty roster in compliance with the legal and regulatory provisions, where this is justified by an emergency.

For full-time employees, in the event of discontinuous work, the daily working time may not be split into more than two working periods of at least 3 hours each.

Collective bargaining law in the home *care* sector also takes account of the specific features of the activity and its organisation, not so much in terms of exceeding the maximum working hours mentioned above, but in terms of organising working hours in a way that differs from practices in the industrial and commercial sector. To this end, the NCCs use the concepts of amplitude and distribution of the working day to meet "service imperatives".

For example, the NCC for personal services companies of 20 September 2012 (extended) specifies that the daily working time may not exceed 12 hours. The daily working time may be extended to 13 hours for work with vulnerable and/or dependent individuals. However, if the normal contractual travel time from home to the place of work is exceeded (see point d, section 2), the excess must be deducted from the maximum daily working time of 13 hours. The daily working time is calculated on the same day from 0 hours to 24 hours. (2). The maximum daily working time is in principle 10 hours, but may be increased to a maximum of 12 hours for up to 70 days a year. The maximum daily working time is calculated on a daily basis, i.e. from 0 hours to 24 hours. The maximum weekly working time may not exceed 48 hours or 44 hours over any period of 12 consecutive weeks. In addition, the same agreement provides that the distribution of working hours may be modified according to service requirements. "… Details of the work carried out by the employee with beneficiaries are made available to him/her by the employer. The employee may consult it at any time."

> In return for less than 7 days' notice of changes to working hours, and in compliance with the periods of unavailability that must be stipulated in the employment contract, employees may refuse to change their working hours 7 times per calendar year, without such refusals constituting misconduct or grounds for dismissal and without these hours being deducted in any way whatsoever. Any refusal to change working hours must be confirmed in writing by the employer to the employee. This confirmation must include the proposed working hours refused, the number of refusals recorded by the employer during the calendar year and the contractual unavailability periods.

Lastly, the NCC stipulates that the usual weekly rest period is Sunday, and that there must be at least 35 consecutive hours between 2 operations during the week. However, given the need for daily operations due to the special nature of the services provided to employees, it is possible to derogate from the Sunday rest rule, up to a limit of 2 Sundays per month, unless the employee agrees. To take account of the constraints associated with Sunday working, remuneration is increased by at least 10%. Employees who do not wish to work on Sundays may specify this in their contract of employment as part of the periods of unavailability.

In order to take account of the service requirements specific to this sector, the NCC individual employer and home-based employment (extended) distinguishes between 2 working regimes, regular/irregular, which it defines as follows. When the parties determine a fixed weekly working time; or when periods of work follow one another and/or are repeated regularly according to a working pattern laid down in the employment contract and any amendments thereto. Working periods are expressed in days and/or weeks. When the working hours do not meet one of the conditions for regular working hours, they are said to be "irregular". Where applicable, the individual employer must inform the employee in writing of the working hours and their distribution, giving 5 calendar days' notice. To this end, the employer may provide the employee with a schedule for each work cycle.

6.1.2.1.2.2 Overtime

According to the French Labour Code, the legal working week is 35 hours. Any hour worked in excess of this is considered to be overtime. Overtime is calculated on a weekly basis and may be worked up to a maximum annual quota. Any overtime worked in excess of this entitles the employee to compulsory time off in lieu. Overtime is paid at a higher rate of 25% for the first 8 hours of overtime and 50% thereafter (supplementary legal provisions). A branch or company agreement may provide for a different rate of overtime pay, provided that it is not less than 10%. These agreements may also set out all the conditions under which overtime may be worked in excess of the annual quota, as well as the duration, characteristics and conditions of compulsory time off in lieu, which may not be less than 50% of the hours worked. In companies where there is no trade union representative, the employer may replace all or part of the overtime pay and supplements with compensatory rest, provided that the CSE, if it exists, does not object.

The NCC for the home help, support, care and services as extended, incorporates the maximum daily working hours, weekly working hours, monthly working hours and maximum daily working amplitude set by law and referred to above.

Conversely, the NCC for individual employer and home based employment (extended) includes a working time regime that is distinct in several respects from statutory law, for the simple reason that the latter does not apply to home care workers employed by private individuals. The situation of home care workers employed by a private employer is more unfavourable than that of workers subject to ordinary labour law, and consequently than that of workers benefiting from the application of the NCC de l'aide à domicile of 2010 mentioned above or the NCC for personal services companies of 2012.

- The NCC sets the contractual working time in excess of the statutory working time (35 hours) at 40 hours. What's more, it leaves the parties free to provide for a shorter or longer working week, in compliance with the collectively agreed maximum working week of 48 hours over 12 consecutive weeks, or 50 hours in any one week in the case of regular work, or between 0 and 48 hours in the case of irregular work. Here again, the maximum contractual working hours are higher than those set by the legislator.

- The NCC stipulates that the individual employer is obliged to pay overtime or have it recovered under the conditions set out in article 147 of the agreement. Overtime refers to hours actually worked in excess of the 40-hour working week.[253] Article L. 3121-30 of the French Labour Code, which states that overtime may be worked up to an annual quota and that hours worked in excess of this quota give entitlement to compulsory time off in lieu, does not apply to employees of private individual employers.[254] According to the national collective agreement for private individuals working as employers, in the case of regular working hours, overtime may not exceed an average of 8 hours per week calculated over any period of 12 consecutive weeks, without exceeding 10 hours in the course of the same week. Overtime worked on a regular basis and provided for in the employment contract is paid on a monthly basis. In the event of irregular working hours, the employee may work a maximum of 48 hours per week. Overtime is paid on a monthly basis, or recovered within 12 months of being worked, in accordance with the conditions laid down in the employment contract. Overtime is paid or recovered at a rate of 25% (for the first 8 hours) and 50% (for overtime in excess of 8 hours).

6.1.2.1.2.3 Daily and Weekly Rest Periods

A number of public policy provisions apply to rest periods.

The daily rest period must be at least 11 consecutive hours, unless there is a collective agreement or an emergency.[255] It is possible to derogate from this requirement by means of a collective agreement at company or branch level,

[253] If the schedule is regular, overtime pay is applicable when the number of hours actually worked exceeds 40 hours per week. Overtime is calculated on a weekly basis, i.e. from 00:00 on Monday to 24:00 on Sunday. In the case of shared childcare, if the total number of hours worked exceeds the agreed weekly working time, the overtime pay and additional pay are borne by the individual employers, according to the method agreed between them. If the working hours are irregular, overtime pay is applicable when the number of hours actually worked (and/or the number of hours resulting from the transformation of the hours of responsible presence) exceeds an average of 40 hours per week calculated over 8 consecutive weeks. In the case of irregular working hours, the weekly amplitude ranges from 0 to 48 hours of actual work per week.

[254] Cass. soc., 8 July 2020, no. 17-10.622, n 676 FS - P + B. On the other hand, pursuant to Article L. 3171-4 of the French Labour Code, "in the event of a dispute relating to the existence or number of hours worked, the employer must provide the court with evidence of the hours actually worked by the employee of a private individual employer. On the basis of these elements and those provided by the employee in support of his claim, the judge will form his opinion after ordering, if necessary, any investigative measures he deems useful. Cass. soc., 19 March 2003, no. 00-46.686, no. 882 F - P. In the same sense, Cass. soc., 13 July 2004, no. 02-43.026, no. 1614 F - P + B; Cass. soc., 16 Feb. 2011, no. 09-43.220; Cass. soc., 5 July 2017, no. 16- 10.841, no. 1228 FS - P + B; Cass. soc., 7 Dec. 2017, no. 16-12.809, no. 2603 FS - P + B. Cass. soc., 18 March 2020, no. 18-10.919, no. 373 FP - P + B + R + I. Cass. soc., 8 July 2020, no. 17-10.622, no. 676 FS - P + B.

[255] Article L. 3131-1 of the French Labour Code.

under conditions laid down by decree, for activities where there is a need to ensure continuity of service or split shifts (on-call, surveillance and duty activities to ensure the protection of individuals, to ensure continuity of service if the working pattern is that of successive shifts, or in the event of a surge in activity).

Weekly rest is legally guaranteed by the fact that "it is forbidden to have the same employee work more than 6 days a week".[256] Rest is granted on Sundays, except in certain activities where it is granted on a rotating basis to employees employed in activities listed by decree, which include personal services to individuals in their own homes.[257] With regard to young workers, the French Labour Code[258] stipulates that they must have 2 consecutive days off per week, unless, due to the particular characteristics of the activity which justify it, a company or branch agreement may reduce this rest period to 36 hours. Young workers may not be employed on public holidays or festivals recognised by law.

Collective bargaining rights relate essentially to the Sunday rest day, which is customary in this sector and can therefore be considered as an additional constraint requiring special collective bargaining treatment.

This is the approach taken by the NCC for establishment and services for Maladjusted and Disabled persons of 1976, Titre IV (not extended). Taking into account the needs of the service and after consultation with the staff representative bodies, the organisation of the working week is established in accordance with the following principles: working hours are distributed in such a way as to cover all needs resulting from the organisation of care or educational or social work, on a full-time or part-time basis, and from the need to ensure their continuity as well as the safety and well-being of users, including at night, on Sundays and public holidays; - a duty roster specifies for each establishment the distribution of working hours and days as well as the scheduling of weekly rest days. Staff are informed of this schedule by means of posters in the various workplaces. In the event of an irregular work pattern, the employees concerned will be informed of a provisional timetable, taking into account the foreseeable workload. An irregular work pattern is defined as a schedule that includes the following 2 conditions: irregular working hours depending on the day or week, including evening and/or night shifts; weekly rest periods granted irregularly depending on the week. Variations in working hours due to foreseeable changes in workloads are subject to consultation with staff representative bodies. A notice period of 7 calendar days must be observed.

It is in much the same spirit of continuity of service that the NCC for home help, support, and care services of 2010 (extended) has made provision for work on Sundays and public holidays. In order to ensure the continuity of home help

[256] Article 3132-1 of the French Labour Code.

[257] Article R. 3132-5 of the French Labour Code. This is a permanent legal exemption that applies to associations or companies approved by the State or a local authority that hire workers to make them available to other people. All activities directly linked to the purpose of these associations or companies are covered.

[258] Article L.3164-2 of the French Labour Code.

and home care activities, all employees may be required to work on Sundays and public holidays for work relating exclusively to the essential acts of daily life (with reference to legal and regulatory provisions), to the specific support of users and to the continuity of the organisation of the resulting services. The introduction of Sunday work is subject to consultation with the works council or, failing that, the staff representatives, if they exist. a) For weekend shifts: for structures that have introduced this organisation of work for weekends with voluntary employees, the working pattern for Sunday work is a maximum of 3 Sundays worked followed by 1 Sunday not worked. b) For other cases: in other cases, the working pattern for Sunday work may be 1 Sunday worked out of 4 or 1 Sunday worked out of 3 and a maximum of 1 Sunday worked out of 2. In all cases, the working pattern for public holidays is a maximum of 1 public holiday worked followed by 1 public holiday not worked. A Sunday worked or public holiday cannot be followed by an on-call Sunday or public holiday. With the exception of 1st May, which is governed by legal provisions, employees working on Sundays and public holidays benefit from an additional element of remuneration (ECR) as defined in article III.19.2 of this agreement. As far as possible, and in order to enable each employee to reconcile their professional and personal lives, employers: - arrange for employees to work in their sector of activity or in a neighbouring sector; - arrange for the same employee to work for the whole of a Sunday or public holiday; - draw up a quarterly schedule given to each employee indicating the Sundays or public holidays on which they will be required to work, in accordance with the deadline set out in article V.37 of this collective agreement. Employees may refuse to work on 1 Sunday or 1 public holiday no more than twice a year, without their refusal constituting misconduct or grounds for dismissal.

In the NCC for individual employers and home based employment of 2021 (extended), a different approach has been adopted, emphasising the contractualisation of the day of rest with all the related effects in the event of work on that day. The usual day of rest must therefore be included in the employment contract. According to the collective agreement, the weekly rest period must last at least 35 consecutive hours between the last hour worked before the weekly rest period begins and the first hour worked after it ends. This rest period must be provided for in the employment contract and preferably include Sunday. Work on the rest day may only be exceptional and carried out with the written agreement of the employee. If work is carried out, at the employer's request, on the weekly rest day, it must be paid in accordance with the collective agreement, at the normal rate plus 25%, or compensated by an equivalent rest period plus the same proportion (one and a quarter hours rest for one hour's work). As for ordinary public holidays, the collective agreement leaves it up to the employer to decide whether or not the employee should come to work on these days. Public holidays worked must be provided for in the written employment contract. Otherwise, work on an ordinary public holiday can only be arranged by mutual written agreement between the parties. Depending on the employer's choice, if the public holiday is worked, it will be paid at an additional rate of 10% of the

salary due. If the public holiday is not worked, it is paid as soon as the employee has worked for the individual employer on the last working day before the public holiday and on the first working day after the public holiday, unless permission for absence has been granted in advance.

6.1.2.1.4 Protection Measures for Pregnant Women

Some agreements, which have no legal obligation to do so, provide for measures to reduce the effective working hours of pregnant women.

This is the case of the NCC for private non-for-profit hospital and nursing establishment of 1951 (not extended) which states that "pregnant women, from the first day of the 3rd month of pregnancy, will benefit from a 5/35 reduction in their contractual working hours. This reduction will be spread over their working days".

The NCC for home help, support and care services of 2010 (extended) provides for an hourly reduction of 1 hour per day worked without loss of pay at the end of the 3rd month of medically certified pregnancy, for full-time employees. This measure applies to part-time employees on a pro rata basis. By agreement between the employee and her employer, this reduction may be accumulated and taken in the form of a half-day or full day of rest. The NCC provides for minimum daily and weekly rest periods, as well as the daily breaks stipulated in the Labour Code. It specifies that the lunch break of at least 1/2 hour may under no circumstances include travel time related to an operation.

As for the NCC for establishment and services for maladjusted and disabled persons of 1976, Titre IV (not extended), it stipulates that pregnant women (working full-time or part-time) benefit from a 10% reduction in their working week from the beginning of the 3rd month or 61e day of pregnancy, without any reduction in their pay.

6.1.2.2 Regulation of Working Hours in the Public Sector[259]

Effective working hours are set at 35 hours per week, i.e. a maximum of 1607 hours per year in the 3 civil services. Effective working hours are defined in the same way as in the private sector, with article L.611-1 of the General Civil Service Code referring to article L.3121-27 of the Labour Code. However, in the regional and hospital civil services, specific decrees are adopted, always with reference to the limits applicable to State employees. In each of the civil services, it is possible to take account of the specific hardships to which certain employees are subject or to take account of the specific nature of the tasks performed. Working time is one of the subjects that can be the subject of collective bargaining with local authorities. At this stage of the research project (30 September 2023) we are not aware of any agreements concluded in this sector and in this area.

[259] Articles L. 611-1 to L. 613-11 of the General Civil Service Code.

The decree of 25 August 2000 on the organisation and reduction of working hours in the state civil service[260] is the reference standard for the other two civil services. It stipulates that the annual working time may be reduced due to hardship linked to the nature of the tasks and the definition of the resulting work cycles, in particular night work, work on Sundays, staggered working hours, long shifts or arduous and dangerous work.

The decree, as last amended by the decree of 20 November 2020, establishes minimum guarantees for maximum working hours. These maximum working hours are exactly the same as in the private sector, covering the week (48 hours over 1 week or 44 hours over 12 weeks), the day (10 hours, with a minimum rest period of 11 hours), the maximum working day (12 hours) and the daily break. Derogations from these guarantees are only possible (as in the private sector) where there is a need to protect individuals or in exceptional circumstances for a limited period).

The 2000 decree also establishes the possibility of setting periods of on-call duty: a period during which the employee, without being permanently and immediately available to his employer, is obliged to remain at home or nearby in order to be able to intervene to carry out work in the service of the administration, the duration of this intervention being considered as actual working time. The cases in which on-call duty may be used are defined by ministerial decree. Compensation and remuneration for standby duty are specified by decree, with reference to the procedures and rates applicable in government departments.

The possibility of working flexitime is envisaged by the 2000 decree "subject to the requirements of the service after consultation of the social committee of the administration".

Work may be organised according to reference periods known as work cycles: working hours are defined within the cycle (which may be weekly or annual). These cycles are defined by ministerial decree.

6.1.3 Organisation of Working Time

As there is no provision for the organisation of working time in the General Code for the Civil Service, we will only examine the private sector here.

The organisation of working time makes it possible to introduce reference periods for working time longer than one week, which has consequences for the calculation and payment of overtime. The French Labour Code authorises the negotiation of agreements or arrangements providing for periods of up to 3 years (public policy provision), despite a decision by the European Committee of Social Rights on 15 March 2019. In this decision, the Committee considered that providing for a reference period of more than one year

[260] Decree no. 2000-815 of 25 August 2000.

> unfairly deprives the employee of the right to an increase in overtime without the rest granted constituting adequate compensation, as multiannual working time does not comply with the European Social Charter.[261]

In the absence of a collective agreement, the employer may unilaterally introduce a reference period which may not exceed 9 weeks in companies with fewer than 50 employees and 4 weeks in companies with more than 50 employees (public policy). Overtime is deducted at the end of the reference period. If such a system is introduced, employees must be informed within a reasonable period of any change in the distribution of working hours. This period must be set by collective agreement. In the absence of a collective agreement, the notice period for any change in the distribution of working hours is set at 7 days (default provision). It should be noted that if this change is provided for by collective agreement, it cannot legally be considered as a change to the employment contract for full-time employees.

At the request of employees, the employer may, after consulting the works council, introduce a system of individualised working hours allowing hours to be carried over from one week to the next; hours worked in excess of the statutory or collective agreement working hours at the employee's initiative are not considered overtime. Family carers and relatives of a disabled person are entitled to flexible working hours to make it easier to support the person being cared for.

The collective bargaining law applicable to care workers in institutions is not very developed on the organisation of working time. The NCC for private non-for-profit hospital and nursing establishment of 1951 (non-extended) limits itself to stating that in the event of the organisation of working time over 2 weeks, the law applies to the counting of overtime, its remuneration and its counterpart in compensatory rest. The NCC for establishments and services for maladjusted and disabled persons provides for the possibility of organising work in cycles in accordance with the 1998 law[262] in accordance with the branch agreement of 1st April 1999. The cycle may be organised on a fortnightly basis (70 hours), over several weeks (up to a maximum of 12) or over all or part of the year by granting rest days in accordance with article 4 of the law of 13 June 1998. In application of the branch agreement, working hours may be organised in the form of a work cycle, provided that the distribution of hours within the cycle is repeated identically from one cycle to the next. The number of hours worked during the weeks making up the cycle may be irregular. An employee may not work more than 44 hours per week, either during the day or at night. The work cycle may not exceed 12 consecutive weeks. Over the entire cycle, the average weekly working time may not exceed the legal working time. The employer shall post a table showing the working hours for the duration of the cycle.

[261] ECSR 15 March 2019, no. 154/2017.

[262] Article 20-2, Title IV of the NCC for establishments and services for maladjusted and disabled persons (not extended).

For homecare workers, the situation varies widely from one national collective agreement to another. The NCC for personal services companies extended) of 2012 refers to Article L. 3121-44 of the French Labour Code, which states that it is possible to arrange working hours by company agreement, provided that the agreement specifies the reference period, which may not exceed 12 months, the conditions and periods of notice for changes in working hours or hours, the conditions for taking account of employee absences and, where applicable, the smoothing of monthly pay. The NCC stipulates that the company agreement may provide for a lower limit than 1607 hours for counting overtime, which is suggested as a possibility by the legislator.

On the other hand, the NCC for home help, support and care services of 2010 (extended) is very prolix on the subject, devoting a chapter to it. It sets out common provisions for the different types of organisation and provides in detail for 2 types of organisation of working time.

- The common provisions concern the notice period for informing employees of working hours and their distribution. This period is at least 7 days (as in the French Labour Code). It may be reduced to 4 days to "better meet the needs of users, cope with fluctuating demands inherent in the activity and ensure continuity of service". In the event of an emergency, the NCC does not set a minimum time limit, but specifies that, in accordance with legal and regulatory provisions, the employer must check that the intervention is justified exclusively by the performance of an essential act of daily life and falls within one of the following cases:
  - replacement of a colleague on unplanned absence: illness, leave for family events or exceptional leave;
  - immediate need for assistance with children or dependent persons due to the unforeseeable absence of the usual carer;
  - return from unplanned hospitalisation;
  - sudden deterioration in the state of health of the person being cared for. The specific situation of employees with multiple employers is taken into account. The collective agreement provides for compensation if the notice period is less than 7 days, although this is not required by law. Employees may refuse to change their working hours four times per reference year, without this refusal constituting misconduct or grounds for dismissal. Employees who undertake to accept emergency call-outs (less than 4 days' notice) will be entitled to an additional day's leave per reference year, at the employee's discretion, provided that they have actually been called out. These employees may refuse to take part four times; after that, they lose their right to additional leave. Any employee refusing a change in working hours must confirm this in writing to the employer. In addition, the agreement stipulates that the choice of a method of organising working time involves informing and/or consulting the works council or, failing that, staff representatives if they exist, informing the labour inspector and informing employees in accordance with legal and regulatory provisions.

- The special provisions apply to the 2 methods of organising working time. In all cases, it is stipulated that the monthly remuneration must be smoothed. The first method consists of distributing working time over a period of 2 weeks. This type of working time arrangement is open to all employees. For full-time employees, the working time is 70 hours per period of 2 calendar weeks. An unequal number of working hours may be worked during either week, provided that the legal maximum working hours are respected. Employees working in this context may not work more than 6 consecutive days. They are entitled to at least 4 days off per 2-week period comprising at least 2 consecutive days, including one Sunday.[263] The second method of organising working time involves the granting of rest days either over an annual reference period[264] or over a reference period of 4 weeks.[265]

6.1.4 Night Work

As the General Civil Service Code does not contain any provisions on night work, we will only present here the legal (6.1.4.1) and contractual (6.1.4.2) rules applicable in the private care sector.

6.1.4.1 Legal Provisions Governing Night Work in the Private Sector

Under French law, night work must be "exceptional".[266] According to article L. 3122-1 of the Labour Code (public order), "it takes into account the impera-

[263] Article 42 of the NCC for home help, support and care services of 2010.

[264] Article 43 of the NCC for home help, support and care services of 2010. This arrangement of working hours consists of maintaining a working week of more than 35 hours and granting, in return, additional days off up to a limit of: 23 working days per year for 39 hours; 18 working days per year for 38 hours; 12 working days per year for 37 hours; 6 working days per year for 36 hours. Under no circumstances may these days be added to the main paid leave. Half of these days are taken at the employees' discretion and half according to a schedule determined by the employer. Any change to this schedule, with reasons, may only be made subject to: 15 days' notice when the period of leave does not exceed 1 week; 1 month's notice when the period of leave is equal to or greater than 1 week. These days may be split, but are not subject to any additional charges. They are subject to the same collective bargaining arrangements as paid leave. Unless they are paid into a time savings account, these days must be taken at the latest before the end of the reference period or year determined in the information notice or local agreement.

[265] Article 43 of the NCC for home help, support and care services of 2010. A schedule drawn up in advance according to the needs of the service and the personal constraints of the employees must set the dates on which these days or half-days of rest are taken within the 4-week period. The rules relating to the conditions and notice periods for changes in working hours or hours of work are 7 days. The employer shall provide the employee with monthly information on the working time completed in accordance with the legal provisions in force. An unequal number of hours may be worked in any one week, provided that the maximum working time is respected. Hours worked in excess of 140 hours over this 4-week period, and counted at the end of the period, are overtime hours paid in accordance with legal and regulatory provisions.

[266] Article L. 3122-1 of the French Labour Code.

tives of protecting the health and safety of workers and is justified by the need to ensure the continuity of economic activity or services of social utility". The law defines night work as work performed over a period of at least 9 consecutive hours, including the period between midnight and 5am. The night period begins no earlier than 9 p.m. and ends no later than 7 a.m.[267] In the absence of an agreement, work performed between 9 p.m. and 6 a.m. constitutes night work. The law also defines a night worker as either someone who works at least 3 hours of night work per day at least twice a week as part of his or her normal working schedule, or someone who works a minimum number of hours of night work during a reference period, as defined in the definition of night work (public order).[268]

A night worker's working time may not exceed 8 hours, unless the work is carried out in shifts (see rest section below), and the weekly working time may not exceed 40 hours over 12 consecutive weeks (public policy).[269] Night workers are entitled to compensation in the form of compensatory rest and, where applicable, pay. All night workers are entitled to regular medical check-ups. When night work is incompatible with imperative family obligations, in particular the care of a dependent person, refusal to perform night work does not constitute misconduct or grounds for dismissal. All these provisions are of public order.

6.1.4.2 Contractual Law on Night Work in the Private Sector

A company or branch agreement may introduce night work, provided that it sets out the reasons for such recourse, the definition of the period of recourse, the compensation, measures to improve employees' working conditions, measures to facilitate the reconciliation of private and professional life (in particular means of transport), and break times. In the absence of an agreement, and provided that the employer has entered into serious and fair negotiations with a view to concluding an agreement, he may unilaterally, after authorisation from the Labour Inspectorate (which verifies the existence of compensation and breaks), assign workstations to night work (suppletive provision).[270] In view of the developments in all the national collective agreements, we will first present the conventional law on night work in institutions (6.1.4.2.1) and then that at the beneficiary's home, which has special characteristics due to the workplace (6.1.4.2.2).

6.1.4.2.1 Collective Bargaining Agreements on Night Work in Establishments

The NCC for private hospital of 2002 (extended) devotes a very long article to night work, the use of which is justified by the need to ensure continuity

[267] Article L. 3122-2 of the French Labour Code.
[268] Article L. 3122-5 of the French Labour Code.
[269] Article L. 3122-6 of the French Labour Code.
[270] Article L. 3122-21 of the French Labour Code.

of service.[271] It should be emphasised from the outset that the industry agreement incorporates certain legal provisions as they stand, and in others has taken advantage of the possibility offered by the law to derogate *in peius*, going so far as to authorise certain aspects of night work to be organised at establishment level either by collective bargaining or, failing that, by referendum. In this way, the NCC incorporates the law on definitions, medical surveillance, the right to refuse night work on the grounds that it is incompatible with family responsibilities, break times, transport conditions and changes of assignment for pregnant women. On the other hand, the collective bargaining agreement allows the daily working time to be extended to a maximum of 12 hours by company agreement. In the absence of a company agreement, after informing and consulting the works council or, failing that, the staff delegates, or failing that, after consulting the categories of employees concerned, and by anonymous ballot with a majority of the votes cast, the daily working time may be increased to a maximum of 12 hours.

Night workers who are exempted from the maximum daily working time of 8 hours on night shifts must be given equivalent rest time. This equivalent rest time will allow, as part of the work organisation, either an increase in the daily rest period, or an increase in the weekly rest period, or an increase in the rest period over 2 weeks. The only exception to this rule is an equivalent compensatory payment, which ensures appropriate protection for the employee concerned and is provided for exclusively by collective agreement at company or establishment level, where it is not possible to grant this rest. Independently of the hardship allowance for night work, as defined by article 82.1 of the collective agreement, when the night worker within the meaning of article 53.1.2 has worked at least 3 hours per hour, rest time equivalent to 2.50% of each hour worked between 9 p.m. and 6 a.m. will be granted. This time off in compensation may be taken by the day or half-day when the time off acquired represents a day corresponding to the daily working time of the person concerned. In this case, the employee must request it, giving 15 working days' notice, specifying the date and duration of the rest required. Unless the service requires it, the rest period will be granted on the date requested by the employee. To take account of the particularities of night work, when the Works Council is consulted on the training plan, the conditions of access to professional training for night staff will be examined. All provisions will be made to enable these employees to access training under the same conditions as day workers.

The NCC for private, non-for-profit hospital and nursing establishment (non-extended) of 1951 simply states that

> In view of the need to provide continuous care for users and to take account of the arduous nature of night work, the staff concerned benefit from the specific provisions laid down by the branch agreement relating to night work and/or by

[271] Article 53 of the NCC for private hospital of 2002 (extended).

company or establishment agreements. The employees concerned benefit from article A 3.2.2 of this agreement if they meet the conditions.[272]

This agreement was supplemented by an agreement of 17 April 2002 on night work (extended) to which the Federation of establishments for the disabled (Fédération des établissements pour personnes handicapées) has signed up, which will therefore apply to all workers in this sector. The agreement justifies the use of night work as follows: "Given the activities of the not-for-profit health, social and medico-social sector, the use of night work is inseparable from the need to provide continuous care for users". The agreement adopts the statutory nighttime working hours (between 9 p.m. and 7 a.m.) and the legal definition of a night worker. However, it opens up an option with regard to night workers: they can also be workers who work at least 40 hours over a period of 1 calendar month during the night shift as part of their normal working hours. The agreement derogates *from* the French Labour Code by raising the maximum daily working time to 12 hours (instead of 8). In return, if the daily working time exceeds 8 hours, employees will be entitled to a rest period equivalent to the duration of the excess, in addition to the statutory daily rest period of 11 hours. However, the industry agreement stipulates that collective agreements may define sectors where work involves particular risks or significant physical or mental strain, in which night work may not exceed 8 hours in any 24-hour period.

The agreement provides for night work to be monitored by the occupational physician and staff representative bodies. The agreement stipulates that a visit to the occupational physician will be organised prior to the start of night work and renewed every 6 months. The employer will have to transfer the night employee to a day shift, once the occupational physician has established that the employee's state of health so requires. The occupational physician shall be consulted prior to any major decision relating to the introduction or modification of the organisation of night work.

The agreement establishes a series of protections in various situations. Firstly, it recognises (without any legal obligation) the right of any employee who is medically pregnant or who has given birth, as long as she so requests, to be assigned to a day job for the duration of her pregnancy and during the period of legal postnatal leave when she waives this. If the employer is unable to offer a day job, he must inform the employee or the company doctor, as the case may be, in writing of the reasons for not reassigning the employee. The employee's employment contract will then be suspended until the start of her statutory maternity leave. Secondly, measures may be taken by establishments and services to make it easier for night workers to combine night work with family and social responsibilities. When night work is incompatible with the following imperative family obligations: looking after a child, caring for a dependent person, the employee may ask to be assigned to a day shift, insofar as a position compatible

[272] Article 05.04.2 of the NCC for private, non-for-profit hospital and nursing establishment of 1951 (not extended).

with professional qualifications is available. For the same reasons, an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal.

Finally, the agreement provides for compensation for night work. The text distinguishes between establishments and services that are subject to collective agreements or agreements that already provide for compensation for night work, in which case night workers will be granted 1 day's compensatory rest per year starting on the first day of the month. For establishments that do not provide for any compensation, the hours worked at night will give entitlement to compensation in the form of rest.[273] Establishments and organisations will be able to reduce part of this compensatory rest by converting part of it into a financial increase of up to 50%. This possibility of converting part of the compensatory rest into a financial supplement will have to take the form of a collective company agreement. In the absence of union representatives, the employer may implement this provision after consulting the staff representatives.

6.1.4.2.2 Collective bargaining Rights on Night Work Performed in the Beneficiary's Home

In the case of night work performed in the beneficiary's home, the issues raised are for the most part common, at least in the case of workers employed by establishments, and will therefore be examined simultaneously (6.1.4.2.2.1), while the conditions under which night work is performed by an employee employed by a private employer will be analysed separately (6.1.4.2.2.2). It should be emphasised that given the place occupied by night work in the texts of collective bargaining agreements, this is a question examined with attention, care and precision by the social partners.

6.1.4.2.2.1 Night work in the NCC for Personal Services Companies and in the Ncc for Home Help, Support and Care Services

These two NCCs establish a genuine status for night workers, with protection, compensation, the involvement of the IRP and occupational medicine.

6.1.4.2.2.1.1 Definition of Night Work and Night Workers

The NCC for personal services companies stipulates the principle that "an employee who does not wish to be required to work a period of time considered to be night time must indicate this on his contractual periods of unavailability". As a result, an employee wishing to return to or occupy a daytime position shall

[273] The right to compensatory time off is available from the first hour of actual night work for a period equal to 5% per hour worked up to a maximum of 9 hours per night… (article 5 of the agreement).

be given priority for the allocation of a job corresponding to his/her professional category or equivalent job in the company.[274] Night work is defined as working from 10pm to 7am. However, a company agreement may substitute a period of 9 consecutive hours between 9pm and 6am. The text uses the legal definition of a night worker and adds the possibility of considering as night workers those who work "at least 270 hours in this period over twelve consecutive months". The text reproduces the legal provisions on maximum working hours, breaks and minimum daily rest periods, and specifies that exceptions may only be made to rest periods and breaks within the limits and under the conditions defined by law. However, in view of the specific requirements of providing a continuous service to vulnerable groups, particularly in the context of night work, the maximum daily working time for night workers has been increased to 12 hours. If the employee is required to work in excess of the 8-hour threshold defined in article L. 3122-6 of the French Labour Code, he or she will be entitled to a rest period equivalent to the time spent in excess of this threshold. This rest is taken as soon as possible after the period worked.

The 2010 NCC for home help, support and care services (extended) defines night worker by also taking the definition from the French Labour Code and adding another alternative definition according to which any employee who performs a minimum number of 78 hours of night work per month on average over 6 months is considered to be a night worker. Employees whose job contributes to ensuring the physical and moral well-being, health and hygiene of people being cared for in their own homes may be assigned to a night shift. Night workers are employees whose jobs fall *at least* within step 2 of the category employee level 1 of the jobs defined in Title III. The collective agreement provides for 2 types of night work. The first, known as "sedentary night work", consists of the employee spending all or part of the night with a user whose state of health or situation requires continuous actual work in order to respond to any requests. The second, known as "Itinerant night work", involves the employee working one or more shifts with one or more users whose state of health or situation requires acts of care, nutrition or hygiene during the night working hours defined in the agreement, without the employee spending the night in the home of the person being cared for.

The branch agreement introduces exceptions to the legal provisions. For example, the length of actual night work is increased from 8 hours to 10 hours. In return, when the actual working time exceeds 8 hours, employees are entitled to a rest period equivalent to the duration of the excess. In addition, as the night time slot is 9 hours, when the employee actually works 10 hours, the 10th hour is considered as an hour of night work and therefore benefits from the relevant compensation. This rest time is added either to the daily rest time of 11 hours provided for in the Labour Code or to the weekly rest time.

[274] The employee must inform management in writing.

Another derogation, this one in favour of the employee, concerns the actual weekly working time for night workers, which, calculated over a period of 12 consecutive weeks, may not exceed 40 hours. In any event, night workers may not work more than 5 consecutive nights and must be entitled to a weekly rest period. The agreement is based on the French Labour Code as regards breaks. Employees are entitled to a 20-minute break once their actual working time reaches 6 hours. Break times during which employees remain permanently at the employer's disposal are counted as actual working time.

6.1.4.2.2.1.2 Protection for Night Workers

The NCC for personal services companies provides for enhanced medical surveillance of night workers, without providing any further details. In companies with more than 50 employees, the social and economic committee (or staff representatives) is involved in monitoring night work.[275] In addition, by virtue of the protection of social and family life,

> an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal. For the same reasons, any night worker may ask to be assigned to a day shift because of compelling family obligations. The employer must respond within a maximum of one month to any request for a change of assignment from a night shift to a day shift. As stipulated by law, the NCC must provide for transport arrangements, which is a point of attention in the case of work carried out at the beneficiary's home. In order to facilitate the transport of night workers, work schedules are organised in such a way as to allow employees who do not live at home or who do not have a motorised land vehicle to use public transport. Exceptionally, and only with the employer's authorisation, a taxi, the cost of which will be borne by the employer, may be requested by an employee who no longer has any means of transport to return home.

With regard to pregnant women working night shifts who wish to take up a day shift, the NCC incorporates the legal provisions on the rights of pregnant women in relation to night shifts and adds, in view of the specific features of the sector and its work organisation, that if the employer is unable to offer another job, it shall inform the employee and the occupational physician in writing of the reasons preventing the employee from being reclassified as a day shift. The employee's employment contract is then suspended until the date of commencement of the statutory maternity leave and possibly during the additional period following the end of this leave in application of the above provisions. During this period, regardless of the employee's length of service, she will receive guaranteed remuneration consisting of a daily allowance paid by social security and additional remuneration payable by the employer, in accordance with the same

[275] As part of the annual report provided for in Article L. 4612-16 of the French Labour Code.

terms and conditions as those set out in the inter-professional agreement of 10 December 1977 appended to the law on the monthly payment of wages of 19 January 1978. Finally, the NCC stipulates equality between men and women and access to training for night workers:

> in view of the specific nature of night work, the employer must ensure that the conditions of access to training and its organisation are adapted to enable night workers to benefit from training courses. Where appropriate, the employer may propose temporary changes to the employee's working hours.

The 2010 NCC for home help, support and care services (extended) lays down 2 prerequisites for any work in the context of "sedentary night work". The first is for the employer to check that an isolated and sanitary area is available to the employee. The second requires the employer to set up an organisation to ensure that the employee can always contact a contact person. This permanent contact may be organised in the form of an on-call duty for the contact person. In justified cases, the employer will work with the CHSCT, or failing that the works council or staff representatives if they exist, on ways of ensuring the safety of night work. Before introducing night work, the employer must first consult the works council and the health, safety and working conditions committee, or failing that, the staff delegates if they exist. The employer must then inform all employees and propose an amendment to the employment contract for those employees affected by night work. In addition, the company doctor must be consulted before any decision is taken to introduce night work. All night workers are entitled to a medical examination before being assigned to a night shift and every 6 months thereafter.

The NCC for home help, support and care services de 2010 (extended) stipulates measures designed to make it easier for employees to combine night work with family and social responsibilities. Thus, in accordance with legal and regulatory provisions, when night work is incompatible with imperative family obligations (childcare, care of dependent persons), an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. Similarly, because of the pressing family obligations set out above, a night worker may request to be assigned to a day shift, provided that a position compatible with his or her professional qualifications is available. In order to enable each employee to reconcile family and professional life, a schedule is drawn up and given to each employee, indicating the weeks in which he or she may be required to work at night. The agreement prohibits pregnant women or women who have recently given birth from working nights, provided they have provided a medical certificate.

6.1.4.2.2.1.3 Compensation for Night Work

Night work is considered to be a special hardship and gives rise to compensation fixed by decree in the public sector and by national collective agreement in the private sector. It should be noted that, with the adoption of the Social Secu-

rity Financing Act for 2024, the government has increased the financial increase for night work. As a result, non-medical staff (nurses and care assistants in public hospitals and nursing homes, and in private not-for-profit establishments) will see their night-time pay increased by 25% compared with the daytime rate, and the fixed rate paid for work on Sundays and public holidays increased by 20%: see decree no. 2023-1238 of 22 December 2023 on compensation for night work in the hospital civil service, applicable from 1st January 2024. This decree repeals decree no. 88-1084 of 30 November 1988 relating to the hourly allowance for normal night work and the additional allowance for intensive work.

In addition, under the NCC for personal services companies, night workers are entitled to compensatory rest. Each hour worked as part of the night shift entitles the worker to 5% compensatory rest. Compensatory rest must be taken every 7 hours for a full-time employee and at least 4 hours for a part-time employee, within a period of 12 months during the employee's normal working hours. Compensatory rest not taken at the end of the reference period because it is less than the equivalent of one day's rest is carried over to the following half-year. Requests for compensatory rest must be submitted to the employer 1 month in advance. Night workers are also entitled to a 5% increase in their hourly rate for each hour worked as part of the night shift (suggested by law). These increases in hourly rates for night work cannot be combined with the increase for work on Sundays. As a result, hours worked on Sunday nights entitle the employee exclusively to the most advantageous financial increase, either that resulting from Sunday work or that resulting from night work. The increase for night work is cumulative with the increase in the hourly rate for work on a public holiday.

6.1.4.2.2.1.4 Contractual Treatment of Night-Time Presence

The NCC for personal services companies includes specific clauses for night-time presence, which does not necessarily require work: some services do not require continuous work or active watchfulness on the part of the employee with the person being cared for. A system of equivalence has been set up called "night presence". An employee provides a night presence when he or she is required to remain in the home of the beneficiary of a service, at night, and is likely to intervene under certain conditions for tasks relating to the benchmark jobs of life assistant… Two conditions are required for recognition of night work and application of the night work equivalence scheme:

> the need for the employee to sleep in the home of the beneficiary of the service (in a separate, suitably equipped room); a real division of his/her time on this occasion between periods of inaction (without intervention) and periods of action (with intervention), it being understood that this division will be precisely measured taking into account the criteria defined in article 10.2 of this agreement. It is important to specify that in any event, particularly with regard to respect for rest periods, any night presence must be compatible with a day job in order to enable the employee to work full time. The system of equivalence does

> not prevent a worker from being recognised as a night worker. Except with the employee's express agreement, any change to the schedule during night working hours must be made with 7 days' notice. In this respect, refusal to change night working hours, even in an emergency, cannot constitute misconduct or be considered as an absence. The night-time presence of an employee as defined in the previous article may not be less than 10 continuous hours. An employee may not be present at night for more than five nights over a period of seven calendar days. If an employee's presence at night requires continuous and permanent vigilance on his part, the time spent in action and the time spent in inaction cannot be distinguished, and there can therefore be no question of counting hours of equivalence. All hours of presence under these conditions are treated as actual working time, with the requirements of night work,

which means that the employee's employment contract must be amended.[276] Equivalent hours worked by an employee when present at night are counted and remunerated.[277] This count must be made on a weekly basis and systematically brought to the employee's attention by any means.[278] The NCC imposes a duty of vigilance on the employer, who must check the progress of night work by contacting the employee concerned at least once a month and visiting the customer at least once a quarter.

Under the 2010 NCC for home help, support and care services (extended), the cost of transporting the night worker from his or her home to the home of the person or persons being assisted is borne by the employer. Depending on the resources of the employing organisation and the specific nature of the work, this cost is covered either by the payment of mileage allowances, or by the provision of a vehicle, or by the reimbursement of public transport. Night workers are entitled to additional remuneration or compensatory rest, the terms of which are defined after consultation with the social and economic committee, if one exists. However, hours worked during the night on a Sunday or public holiday give entitlement to the compensatory rest provided for in this article and to the additional element of remuneration linked to work on a Sunday or public holiday.

6.1.4.2.2.2 Night Work in the NCC Individual Employers and Home Based Employment

The agreement provides for 2 types of night work. Here again, it should be remembered that the legal provisions on night work do not apply. The partners are free to regulate this type of work organisation. They do, however, set limits and conditions to provide a minimum of protection for the worker concerned.

[276] Article 11 of the NCC for personal services companies.

[277] Calculation of equivalent hours vs. inactive time, see Table of Correspondences, NCC, art. 10-2. Art 10-3.

[278] Article 13 of the NCC for personal services companies.

Night presence means that the employee is obliged to sleep on the premises in a separate room and in decent conditions,[279] without having to do any of the usual actual work, while being required to intervene if necessary as part of his duties. Night work must be provided for in the contract. It is compatible with daytime work. A night is between 8pm and 6.30am. The parties may, however, adjust this time slot by bringing forward the start of the night shift and/or delaying the end of the night shift, up to a total limit of one and a half hours. Night time may not exceed 12 hours. The night shift may be scheduled for more than 5 consecutive nights, subject to compliance with the weekly rest period and the following cumulative conditions: the number of night shifts carried out by the employee must not exceed 4 shifts every night; it is the result of a request made by the employee and/or the individual employer with a view to meeting specific needs requiring a night shift, due in particular to the employee's state of health and/or dependency, disability, age and/or social and/or family isolation; the parties have formalised their agreement in writing. The employee's refusal to work more than 5 consecutive nights may not constitute grounds for termination of the employment contract. The collective agreement expressly states that night work is not taken into account when determining the actual working time. However, if the employee is required to work at least 4 nights in a row, the hours worked during the night must be reclassified as actual working hours and the employment contract must be revised. The hours and conditions of night watch must be set out in the employment contract. Night watch is remunerated in accordance with the collective agreement by means of a flat-rate allowance. The amount of this allowance may not be less than 1/4 of the contractual salary paid for equivalent actual working time. This allowance will be increased according to the nature and number of interventions. If on certain nights the employee is called upon to intervene: at least 2 times, the fixed allowance is due for the night during which the employee intervenes, is increased to 1/3 of the contractual salary paid for equivalent actual working time; at least 4 times, the allowance due for the duration of the interventions corresponds to the contractual salary paid for equivalent actual working time. The flat-rate indemnity for the remaining nights is equal to 1/3 of the contractual salary paid for equivalent actual working time. If the employee works every night and at least 4 times, all night hours are considered as hours actually worked and must be paid at the gross hourly rate stipulated in the contract. The contract must then be revised.

Night nursing hours. Employees working as night nurses remain close to the patient and do not have their own room (they are likely to intervene at any time). This function is not compatible with a full-time day job. The hours worked may not exceed 12 consecutive hours. The collective agreement stipulates that the function of night nurse is exclusively applicable to employees in the benchmark

[279] If the employee is required to sleep on site as part of the night shift, the accommodation will not be taken into account when assessing benefits in kind and will not be deducted from net pay.

jobs in the adult sector "Life assistant C" and "Life assistant D". The hours and conditions of night duty must be stipulated in the employment contract. Night watch is remunerated in accordance with the collective agreement by means of a flat-rate allowance. The amount of this allowance may not be less than 1/4 of the contractual salary paid for equivalent actual working time. This allowance will be increased according to the nature and number of interventions. If on certain nights the employee is called upon to intervene: at least 2 times, the fixed allowance is due for the night during which the employee intervenes, is increased to 1/3 of the contractual salary paid for equivalent actual working time; at least 4 times, the allowance due for the duration of the interventions corresponds to the contractual salary paid for equivalent actual working time. The flat-rate indemnity for the remaining nights is equal to 1/3 of the contractual salary paid for equivalent actual working time. If the employee works every night and at least 4 times, all night hours are considered as hours actually worked and must be paid at the gross hourly rate stipulated in the contract. The contract must then be revised. For employees working as night nurses, remuneration is calculated on a basis that cannot be less than the gross hourly wage stipulated in the employment contract.

6.1.5 Holidays

In this section on leave for *care workers*, we will first distinguish between paid annual leave (par. 1) and other forms of leave (par. 2). In addition, the law applicable to the private sector differs from that of the public sector because the General Civil Service Code retains specific features on this aspect of working conditions which have not been erased despite the approximations with the Labour Code mentioned on several occasions in this chapter on working hours and working time. We will therefore describe these respective specificities, whether in terms of paid leave (6.1.5.1) or other leave (6.1.5.2).

6.1.5.1 Paid Annual Leave

Employees are entitled to 2.5 working days of paid annual leave per month of actual work or equivalent period during the reference period. Leave may be split into periods of more than 12 days. The main leave taken between 1st May and 31 October each year must be at least equal to 12 consecutive working days, which may not be split, and must not exceed 24 working days. Collective bargaining rights in the *care* sector will mainly consist of either increasing the number of days of paid leave, in particular on the basis of seniority, or organising and compensating for the splitting of paid leave by adopting the supplementary legal provision on the granting of additional leave in the event of splitting.[280]

[280] Article L. 3141-23 of the French Labour Code, i.e. 2 working days if the total number of working days taken outside the period is 6 or more and 1 working day if the total number of working days taken outside the period is between 3 and 5 days.

The NCC for private hospital of 2002[281] (extended) and the NCC for personal servicies companies (extended) of 2012 reproduce, without modifying them either favourably or unfavourably, the legal provisions relating to the duration of leave, its calculation, the period during which leave is taken, and the terms, conditions and compensation for fractioning.

On the other hand, the NCC for establishment and services for maladjusted and disabled persons of 1966[282] (not extended) provides that the annual paid leave of permanent salaried staff will be extended by 2 working days for each period of 5 years of seniority in the company, up to a maximum of 6 days. In addition, if, for service reasons, and with the agreement of the employee concerned, annual leave has to be granted outside the normal period, the statutory period will be extended by 3 working days per calendar year, which is more favourable than the relevant legal provision.

The NCC for private non-for-profit hospital and nursing establishment of 1951 (not extended) provides for exceptional paid leave for staff in establishments for disabled or maladjusted children or adults, in which the decentralised bonus is equal to 3%, benefit during each of the three quarters that do not include the annual leave from additional paid leave to be taken in the best interests of the service. The duration of this additional paid leave, which for each of the 3 quarters may amount to 6 consecutive working days for educational staff and 3 consecutive working days for other staff, is calculated in proportion to the actual time worked during the quarter.

The NCC for individual employers and home based employment of 2021 (extended) takes up the legal right to holidays, which once again brings these workers back into the fold of ordinary law, for whom the legislator, without explicitly excluding them, does not expressly mention paid holidays among the provisions applicable to domestic workers. Thus, the calculation and number of days of holiday are those of ordinary law (2.5 days per month worked). And in the event of split leave, the agreement recognises the right to additional leave such as that provided for in the Labour Code.

Civil servants in active employment are entitled to annual leave equal to five times their weekly service obligations for each completed year of service. This period is assessed in terms of the number of days actually worked. An additional day's leave is granted to any employee whose number of days of leave taken outside the period from 1st May to 31 October is five, six or seven days; a second additional day's leave is granted when this number is at least equal to eight days. Absence from work may not exceed thirty-one consecutive days, except in the case of civil servants and State employees who are exceptionally authorised to combine their annual leave to travel to their country of origin or to accompany their spouses travelling to their country of origin.

[281] Title VI of the NCC for private hospital of 2002.

[282] Title IV of the NCC for establishment and services for maladjusted and disabled persons of 1966 (not extended).

6.1.5.2 Other Types of Leave

A distinction should be made between other private-sector leave covered by the provisions of the Labour Code and collective agreements (6.1.5.2.1) and public-sector leave covered by the General Civil Service Code (6.1.5.2.2).

6.1.5.2.1 Other Forms of Leave in the Private Sector

The Labour Code contains a wealth of provisions introducing other forms of leave: child-rearing leave, teaching and research leave, vocational training leave, trade union training leave, mobility leave, parental leave, leave to care for relatives, representation leave, family solidarity leave, international solidarity leave, parental leave, leave to acquire nationality, natural disaster leave, business start-up leave, sick child leave, leave for family events, sabbatical leave (leave for family events, family solidarity leave, leave to care for relatives,[283] sabbatical leave, leave for associative, political or activist commitments, mutualist leave. Collective bargaining agreements applicable in the *care* sector are also covered (only those benefits that are strictly collective bargaining and therefore provide an added benefit to the employee will be discussed here).

It should be noted that the NCC for personal services companies of 2012 and the NCC for home help, support and care services of 2010 are the only agreements that do not include any specific clause on other leave.

The NCC for establishment and services for maladjusted and disabled persons of 1966, Title IV (not extended) provides for benefits in addition to those provided for by the law.[284] Additional and exceptional leave is granted, with justification, to staff for family-related events (between 1 and 5 days depending on the event). In addition to paid annual leave, employees are entitled to up to 21 days' paid exceptional leave per 3-year period to take part in training courses, advanced training sessions and professional conferences. Exceptional unpaid leave for personal reasons may be granted on an exceptional basis, if service requirements allow, and on justification of the reasons for the request, up to a maximum of 3 months. Such leave may, at the option of the person concerned, either be deducted from annual leave accrued on the day the leave is taken, or granted without pay. In the event of work stoppage due to illness, employees who have been with the company for 1 year will receive, after deduction of the daily allowances received under the social security and supplementary provident schemes: for the first 3 months, the net salary they would normally have received without interruption of activity; for the following 3 months, half the net salary corresponding to their normal activity. The same benefits apply in the event of leave due to an accident at work or occupational illness. Lastly, employees who have completed one year's service with the company will be entitled,

[283] Article D. 3142-7 of the French Labour Code.

[284] Title IV of the NCC for establishment and services for maladjusted and disabled persons of 1966 (not extended).

for the duration of their statutory maternity leave or statutory adoption leave, to additional allowances so that, taking into account social security allowances, they receive the equivalent of their net salary.

The NCC for private hospital of 2002, Title VI (extended) provides for leave for family events (between 2 and 5 days), leave for sick children (12 working days per employee or for the couple); in the event of maternity leave, the payment of additional allowances up to the level of salary and, from the end of the 2nd month of pregnancy, a 10% reduction in the daily working time, with their pay being maintained. Paternity leave of 11 days gives rise to the payment of an additional allowance, leave to care for a close relative (12 months). For all other types of leave (parental leave, international solidarity leave, sabbatical leave, etc.), the collective agreement refers to ordinary law.

The NCC for private non-for-profit hospital and nursing establishment (not extended) also includes more favourable provisions for certain other types of leave. This is the case for leave for a sick child (1 to 4 days per child per year), which is paid as actual working time and also benefits cohabitees and PACS employees treated as spouses. This is also the case for leave for family events[285] on justification, paid as actual working time. Exceptional short-term leave for personal reasons may be granted if the needs of the service permit and if the reasons for the request are justified, but it is either deducted from the annual leave earned or unpaid. Unpaid leave may be granted for a maximum of 3 months, renewable once. With regard to maternity and adoption leave, employees with 1 year's seniority will continue to receive their salary.

The 2021 NCC for individual employer and home based employment includes a series of other types of leave which are worth highlighting, since the relevant labour legislation does not in principle apply. By mimicking other national collective agreements and drawing inspiration from the legal provisions, the signatories of the NCC have thus achieved a rapprochement or even alignment with other employees in the sector from the point of view of social benefits. Firstly, there is leave for family events,[286] paid leave for family events, with

[285] Death of an employee's child or spouse's child: 5 days; death of an ascendant, descendant, brother or sister, son-in-law or daughter-in-law, father-in-law or mother-in-law, spouse's brother or sister: 2 days; marriage of a child: 2 days; marriage of a brother or sister: 1 day; employee's marriage: 5 days; birth of a child: 3 days. This leave is also granted to a partner.

[286] According to article 48.1.3.1 of the NCC Individual employer and home based employment: 4 working days for her marriage or for the conclusion of a civil solidarity pact; 1 working day for the marriage or for the conclusion of a civil solidarity pact of a child; 3 working days for each birth occurring in her home or for the arrival of a child placed with a view to adoption. These 3 working days are taken, in accordance with the conditions set out below, in the 15 days surrounding the event; 5 working days for the death of a child. The period of leave is increased to 9 working days in the following cases: death of a child, whatever its age, if it was itself a parent; death of a child aged under 25; death of a person aged under 25 who was the employee's actual and permanent dependant; 3 working days for the death of the employee's spouse, partner in a civil solidarity pact, cohabitee, father, mother, father-in-law, mother-in-law (understood as the father or mother of the employee's married spouse), brother or sister;

salary maintained and treated as actual working time for the purposes of calculating paid leave and seniority. The NCC specifies that when leave for family events is compensated by the social security system, the individual employer maintains the employee's salary after deduction of the daily allowances paid, so that the employee does not suffer any loss of salary during the period of absence. If the employee receives the daily allowances directly from the social security scheme, he must provide the individual employer with proof of the amount of these allowances without delay. There is also leave for the Defence and Citizenship Day, for which salary is maintained and which is treated as time actually worked. Employees are also entitled to leave for a dependent child (2 working days, up to a maximum of 30 per year), for the acquisition of French citizenship. In addition to this paid leave, there is other unpaid leave which is not counted as actual working time: leave on personal grounds if authorised by the employer;[287] unpaid leave of 3 working days for a sick child, separate from leave for a family event, which is not counted as actual working time; unpaid parental presence leave,[288] which is not counted as actual working time for the purposes of determining entitlement to paid leave, but is taken into account for the purposes of determining entitlement to seniority.

6.1.5.2.2 Other Public Sector Leaves

The General Civil Service Code distinguishes between leave of absence and other forms of leave. Civil servants[289] and public employees[290] are entitled to leave of absence in connection with parenthood and certain family events. These absences are not included in the calculation of paid leave, in the same way as the

2 working days for the announcement of the onset of a disability in a child; 1 working day in the event of the death of a descendant in the direct line (grandchild, great-grandchild), other than a child for whom special provisions are made in this article; 1 working day in the event of the death of an ascendant in the direct line (grandparent, great-grandparent). In the event of the death of a child or a person under the age of 25 who is the employee's actual and permanent dependant, the employee is entitled to additional bereavement leave of 8 working days in the event of the death of a child under the age of 25 or a person under the age of 25 who is the employee's actual and permanent dependant.

[287] The individual employer does not have to give reasons for refusing to grant the leave, and if the individual employer does not agree, the employee's absence from work may be treated as unjustified absence.

[288] This leave may be requested if the dependent child suffers from an illness, disability or is the victim of a particularly serious accident, making a sustained presence and constraining care indispensable. There is also family solidarity leave (article 48.2.4 of the NCC for private individual employers and home based employment and leave for close assistance (article 48.2.5 the NCC).

[289] 5 to 7 working days, depending on age, in the event of the death of a child or of a person for whom the civil servant is effectively and permanently responsible. Article L. 622-2 of the General Civil Service Code.

[290] 8 days which may be split and taken within one year of the death. Article L. 622-2 of the General Civil Service Code.

leaves of absence provided for in the hospital and local authority civil services.[291] The Civil Service Code contains a number of provisions relating to other types of leave, which may be regarded as special social benefits associated with civil service status.

Firstly, there is leave linked to parental and family responsibilities in addition to parental leave. The Civil Service Code makes a number of references here to the Labour Code (in relation to birth leave, maternity leave, adoption leave, paternity leave,[292] leave to care for relatives).[293] The Code adds other forms of leave: in the event of the child's hospitalisation or the mother's death during her maternity leave;[294] for parental presence[295] in the event of an accident or a particularly serious disability of the child. The Code also provides for unpaid family solidarity leave[296] for a period of 3 months, renewable once, which is treated as actual work and cannot be deducted from paid leave.[297]

The Civil Service Code also contains lengthy provisions on leave related to civic activities. The first is unpaid citizenship leave of 6 working days per year, which is treated as a period of actual service and cannot be deducted from annu-

[291] Articles L. 622-2 to L. 622-7 of the General Civil Service Code.

[292] Where applicable, to the employee who is the mother's spouse or to the public employee bound to her by a civil solidarity pact or living in a marital relationship with her. Article L. 631-9 of the General Civil Service Code.

[293] Articles L. 634-1 to L. 634-4 of the General Civil Service Code.

[294] Article L. 631-4 of the General Civil Service Code: the father of a civil servant is entitled to leave for the period remaining between the date of the mother's death and the end of the mother's compensation period. If the child's father does not request it, this right is granted to the mother's civil servant spouse or to the civil servant bound to her by a civil solidarity pact or living in a marital relationship with her.

[295] Article L. 632-1 of the General Civil Service Code. In the event of illness, accident or disability of a dependent child that is particularly serious, making it essential for the child's mother or father to be present at all times and to provide constraining care. This leave is for a maximum of three hundred and ten working days over a period of thirty-six months. It may be renewed once for the same reasons for a maximum of three hundred and ten working days over a further period of thirty-six months. The leave may be split up or taken in the form of part-time work. It may not be deducted from annual leave. Civil servants on parental leave are not paid. They receive a daily allowance for parental presence under the conditions set out in Chapter IV of Title IV of Book V of the Social Security Code. State or local civil servants may also, at their request, be assigned to a post closest to their place of residence, after application of articles L. 512-19 and L. 512-26 respectively relating to transfer priorities in the State civil service and in the local civil service: Article L. 631-1 of the General Civil Service Code.

[296] It may, however, give rise to the payment of a daily allowance to support a person at the end of life, under the conditions and according to the procedures set out in Chapter VIII of Title VI of Book I of the Social Security Code.

[297] Articles L. 633-1 to L. 633-4 of the General Civil Service Code: when an ascendant, descendant, brother, sister, a person sharing the same home or a person who has designated them as their trusted support person within the meaning of article L. 1111-6 of the Public Health Code is suffering from a life-threatening condition or is in the advanced or terminal stages of a serious and incurable disease, whatever the cause.

al leave. Then there is left to represent an association or mutual society, granted subject to service requirements, with pay, for 9 working days a year.[298] There is also left prepare and supervise cohesion stays as part of the universal national service, paid subject to service requirements for a period of up to sixty days over a period of twelve consecutive months. Finally, there is paid leave to complete a period of military service, military training or activity in an operational reserve.

6.2 Health and Safety at Work for Carers

- Describe and discuss the regulation of health and safety, including employee representation and influence, employer obligations, physical and psychosocial work environment risks, violence and harassment at work, stress and workload, proactive measures etc., in your country, both *specific* labour law regulation for care workers and *general* labour law regulation applied to care workers.
- Describe and discuss the short-term, long-term, and post-pandemic implications of the COVID-19 pandemic for the working situation, job quality, and working conditions of care workers (in this context often referred to as "frontline workers") and for the care sector in general, both *specific* labour law regulation for care workers and *general* labour law regulation applied to care workers, and the role of social partners, social dialogue, and collective bargaining in this regard.

The provisions of Part 4[e] of the French Labour Code relating to health and safety at work have a very broad scope.[299] Occupational health and safety regulations apply to workers and employers under private law. They also apply to public industrial and commercial establishments, to public administrative establishments when they employ staff under private law conditions, to health, social and medico-social establishments,[300] and to public law health cooperation groups mentioned in 1° of article L. 6133-3 of the Public Health Code.

On 17 May 1948, France ratified ILO Convention no. 17 on compensation for occupational injuries, 1925, and on 13 August 1931 ILO Convention no. 18 on occupational diseases, 1925. French legislation on health and safety at work stems from a framework directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of employees at work. The transposition of this directive into French law was completed by an order of 22 February 2001. This legislation is also the result of 3 directives relating to minimum health and safety requirements for workplaces and the use of work equipment: they were incorporated into French law by Law no. 91-1414 of 31 December 1991 amending and adapting the new Labour Code and the Public Health Code.

[298] Articles L. 642-1 and 2 of the General Civil Service Code.

[299] See articles L. 4111-1 to L. 4831-1 and R. 4121-1 to R. 4822-1; L. 4121-1 of the French Labour Code (Part 4).

[300] Statutory part of the hospital civil service - Ordinance no. 2017-28 of 12 Jan. 2017, article 5.

Most of the regulations are codified in Articles L. 4111-1 to L. 4831-1 and R. 4121-1 to R. 4822-1 of the French Labour Code. There are also special regulations that have not been codified, and various other provisions issued by the occupational health and pension insurance funds (Caisses d'Assurance Retraite et de Santé Au Travail -Carsat) relating to technical safety standards. Occupational health and safety regulations are also set out and supplemented by collective agreements and various types of agreement between the two sides of industry. Employers also have the option of adopting more stringent provisions through internal charters or codes of conduct. In addition, in establishments with at least 20 employees, the internal regulations include compulsory instructions and prescriptions on health and safety at work.

The legal and contractual provisions relating to health and safety at work must be applied (as a matter of absolute public policy) to all companies in the private sector, including establishments and services of all kinds, whether public or private, secular or religious, commercial or not-for-profit. With the exception of a few specific civil service activities (armed forces, police, civil defence), all establishments in the three civil services (State, regional and hospital) are covered by these provisions. The health and safety regulations apply to all persons employed in any capacity by an employer,[301] including temporary workers and trainees.[302] We will look first at the prevention of occupational risks (6.2.1), then at workers' rights in terms of health and safety at work (6.2.2) and finally at the health and safety risk factors at work in the care sector (6.2.3).

6.2.1 Occupational Risk Prevention

As part of the general principles of prevention,[303] the legislator has instituted prevention, information and training objectives and obligations for employers (6.2.1.1) and workers (6.2.1.2). The legislator also intervened to introduce specific obligations during the COVID-19 pandemic (6.2.1.3).

[301] On this subject, see the provisions of the applicable national collective bargaining agreements, most of which refer to common law: article 20, para. 4-5-6; article 21-5-6 and article 21-6-3 of the NCC Home help, support and care services; Article R. 4121-1 of the French Labour Code. On the DUER and the definition of psychosocial risks, see 2013 amendment adopted in accordance with art. 77 of the law of 10 Nov. 2010 on pension reform: article 21-6-5 and article 20, al. 4-5-6 of the NCC Home help, support and care services; article 35 of the NCC for establishment for maladjusted and disabled persons; Title X: Working conditions, health and safety (laconic title) of the NCC Private hospital; Title VI, article (unique) 06.04 of the NCC Private non-for-profit hospital and nursing establishment. The same applies to civil servants: see articles L. 811-1 to L. 829-2 of the General Civil Service Code.

[302] Article L. 4111-5 of the French Labour Code.

[303] General principle of prevention: Document unique d'évaluation des risques (single risk assessment document): articles R. 4121-1 et seq. of the Labour Code resulting from Decree no. 2011-354 of 30 March 2011, Crise COVID-19. See also M. Véricel, "Déconfinement, reprise des activités économiques et santé au travail," *RDT* (2020): 409–11.

6.2.1.1 The Employer's Obligation to Ensure the Safety and Health Protection of Employees

Employers have a legal obligation under Article L. 4121-1 of the French Labour Code to guarantee the safety and health protection of their employees. This obligation implies the implementation of preventive measures, information, training and appropriate means to ensure safety at work. Failure to comply with this obligation may constitute inexcusable fault on the part of the employer in the event of an accident at work or occupational disease.

Until 2015, employers were bound by an "obligation de sécurité de résultat" (an obligation to ensure safety at work), considering any work-related incident to be inexcusable misconduct if the employer was aware of the danger and had not taken the necessary measures. However, following reversals in case law in 2002, the Court of Cassation redefined inexcusable fault as exceptionally serious fault with an intentional element. The "Air France" ruling in 2015 established that the employer does not breach its legal obligation if it proves that it has taken all the measures provided for by the Labour Code, thus abandoning the contractual basis of the obligation of safety of result. This case law was followed by the Second Civil Chamber of the Court of Cassation in 2020.

Failure to comply with the safety obligation exposes the employer to criminal and civil liability, underlining the importance of taking adequate measures to ensure the safety and health of workers in the workplace.

The employer's general health and safety obligation is broken down into various obligations. There are preventive measures (6.2.1.1.1), the introduction of a personal arduousness account for workers (6.2.1.1.2), the obligation to introduce an individual prevention sheet (6.2.1.1.3), the general obligation to inform and train employees about risks (6.2.1.1.4), the obligation to prevent and take action against moral and sexual harassment and other sexist behaviour (6.2.1.1.5), the obligation to check the amplitude and workload of employees on fixed working days (6.2.1.1.6) and the obligation to provide training and specific adaptation measures for the safety of workers (6.2.1.1.7).

6.2.1.1.1 Prevention Initiatives

The employer's legal obligation to ensure health and safety means that preventive measures must be taken to protect workers' health and safety, as set out in articles L. 4121-1 and L. 4121-2 of the French Labour Code. In order to ensure the safety and protect the physical and mental health of workers, the employer must put in place the following measures:

- Actions to prevent occupational risks.
- Information and training initiatives.
- Setting up an appropriate organisation and resources.

These measures are dynamic, and the employer must ensure that they are adapted to take account of changing circumstances and aim to improve existing situations.

Article L. 4121-2 of the French Labour Code sets out nine objectives for preventive measures in the field of health and safety at work. These objectives are: the avoidance, assessment and reduction of risks, the adaptation of work to people, taking account of technological developments, the replacement of dangerous elements, prevention planning, giving priority to collective protection measures, and the communication of instructions to workers.

6.2.1.1.2 The Introduction of a Personal Arduous Work Account for Workers

The personal account for the prevention of arduous work (C2P)[304] has been set up to take account of occupational risks. It covers ten risk factors, such as night work, manual handling of loads and mechanical vibrations. The employers concerned must assess and prevent these risks by means of a Document unique d'évaluation des risques professionnels —DUER— (Single occupational risk assessment document)[305] or an action plan. Employees exposed to these risks (according to certain thresholds)[306] can open a personal account for the prevention of arduous work, and employers must pay a basic arduous work contribution[307] of 0.01%. An additional contribution of 0.2% or 0.4% applies depending on the level of exposure. Failure to comply with these obligations exposes the employer to penalties in accordance with ordinary labour law.

6.2.1.1.3 The Obligation to Draw up an Individual Prevention Sheet

In France, seconded and temporary workers are subject to traceability thanks to the individual prevention sheet.[308] This does not apply to employees of private employers.[309] In France, seconded and temporary workers are subject to traceability thanks to the individual prevention sheet. This does not apply to employees of individual employers and homebased emplyment. In fact, for employees in this unified branch, the law, under the terms of article L.4625-2 of the Labour Code, has opened up the possibility of providing, by means of an extended branch collective agreement, for derogations from the rules relating to the organisation and choice of the occupational health and prevention service, as well as to the

[304] Instruction no. DGT/DSS/SAFSL/2016/178 of 20 June 2016 relating to the implementation of the personal account for the prevention of penibility NOR: ETST1614584J. This instruction cancels and replaces DGT-DSS Instruction no. 1 of 13 March 2015 on the same subject.

[305] Failure to produce a DUER exposes the employer to fines: Article R. 4741-1 of the Labour Code or damages for employees in the event of injury: Cass. soc., 25 Sept. 2019, no. 17-22.224; Cass. soc., 8 July 2014, no. 13-15.474; Cass. soc., 8 July 2014, no. 13-15.470, no. 1475 FS - P + B.

[306] Article D. 4161-2 of the French Labour Code. "These thresholds include a dual dimension of intensity and temporality. Whether or not the thresholds are exceeded is assessed by applying individual and collective protection measures": see Instruction of 2016, data sheet no. 3.

[307] Instruction of 2016, sheet no. 7. Its rate is set by Decree no. 2014-1157 of 9 October 2014.

[308] Article L. 1262-4 of the French Labour Code.

[309] Article L. 7221-1 of the French Labour Code.

procedures for monitoring the state of health of workers. These derogations are necessary in view of the singular nature of the sector resulting from:

- the high number of employees with multiple employers.
- the high number of employees working part-time.
- the diversity of jobs performed by employees in the sector.
- the inviolable private home which constitutes the workplace.
- the fact that the employer is a private individual and not a company.

The personal account for the prevention of arduous work and the individual prevention sheet are integrated into the assessment of occupational risks via the occupational risk assessment document, drawn up by collective agreement at branch level or in accordance with approved occupational benchmarks. The occupational risk assessment document enables the employer to determine the conditions of hardship to which each worker is exposed, thereby enhancing the reliability of individual declarations to the Caisse nationale d'assurance vieillesse.

6.2.1.1.4 The General Obligation to Inform and Train Employees About Risks[310]

The employer is obliged to provide information to employees on health and safety risks at work, taking into account the size of the company, the nature of the activity and the risks identified.[311] This information can be communicated via internal notes or appropriate signage, during working hours.[312] It covers preventive measures, the role of the occupational health service, the provisions of the internal regulations, and instructions in the event of fire,[313] with the collaboration of the occupational physician.[314]

6.2.1.1.5 The Obligation to Prevent and Take Action Against Moral and Sexual Harassment and Other Sexist Behaviour

Employers have an obligation to prevent and remedy the mental distress of their employees,[315] an obligation that also covers public sector employees.[316] Case

[310] See in particular: N. Gacia, "La gestion préventive des risques en matière de sécurité et santé au travail," *JCP S* (2009): 1110; "Training in conditions of movement of persons in the workplace," *R*. 4141-11 and 12; "Training in conditions of performance of the work," *R*. 4141-13 to 16, "Training in what to do in the event of an accident or disaster," *R*. 4141-17 to 20.

[311] Article L. 4141-1 of the French Labour Code.

[312] Article R. 4141-5 of the French Labour Code.

[313] Article R. 4141-3-1 of the French Labour Code.

[314] Article R. 4141-6 of the French Labour Code.

[315] Most national collective agreements refer to ordinary law: e.g. the NCC Individual employers and home based employment refers to article L. 7221-2 of the French Labour Code; articles L. 1152-1 et seq. and L. 1153-1 and L. 1154-2 of the French Labour Code. See also, Title IV, chapter 2, article 2, article 9 of the NCC for Home help, support and care serviceswhich refers purely and simply to common law.

[316] Articles L. 133-1 to L. 133-3 of the General Civil Service Code.

law establishes that the employer's safety obligation takes precedence over the reinstatement of a protected employee in the event of dismissal for harassment.[317] Employers must ensure the physical and mental health of their employees[318] by implementing preventive measures in accordance with the French Labour Code.[319] They are liable if they fail to comply with their obligations and do not take immediate steps to put an end to situations of moral violence.[320]

6.2.1.1.6 The Obligation to Check the Working Hours and Workload of Employees on Fixed-Term Contracts

In a ruling handed down in March 2022,[321] the French Supreme Court (Cour de cassation) ruled that the employer must guarantee a reasonable workload and a balanced distribution of work over time in order to protect the employee's health. In this case, an occupational physician argued that his employer had failed to comply with his safety obligation by ignoring signals of stress and problems of work overload, despite prior warnings. The employer argued that its duty had been fulfilled, but the Court reiterated the importance of annual interviews to discuss workload and its impact on the employee's personal life, stressing that the absence of such interviews also constitutes a breach of the employer's safety obligation.[322]

6.2.1.1.7 The Obligation to Provide Training and Special Adaptation Measures for Worker Safety

The employer is required to provide practical and appropriate safety training for all workers, particularly on recruitment, when changing jobs or techniques, when changing working conditions, when returning to work after an absence of more than 21 days, and whenever necessary.[323] In principle, this training takes place in the workplace[324] and must be repeated periodically.[325] Its aim is to make workers aware of the risks and preventive measures, and to promote

[317] Cass. soc., 8 June 2017, no. 16-10.458; Cass. soc., 21 June 2017, no. 15-24.272; Cass. soc., 22 June 2017, no. 16-15.507.

[318] Article L. 4121-1 of the Labour Code; Cass. soc., 8 June 2017, no. 16-10.458; Cass. soc., 21 June 2017, no. 15-24.272; Cass. soc., 22 June 2017, no. 16-15.507.

[319] Articles L. 4121-1 and L. 4121-2 of the French Labour Code.

[320] Cass. soc., Oct. 17, 2018, no. 16-25.438.

[321] Cass. soc., 2 March 2022, no. 20-16.683, no. 261 FS - B.

[322] In the same vein, Cass. soc., 13 Apr. 2023, no. 21-20.043.

[323] Article L. 4141-2 of the French Labour Code. See also Title IV, chapter I, article 41 of the NCC Private hospital.

[324] Article R. 4141-14 of the French Labour Code.

[325] Article L. 4141-2 of the French Labour Code.

safe behaviour.[326] Time spent on training is considered as working time.[327] In addition, in the event of serious accidents or repeated occupational illnesses, the employer must organise appropriate training,[328] including for employees on fixed-term or temporary contracts working in high-risk jobs.[329] The Social and Economic Committee has a consultative role in the organisation and monitoring of such training.[330] Funding is the responsibility of the employer,[331] and there is now a "prevention passport"[332] for health and safety at work training.

6.2.1.2 Obligations of Employees

Every worker has an obligation to take care of their own health and safety, as well as that of others affected by their actions or omissions. This responsibility implies that the employee must comply with the employer's instructions, in accordance with his or her training and abilities.

Employee breaches of this obligation are assessed in the light of the employer's obligations in terms of information, training and working conditions. Penalties for breaches, such as failure to comply with the safety instructions in the internal regulations or training, are determined by the disciplinary rules of the aforementioned regulations. Serious breaches may be grounds for dismissal. None of this affects the employer's responsibility for the safety of workers.[333] The employer must also take account of the worker's abilities when assigning health and safety-related tasks in line with the company's activities.[334]

6.2.1.3 Occupational Health and Safety Obligations Created by the COVID-19 Pandemic

In light of the COVID-19 epidemic, employers need to update their occupational risk assessment documents to take account of the risks associated with transmission of the virus within the company. This involves identifying work situations where the conditions for transmission of the virus are present, such as close contact without protection, and putting in place appropriate preventive measures.[335]

[326] Articles R. 4141-3, R. 4141-4 and R. 4141-13 of the French Labour Code.

[327] Article R. 4141-5 of the French Labour Code.

[328] Article R. 4141-8 of the French Labour Code.

[329] Article L. 4143-1 of the French Labour Code.

[330] Article R. 4143-1 of the French Labour Code.

[331] Article L. 4141-4 of the Labour Code and Circ. 16 October 1980.

[332] Law no. 2021-1018, 2 August 2021: JO, 3 August, article 6; article L. 4141-5 of the French Labour Code; Decree no. 2022-1712, 29 Dec. 2022: JO, 30 Dec. See the Prevention Passport information portal on the travail-emploi.gouv.fr website.

[333] Article L. 4122-1 of the French Labour Code.

[334] Article L. 4121-4 of the French Labour Code.

[335] CA Versailles, 14th ch., 24 Apr. 2020, no. 20/01993.

Employees' right of withdrawal does not apply automatically in the event of a pandemic or epidemic, as it relates to specific work situations. If the employer has implemented all the protective measures provided for by law and national recommendations to ensure the health and safety of workers, the right of withdrawal should not be exercised.[336] Similarly, other situations such as a heatwave do not automatically justify the exercise of the right of withdrawal.[337]

6.2.2 Workers' Rights to Health and Safety at Work

Workers have been granted various rights in the area of health and safety at work. First of all, individual rights of warning and withdrawal have been given to employees for their immediate protection (6.2.2.1). Secondly, collective rights have been given to the Social and Economic Committee so that it can intervene and communicate as soon as it becomes aware of risks to employees (6.2.2.2), and also negotiate agreements on occupational risks and arduous work (6.2.2.3).

6.2.2.1 The Employee's Right to Warn of and Withdraw from Work in the Event of Serious and Imminent Danger

The right of withdrawal is a fundamental right granted to employees, enabling them to withdraw from a work situation presenting a serious and imminent danger[338] to their health or life,[339] without incurring sanctions. To exercise this right, the employee must first or simultaneously alert the employer to the risk.

Employees also have a duty to warn.[340] But this subjective assessment of the danger is sovereign and specific to the employee. As a result, its use is optional.[341] The right to withdraw may be exercised individually or collectively, provided that each employee considers that he or she is in danger.[342] During the exercise of this right, no deduction of salary or sanction is authorised,[343] failing which the disciplinary sanction will be annulled.[344]

[336] DGT Circular 2009/16, 3 July 2009.

[337] DRT Circular 2004/08, 15 June 2004; DRT Circular 2006/14, 19 July 2006.

[338] Article D. 4132-1 et seq. of the French Labour Code. See also articles L135-1 to L135-6 of the General Civil Service Code.

[339] Article L. 4131-1 of the French Labour Code. CA Toulouse, ch. soc. section 2, 6 June 2003, no. 2002/04756.

[340] Article L. 4131-1 of the French Labour Code. For a reference in collective bargaining law, see e.g. articles 19-20 of the NCC for home help, support, care and services of 2010 (extended).

[341] Cass. soc., 9 Dec. 2003, no. 02-47.579. Circular DRT 93-15, 25 March 1993: BO min. Trav. no. 93/10, 5 June.

[342] Cass. soc., 22 Oct. 2008, no. 07-43.740. However, the collective exercise of a right of withdrawal is not similar to the exercise of a right to strike to improve working conditions, even in the case of a concerted cessation of work: Cass. soc., 11 July 1989, no. 86-43.497, no. 2936 P.

[343] Article L. 4131-3 of the French Labour Code.

[344] Cass. soc., 11 Dec. 1986, no. 84-42.209; Cass. soc., 28 Jan. 2009, no. 07-44.556, no. 151 FS - P + B. C. trav., art. L. 4741-1 et seq.

However, the right of withdrawal is not always legitimate and its exercise is not automatic. Abusive use may result in disciplinary action,[345] or even dismissal.[346] Moreover, unlike the right to withdraw, whistleblowing in public health and environmental matters does not give rise to withdrawal from work,[347] but it does offer whistleblowers legal protection against any form of discrimination or sanction resulting from their reporting.[348]

6.2.2.2 Health and Safety at Work and the Right of Participation or Expression of Workers

In terms of workers' right to information and training, the employer's obligation is perfectly symmetrical with the employees' right to be informed and trained. The Social and Economic Committee (CSE) also has the right to issue a warning in the event of serious and imminent danger, triggering an immediate investigation so that appropriate measures can be taken.[349] In the event of disagreement with the employer, specific procedures are provided for.[350]

Any employee representative on the CSE who becomes aware, particularly through the intermediary of an employee, that there is a serious risk to public health or the environment within the company must immediately alert the employer. The alert is recorded in writing in the alert register. The employer examines the situation jointly with the staff representative on the CSE who forwarded the alert and informs him/her of the action he/she intends to take.[351] The CSE is informed of employee alerts that have been forwarded to the employer, the action taken on them and any referrals to the Prefect, who is notified either if there is disagreement with the employer as to the validity of the alert forwarded, or if no action is taken on the alert within a period of one month.[352]

Since 2010, certain companies have been legally obliged to negotiate and sign a branch agreement or an action plan for the prevention of occupational risks and arduous work.[353] The obligation to do so depends on criteria such as the size of the company, the proportion of employees exposed or the number of

[345] CA Montpellier, ch. soc. 11 March 2003, no. 02/01245.

[346] CA Riom, 23 August 1989, no. 2773/88.

[347] Articles D. 4133-1 et seq. of the French Labour Code.

[348] Article L. 4133-1 and 5 of the French Labour Code.

[349] Article L. 2312-60 of the French Labour Code.

[350] Articles L. 4132-2 to L. 4132-4 and L. 4526-1 of the French Labour Code.

[351] Article L. 4133-2 of the French Labour Code.

[352] Article L. 4133-3 and 4 of the French Labour Code.

[353] Law no. 2010-1330, 9 November 2010, article 86, I: JO, 10 November; DGT Circular no. 08, 28 October 2011. Industry-level negotiations are first given an incentive by Article 86 I of the 2010 law on pension reform. It then became an obligation for certain companies to negotiate an agreement on the prevention of occupational risks (details DGT Circular No. 08, 28 October 2011).

accidents.[354] The[355] agreements or action plans are based on a diagnosis of the risks and cover ten occupational risk factors,[356] according to criteria relating to physical constraints, exposure to dangerous chemical agents or particular work patterns.[357]

6.2.2.3 The role of the Social and Economic Committee (CSE)[358] and Professional Branches in Negotiating Agreements on Occupational Risks and Arduous Working Conditions

According to the French Labour Code,[359] the Social and Economic Council is involved in preparing safety training courses. It is generally consulted on matters relating to health, safety and working conditions. This responsibility also extends to temporary workers, trainees and any person placed in any capacity under the authority of the employer.[360] More specifically, the CSE plays an essential role in promoting safety training and the prevention of occupational risks. It is consulted on these matters during the annual consultation on vocational training.[361] In addition, the CSE is involved in setting up and monitoring a risk prevention action plan.[362] In companies with more than 300 employees, it receives a detailed report on the safety training planned for new employees, workers changing jobs and temporary workers.

As for the professional branches, in France they play a crucial role in preventing arduous work. They draw up collective branch agreements that must be extended in accordance with articles L. 4163-2 and L. 4163-4 of the Labour Code. In addition, they create industry-wide occupational benchmarks to as-

[354] Articles L. 2211-1 and L. 2233-1; article L. 2331- 1; article L. 4162-1 of the French Labour Code.

[355] It is concluded for a maximum of 3 years: article L. 4162-3 of the French Labour Code.

[356] Article D. 4162-2 and 3 of the French Labour Code.

[357] This includes night work as defined in the Labour Code (articles L. 3122- 29 to L. 3122-31), work in successive alternating shifts, and repetitive work, which is characterised by the performance of work involving repeated movements, requiring all or part of an upper limb, at a high frequency and at a constrained pace.

[358] The CSE was created by Ordoniance no. 2017-1386 of 22 December 2017. On the CSE in companies with 11 to 49 employees, see C. trav., art. L. 1226-2 and L. 1226-10. On the CSE in undertakings with more than 50 employees (CSSCT), see C. trav., art. L. 2315-39 to L. 2315-32 from the Ordinance no. 2017-1386). On the warning rights of the CSE: C. trav., art. L. 2312-59; C. trav., art. L. 2312-60; C. trav. L. 2312-70 and art. L. 2312-71.

[359] Article R. 4143-1 of the Labour Code resulting from Decree no. 2017-1819 of 29 December 2017, article 3.

[360] Article L. 2315-2 of the French Labour Code.

[361] Articles L. 2323-33 and R. 4243-2 of the French Labour Code.

[362] Articles L. 4162-2, R. 4143-1 and 2, R. 4644-1 of the French Labour Code. See also articles 21-2 and 21-4 of the NCC for home help, support and care services. For further information on occupational health and safety prevention bodies, see articles L. 4644-1; L. 8113-5; D. 4626-1; R. 4644-11; R. 4626-35 of the French Labour Code.

sess workers' exposure to occupational risks above thresholds set in advance, taking account of protective measures. These benchmarks enable employers to declare the annual exposure of workers and identify the appropriate means of prevention. The benchmarks may cover the entire branch or focus on specific fields of activity. They are subject to joint approval by the Ministers of Labour and Social Affairs. In the event of an obvious error, the authorities may work with the industry to adjust the reference framework for preventing arduous working conditions.

6.2.3 Health and Safety Risks Specific to Care Work

The main risk factors linked to the work of care workers result from the work organisation methods specific to this activity. These include night work,[363] alternating shifts, repetitive work and the handling of heavy loads (particularly for dependent patients).

These risks are taken into account in ordinary law, in particular through the personal account system for the prevention of arduous work,[364] which requires all employers, whether private or public, non-profit or commercial, to guarantee the safety and physical and mental health of workers, including those in precarious forms of employment.[365]

In addition, collective agreements in the various branches of the healthcare sector contain specific provisions on occupational risk prevention[366] involving the CSE.

6.3 Vocational Training and Skills

The French Constitution of 1958 states that "The nation guarantees equal access for children and adults to education, vocational training and culture". According to article L. 6111-1 of the French Labour Code, vocational training follows on from initial training and supports adults "throughout their lives".[367]

[363] Articles L. 3122-29 to L. 3122-31 of the French Labour Code: articles L. 812-4 and L. 813-2 of the General Civil Service Code.

[364] Decree no. 2017-1768 of 27 December 2017, article 1. See also. Pradel and Pardel-Boureux, *JCP S* (2018): 1022.

[365] These include, in particular, the obligation to inform and train employees on the risks to their health and safety (article L. 4141-1 of the French Labour Code), the content of which is determined in association with the occupational physician (article R. 4141-6 of the French Labour Code), and which takes place during normal working hours (R. 4141-5 of the same code).

[366] See, for example, concerning older workers: article 21-3 of the NCC for home help, support and care services. See also Title VI, article (single) 06.04 of the NCC for private and non-for-profit hospital and nursing establishment Hospitalisation, Risk prevention. Similarly, article 89 of the NCC for private hospitals; articles 35, 88.2 and 88.3 of the NCC for establishment and services for maladjusted and disabled persons (not extended).

[367] Expression enshrined in the law of 4 May 2004, the wording of which comes from the EU memorandum of 30 November 2001.

The aims of continuing vocational training are very diverse: to enable adaptation to changes in techniques and working conditions, to promote social advancement, to support job transformation, to facilitate professional mobility and to enable people to return to work. It is organised by the State, local authorities, educational establishments, employers' and employees' professional organisations and, above all, companies.

Under French law, a distinction is made between the right to free and compulsory education (versus instruction under the Constitution) up to the age of 16, which corresponds to so-called initial training, and the right to so-called continuing vocational training. Apprenticeships are part of the so-called alternating initial training. Unlike national education, which is provided by the public sector, continuing education is provided by the market. Since a 1971 law, vocational training has been a subject of great interest to legislators and social partners in France. It was last reformed by the law of 5 September 2018 on the freedom to choose one's professional future. It occupies the whole of Part VI of the Labour Code. Furthermore, training, skills and professional classification are closely linked in legal and collective bargaining law.

We will first present some general considerations on vocational training law (6.3.2), followed by the law on vocational training in the private sector (6.3.1), on the understanding that the law on continuing vocational training for public employees is very similar to that applicable to the private sector. Article L 421-2 of the General Civil Service Code states that

> Public administrations, local authorities and hospital establishments shall implement, for the benefit of their employees, a coordinated policy of lifelong vocational training and social advancement. This policy, which is similar in scope and means to that defined in Title I of Book III of Part Six of the Labour Code, with the exception of the chapter on professional interviews, takes account of the specific nature of the civil service.[368]

6.3.1 General Considerations on Vocational Training Law

The aim here is to present the principles governing vocational training law (6.3.1.1) and the players involved in its implementation (6.3.1.2). These considerations are generally set out in the preambles to the collective agreements or industry-wide collective agreements applicable in the *care* sector.

[368] The individual rights of civil servants include the right to lifelong professional training (article L. 115-4 of the General Civil Service Code) and the right to have a personal activity account (article L.115-5 of the General Civil Service Code). The right to lifelong training for civil servants pursues objectives comparable to those of employees: to encourage their professional and personal development, to facilitate their career development, mobility and promotion, as well as access to the various existing levels of professional qualification, to enable them to adapt to foreseeable changes in professions and to contribute to equal access to the various grades and jobs, in particular between women and men, and to the advancement of the least qualified.

6.3.1.1 General Principles

The right to training is governed by four main principles: lifelong learning (6.3.1.1.1), lifelong vocational guidance (6.3.1.1.2), equal access to training (6.3.1.1.3) and access to vocational certification (6.3.1.1.4).

6.3.1.1.1 Lifelong Learning

Lifelong training is a national obligation:

> it aims to enable all individuals, regardless of their status, to acquire and update the knowledge and skills that will facilitate their professional development, and to progress to at least one level of professional qualification during their working life. It is a key factor in securing career paths and promoting employees.[369]

To this end, everyone, regardless of their employment status (employee/self-employed/liberal), has a personal training account from the moment they enter the labour market.

The NCC for home help, support and care services of 2010 (extended) devotes an entire chapter to lifelong training, in which it spells out the objectives of implementing specific measures for unskilled jobs and measures to inform staff about all the training and development opportunities available, particularly for employees who have been working in the sector for more than 15 years, and to generalise the practice of professional interviews. In this respect, the collective agreement lays down the principle that

> all unqualified employees should be offered a job-related training course leading to a professional qualification or diploma within a maximum of 3 years of being recruited, subject to sufficient funding.

The 2012 NCC for personal services companies attributes to vocational training the objective of enhancing the sector's specific know-how to "motivate employees and ensure the construction of a professional identity".

The inter-branch agreement of 27 November 2020 for individual employers and home based employment 2021sets out the objectives of the sector's professionalisation policy. The aim is to respond to the challenges facing the sector in terms of the growing needs of society in terms of home support, the acquisition of new skills, promoting the attractiveness and diversity of the professions in the professional sector, ensuring that employees' career paths and employment are secure, and supporting forward-looking management of jobs and skills. All other care workers are subject to the Labour Code and the collective agreements of the professional sector to which their company belongs.

[369] Article L. 6111-1 of the French Labour Code.

6.3.1.1.2 Lifelong Career Guidance

Everyone, regardless of their employment status, has the right to be informed, advised and supported in matters of career guidance as part of the right to education guaranteed by art. L. 6111-1 of the Education Code.[370] As the first concrete expression of the right to career guidance, the State has created a free online service accessible to anyone, enabling them to obtain initial information and personalised advice on career guidance and to be directed towards more specialised structures. The right of all individuals to benefit free of charge throughout their working life from career development advice is intended to promote the development and security of their career path. This right is implemented free of charge at regional level by a dedicated operator as part of the regional public guidance service.[371]

6.3.1.1.3 Equal Access to Training

The law sets out the principle of equal treatment for men and women in vocational training; however, as a transitional measure, by regulation or agreement, measures may be taken for the sole benefit of women in order to establish equal opportunities. The principle of equal access also applies to the disabled and similar persons.

The 2012 NCC for personal services companies devotes a large part of its preamble to the principle of non-discrimination and equal treatment.

> Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector, the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms. A periodic report on this subject will be drawn up at branch level on the basis of information collected from companies in the sector.

Apart from any legal obligation, the agreement provides that in companies with a works council, an "equal opportunities correspondent" should be appointed from among the staff to "monitor the training, awareness-raising and anti-prejudice and anti-stereotyping initiatives carried out by the employer". Notwithstanding the employer's legal obligations, an assessment report is produced annually by the "equal opportunities correspondent".

> This report summarises: the company's recruitment procedures, the distribution of new recruits with indications of gender, age and any cases of disability. This report is sent to the works council as part of the single annual report. It will also be sent to trade union delegates as part of the mandatory annual negotiations. More generally, all supervisory staff in companies in the sector must be trained to manage human resources in a way that guarantees non-discrimination and promotes equality.

[370] Article L. 6111-3 of the French Labour Code.
[371] Article L. 6111-6 of the French Labour Code.

6.3.1.1.4 Access to Professional Certification (Training/Skills)

This idea of skills certification was recently enshrined by the legislator in the law of 5 September 2018. The aim is to validate the acquired knowledge required to carry out professional activities defined in a reference framework that describes the work situations and activities carried out and that is associated with a skills reference framework and a development reference framework. A national register of professional qualifications is drawn up and updated by a national institution called "France Compétences". These qualifications are drawn up jointly by the professional sectors.

6.3.1.2 The Players

Four players are involved in continuing training: the State and the regions (6.3.1.2.1), the social partners (6.3.1.2.2), companies (6.3.1.2.3) and training providers.

6.3.1.2.1 The State and the Regions

The State is responsible for initial vocational training for young people, while the Region is responsible for regional policy on access to vocational training for young people and adults seeking employment or a new career direction. The State has a body created by the law of 5 September 2018 on the freedom to choose one's professional future: "France compétences", the keystone of the governance of the training and work-linked training system. The body's many missions are listed in article L. 6123-5 of the French Labour Code. In particular, it is responsible for distributing pooled training and work-linked training funds among the various training funders. The State exercises general administrative and financial control over training initiatives carried out by employers when they are financed by the State, local authorities, etc., as well as over compliance with the obligations set out in article L. 6323-13 of the French Labour Code. Administrative and financial control of expenditure covers all financial, technical and teaching resources.

The regions are responsible for implementing the national training strategy. Each region has a regional employment, training and career guidance committee. In particular, they are responsible for organising information campaigns on careers and training, as well as on gender diversity and equality in the workplace.

6.3.1.2.2 The Social Partners

Continuing training is a matter for collective bargaining at national, cross-industry, branch and company level. The law leaves it to industry-level negotiations to define the priorities, objectives and resources of vocational training. The law requires collective bargaining to take place every 3 years. Unlike in the case of working hours, company agreements on vocational training cannot be derogatory. The reason for this is simple. If training is to fulfil one of its objec-

tives, which is to support employees' professional mobility, it must be designed according to the needs of the sector and not just those of the company. In addition to the obligation to negotiate on training, the French vocational training system is characterised by its joint management. In some branches, the partners have set up a forward-looking observatory for trades and qualifications.[372]

Collective branch agreements set training action priorities for 3-year periods. The 2012 NCC for personal services companies also targets two types of priority, including unqualified workers, young people and senior citizens, regardless of the size of the company. In particular, the aim is to make it easier for these employees to access continuing vocational training by developing literacy courses, combating illiteracy, and introducing and perfecting the French language.

The 2020 inter-branch agreement on the NCC for individual employer and home-based employment specifies that the sector's professionalisation policy must enable it to cope with future demographic changes. It must respond to the growing needs of society in terms of support in the home, while adapting to technological and environmental changes that will progressively require the development and acquisition of new skills. It also aims to improve professional practices.

6.3.1.2.3 The Company

One of the company's first obligations is to contribute each year to the financing of training and apprenticeship in various ways: by direct financing of training initiatives for their employees, by payment of the one-off contribution to vocational training, by payment of the contribution dedicated to financing the personal training account for holders of fixed-term employment contracts and, where applicable, by payment of additional contributions provided for by national professional agreement… Companies with fewer than 11 employees pay Urssaf 0.55% of the business income used to calculate social security contributions under article L. 242-1 of the Social Security Code. In companies with more than 11 employees, this contribution amounts to 11%. The sums are collected by France Compétences and are earmarked for the financing of work-linked training, career development advice, skills development for employees in companies with fewer than 50 employees, training for jobseekers and the personal training account. These funding obligations do not apply to the State, public establishments in the hospital civil service or local authorities.

It should be noted that the law of 5 September 2018 for the freedom to choose one's professional future confirmed the singularity of the branch of individual employers and home-based employment by adapting the methods of organising and financing vocational training to the specific features of the branch. The decree of 28 December 2018 on contributions paid by certain categories of employers enshrines the mandating by individual employers of the

[372] This is the case with the 2010 NCC for the home help, support and care services.

Association Paritaire Nationale d'Information et d'Innovation pour la mise en œuvre des garanties sociales des salariés (APNI).[373] An inter-branch agreement was signed on 27 November 2020 for the implementation of a professionalisation policy in the sector of individual employers and home-based employment. Two contributions are paid by individual employers: one is a legal exception provided for in article L. 6331-57 of the Labour Code (0.15%) and the other is a conventional contribution (0.40% calculated on the basis defined by article L. 6331-58 of the Labour Code) to enable broader funding. In addition, the inter-branch agreement of 2020 on the professionalisation of workers in the sector recalls the specific features of the professions in this sector of activity, which are as follows: the place where the activity is carried out is not the company, but the employer's private home; the employment relationship between the employer and the employee has no profit-making or commercial purpose (the employer is a citizen assuming the responsibility of employer); the sector is characterised by a high proportion of employees in multi-employment situations. All these features are taken into account when implementing the right to training for workers in this sector.

6.3.2 Vocational Training Schemes in the Private Sector

A distinction will be made between training initiated by the employer (6.3.2.1) and training initiated by the employee (6.3.2.2). It should be noted that the 1976 collective agreements for establishments and services for the maladjusted and disabled, the 2002 collective agreements for private commercial hospitals and the 1951 collective agreements for private not-for-profit hospitals essentially reproduce the legal provisions. Consequently, the following sections will focus on the collective agreements in the home care sector.

6.3.2.1 The Employer's Obligations

In addition to the obligation to contribute financially to training, the employer has a dual obligation: to adapt employees' skills (6.3.2.1.1) and to negotiate collectively on vocational training (6.3.2.1.2).

6.3.2.1.1 An obligation to Adapt and Maintain Employees' Skills as Their Workstations Change

This obligation, which was discovered in a court case[374] in which the judge of the Cour de cassation invoked the employer's general obligation to perform in good faith when assessing the merits of a decision to make employees re-

[373] Two decrees dated 21 December 2018 and 27 January 2020 have also been issued to apply the law to this sector.

[374] Cass. soc. 25 February 1992, Bull. Civ, V, no. 122. Expovit.

dundant, was legalised by the law of 19 January 2000, reformed by the law of 4 May 2004. This obligation was enshrined in two complementary ways. On the one hand, redundancies for economic reasons can only take place when "all efforts at training and adaptation have been made". Failing this, the dismissal is devoid of any real and serious cause.[375] On the other hand, and more generally, the employment contract gives rise to an obligation on the part of the employer to adapt employees to their jobs and "to ensure that employees maintain their ability to hold down a job, particularly in the light of changes in jobs, technologies and organisations" and to "offer training to help develop skills, including digital skills, and to combat illiteracy".[376]

Since the law of 5 September 2018, the non-compulsory skills development plan has replaced the training plan.[377] This plan no longer distinguishes between training to adapt to the job and training to develop skills. A distinction remains between compulsory training and other training. Compulsory training includes all training that is a prerequisite for the performance of an activity or function in application of an international agreement or legal or regulatory provisions. Such training is systematically considered as actual working time and gives rise to continued remuneration. Other training courses are also considered to be actual working time and give rise to continued remuneration, subject to a collective agreement at branch or company level[378] providing for all or part of the training to be carried out outside working hours, with the agreement "being able to provide for compensation to offset the cost of childcare" or, at the employer's request and with the employee's agreement, up to a limit of 30 hours per year and per employee,[379] which the legislator has called co-investment.

The 2012 NCC for personal services companies devotes a specific chapter to forward-looking management of the employment and skills of seniors (people aged over 45). A three-yearly analysis of changes in the employment of seniors in the branch must be carried out, including: an age pyramid; details of the arduous nature of jobs; an indication of the percentage increase and promotion by age bracket and job; and an indication of the number of training days. Job retention measures will cover: job adjustments to take account of arduous working conditions; training in the use of new technologies; a progress report on the job held and in the profession. In addition, for employees working in the field, personal services jobs can generate certain physical burdens inherent to the activity. As a result, senior employees who so wish should be given priority for career development in the profession towards positions involving less physical work or even towards sedentary positions. Lastly, senior employees who have been

[375] Article L.133-4 of the French Labour Code.

[376] Article L. 6321-1 of the French Labour Code.

[377] The 2010 NCC for the home help, support, care and services sector encourages employers to adopt a training plan, regardless of the size of the company's workforce.

[378] Article L. 6321-6 of the French Labour Code

[379] Article L. 6324-6 of the French Labour Code.

in the profession for a long time and who wish to do so can provide support for newcomers to the profession through tutoring, which aims to share the experience they have acquired in the profession.

6.3.2.1.2 An Obligation to Negotiate

Although the law gives priority to industry-level negotiations on continuing vocational training, it does reserve some important powers for the company, including the obligation to negotiate a forward-looking jobs and skills management (GPEC) plan every 3 years in companies with more than 300 employees. These negotiations will also cover the broad outlines of vocational training within the company over the next 3 years, as well as the skills development plan. The aim is also to respond to the challenges of the ecological transition and the accompanying measures that must be associated with it in terms of training and top-up of the personal training account, validation of acquired experience and skills assessment. Each year, the Social and Economic Council is consulted on the multi-year training program, the prevention and training initiatives planned by the employer, the skills development plan and the direction of professional training.

Training is also part of the employer's management powers, which must be exercised in consultation with staff representative bodies. Employees are informed when they are recruited that they are entitled to a professional interview every 2 years to discuss their career development prospects, particularly in terms of qualifications and employment. This interview will result in a written document, a copy of which will be given to the employee. Every 6 years, the professional interview provides an overview of the employee's career path, which must be formalised in writing. This ensures that the employer has carried out the two-yearly interviews, and that the employee has attended at least one training course, validated the experience acquired or benefited from salary or career progression. In companies with at least 50 employees, if the employee has not benefited from the interviews and at least 2 of the 3 measures mentioned above, the employer must add 3,000 euros to the employee's personal training account.

The 2010 NCC for the home help, support, care and services sets out in full the legal provisions on the professional interview.

The NCC for personal services companies of 2012 stipulates that all employees reaching the age of 45 must have a professional progress review (interview 2nd part of the career) in the year following their 45th birthday. During this interview, the employer informs the employee of his or her rights to access a skills assessment or professional development program.

6.3.2.2 Employee Rights

An employee's right to training can be broken down into 3 individual rights: the right to professional qualification; the right of initiative to training (the personal training account created by the law of 14 June 2013 to replace the individual right to training; it is open to anyone aged 16 or over)

and the right to be informed, advised and supported in terms of career guidance. Employees can take various training initiatives: the personal training account (6.3.2.2.1), professional retraining (6.3.2.2.2), professionalisation contracts (6.3.2.2.3) and validation of acquired experience (6.3.2.2.4) and skills assessment (6.3.2.2.5).

6.3.2.2.1 The Personal Training Account

The "professional transition" CPF, created in 1971 and reformed by the law of 5 September 2018 under the name of individual training leave, is designed to help people change jobs or professions as part of a professional transition project.[380] Employees must have been employed by the company for at least 24 months. The request must be made in writing to the employer, who is not entitled to refuse but may simply postpone it in certain situations. Transition employees are entitled to a minimum remuneration set by regulation. The duration of the professional transition project corresponds to the duration of the training course, and cannot be deducted from annual paid leave. This leave is treated as a period of actual work for the purposes of determining entitlement to annual leave and seniority in the company.

The Personal Training Account was created by the Law of 4 May 2004 to enable all employees to receive training throughout their working lives. It is an individual right of employees with open-ended employment contracts; this right took the form of a training credit of 20 h/year that could be accumulated up to 120 h per 6-year period. Replaced by the personal training account under the law of 14 June 2013 on securing employment, it was enshrined unchanged by the law of 2018, which reiterated it in the following terms:

> In order to promote their access to lifelong vocational training, each person has, from the moment they enter the labour market until retirement, regardless of their status, a personal training account which contributes to the acquisition of a first level of qualification or to the development of their skills and qualifications by enabling them, on their own initiative, to benefit from training.[381]

This right may be exercised by any person, whether employed, seeking employment, self-employed, a member of a liberal or self-employed profession or a collaborating spouse.

The Personal Training Account, together with the Personal Account for the Prevention of Penal Injury and the Citizen Commitment Account, make up the Personal Activity Account (CPA). The aim of the CPA is to give its holders greater autonomy and freedom of action, and to make their career paths more secure by removing obstacles to mobility. It also contributes to the right to professional qualification.

[380] Article L. 6323-17-1 of the French Labour Code.

[381] Article L. 6111-1 of the French Labour Code.

Employees who have worked at least half of the legal or contractual working time over the whole year may contribute to the Personal Training Account up to a maximum of 500 euros per year worked, up to a maximum of 5,000 euros.[382] The rights registered on the Personal Training Account are portable in the sense that they remain acquired in the event of a change in the holder's professional situation or loss of employment.

The CPF is used solely on the employee's initiative. However, if the training courses the employee wishes to follow are taken during working hours, the employer's agreement is required. Employees are completely free to use their personal training account, provided that the training leads to professional qualifications registered in the national register. Also eligible are actions to validate acquired experience, skills assessments, etc..[383]

The 2010 NCC for the home help, support, care and services provides an exhaustive list of training courses eligible under the personal training account.[384]

The 2012 NCC for personal services companies incorporates the legal features of the personal training account.

The NCC for personal services companies of 2012 specifies that it encourages the pooling of resources in terms of the personal training account for multi-employer employees (of different statuses), particularly when they carry out an activity within the framework of the branch of employees of the private individual employer. To this end, if the employee is a multi-employer, and if he or she uses his or her acquired rights with his or her various employers, he or she will be given priority for implementing the individual right to training (DIF) as long as the action in question is recognised as a priority by the branch of private personal services companies.

The 2020 inter-branch agreement on individual employers and home-based employment creates a specific tool for the branch with a view to facilitating worker mobility and eliminating the possible perverse effects of multiple employers. This is an inter-branch professional passport enabling employees to: retrace

[382] The amount reached must be used, failing which the account will be frozen.

[383] Article L. 6323-6 I of the French Labour Code.

[384] Article 14-2 of the NCC: the State diploma in educational and social support (DEAES); the State diploma in nursing care (DEAS); the complementary home help qualification; the professional qualification of family life assistant; the State diploma in social and family intervention technician (DETISF); the State diploma in nursing (DEI); the State diploma in family social economy counselling (DECESF); the BTS in health and social sector services and provision; the BEP in health and social careers; added by the social partners: BEPA option services, specialising in personal services; BEPA option économie familiale et rurale; CAP agricole, option économie familiale et rurale; CAP agricole et para-agricole employé d'entreprise option employé familial; CAP petite enfance; CAP employé technique de collectivités; titre employé familial polyvalent; brevet d'aptitudes professionnelles assistant-animateur technique (BAPAAT). Training to acquire the knowledge and skills base defined by decree (CLEA); skills assessments and training to set up or take over a business; and any training listed on the national industry list, the national cross-industry list (COPANEF) or a regional cross-industry list (COPAREF).

their professional experience and the skills they have acquired in the private individual employer and home-working sector; list the professional certifications held by the branches that they have acquired and the training courses they have taken in the sector. In this respect, the professional passport is designed as a tool for enhancing skills, in particular with a view to validating acquired experience (VAE), employability and social recognition of the employee's professionalism. It demonstrates employees' commitment to continuous improvement in their professional practices. It is distinct from the orientation, training and skills passport. This passport, which is separate from the orientation, training and skills passport, is provided for in the French Labour Code and is accessible to anyone via the dematerialised information service dedicated to the personal training account. The inter-branch agreement also provides for the specific case of multi-employer workers. For example, in the case of shared childcare, as provided for in the national collective agreement for employees of private individual employers, the implementation of training is subject to the joint agreement of both employers. The employer who initiated the training project or the employer chosen by the employee to implement the training is the "sponsoring employer". The sponsoring employer gives a mandate to the Association Paritaire Nationale Interbranche (APNI) to ensure the direct payment of remuneration and living expenses during the training course, with the APNI thus acting as a relay employer in accordance with article 14 of the inter-branch agreement.

6.3.2.2.2 Professional Retraining

The aim is to enable employees to change jobs or professions or to benefit from social or professional advancement through training or validation of experience. It applies to employees on permanent full-time or part-time contracts. It applies to employees whose qualifications are below a level determined by decree (corresponding to a bachelor's degree). The list of professional qualifications eligible for retraining will be drawn up by collective branch agreements, and the remuneration of employees undergoing retraining may be paid by the skills operator under conditions laid down by decree. These actions may take place in whole or in part outside working hours, at the initiative of the employee or the employer and with the written agreement of the employee.[385] If they take place during working hours, the employer will continue to pay the employee.

6.3.2.2.3 Professional Training Contracts

The purpose of this contract is to enable the employee to acquire one of the qualifications set out in article L. 6314-1 of the French Labour Code and to promote professional reintegration. It is intended to supplement the initial training of people aged between 16 and 25 and jobseekers aged 26 and over who have not

[385] Article L. 6324-7 of the French Labour Code.

completed a second cycle of secondary education and who do not hold a technological or vocational diploma, which may concern many care workers. According to article L. 6325-3 of the French Labour Code, the employer undertakes to provide the employee with training enabling him or her to acquire a vocational qualification and to provide him or her with a job related to this objective for the duration of the fixed-term employment contract or the vocational training course under the open-ended contract. The employee, for his part, undertakes to work for his employer and to follow the training provided for in the contract. The employee is supervised by a company tutor. The contract is concluded in writing for a fixed or indefinite period. The French Labour Code sets out the conditions relating to pay and working hours, as well as the duration and implementation of the professionalisation measures (from 6 to 12 months), which may be increased or extended by agreement or collective branch agreement.

This is the case with the NCC for the home help, support and care services of 2010, which has decided to extend the minimum duration of the professionalisation action for retraining or promotion through work-linked training to twenty-four months for all employees in the branch, and which specifies that holders of professionalisation contracts aged at least 26 will receive, for the duration of the fixed-term contract or the professionalisation action of the permanent contract, remuneration that cannot be less than either the minimum wage or 85% of the minimum conventional remuneration. In accordance with article L. 6324-3 of the French Labour Code, the social partners in the home help, support, care and services sector have decided to give priority to the eligibility of certain professional qualifications.[386]

As for the NCC for personal services companies of 2012, it specifies that the duration of the training courses may be between 25% and 40% of the duration of the contract (or of the professionalisation period for an open-ended contract), when the nature of the qualification in question so requires, or for groups whose list is broader than that recommended by the law, including in particular: people suffering from illiteracy, people who have not completed upper secondary education (lycée), jobseekers over the age of 45 and employees with at least 1 year's seniority in the personal services sector. It sets the same rates of pay as the NCC for the home help, care, support and care services of 2010.

[386] Article 21-3 of the NCC covers the following diplomas: the diplôme d'État d'accompagnant éducatif et social (DEAES); the titre d'assistant de vie aux familles (ADVF); the diplôme d'État d'aide-soignant (DEAS); the diplôme d'État de technicien d'intervention sociale et familiale (DETISF); the diplôme d'État d'infirmier (DEI); the Bac pro accompagnement, soins et services à la personne (ASSP); the Bac pro services aux personnes et aux territoires (SAPAT); BEPA services aux personnes; BEPA, option économie familiale et rurale; CAP agricole services aux personnes et vente en espace rural (SAPVER); CAP accompagnant éducatif petite enfance (AEPE); CAP assistant technique en milieu familial et collectif (ATMFC); titre complet employé familial; brevet d'aptitudes professionnelles d'assistant animateur technicien de la jeunesse et des sports (BAPAAT); mention complémentaire aide à domicile (MCAD).

6.3.2.2.4 Validation of Acquired Experience

A public service for the validation of acquired experience has been created with the task of guiding and supporting any person requesting the validation of acquired experience who can prove that their activity is directly related to the content of the targeted certification. The validation of prior learning can only be carried out with the consent of the employee, and refusal to do so is neither a fault nor a reason for dismissal. The employee is entitled to leave if he or she has all or part of his or her prior learning validated during working hours and on his or her own initiative. The employer may not refuse an employee's request for leave of absence, but may only ask for it to be postponed for service reasons. The hours devoted to the validation of prior learning for which authorisation has been granted by the employer constitute working time and entitle the employee to continued remuneration and social protection. The Regional Committee for Employment, Training and Vocational Guidance and France Compétences will monitor the validation of prior learning on a statistical basis.

The NCC for the home help, support and care services of 2010 recognises this possibility for all employees, regardless of their length of service with the company, for a period of 24 hours' working time or 35 hours for employees who have not attained a level of training attested by a diploma classified at level V of the répertoire national des certifications professionnelles (national register of professional certifications) or a contractual certification.

The NCC for personal services companies of 2012 specifies, with regard to the validation of acquired skills, that employees aged 45 or over are particularly targeted and that, in any event, after 20 years of professional activity or as from their 45th birthday, any employee who so requests benefits, subject to a minimum of 1 year's seniority in the company, from priority access to VAE.

6.3.2.2.5 Skills Assessment

The purpose of the skills assessment is to enable employees to analyse their professional and personal skills, as well as their aptitudes and motivations, in order to define a career plan and, where appropriate, a training plan.[387]

The NCC for home help, support and care services of 2010 recognises this right to skills assessment leave for any employee with at least 5 years' seniority, consecutive or otherwise, as an employee, whatever the nature of successive employment contracts, including 12 months within the structure, in accordance with legal and regulatory provisions.

The 2012 NCC for personal services companies specifies that skills assessment is particularly aimed at employees aged 45 or over.

[387] Article L. 6313-4 of the French Labour Code.

7. Social Security Coverage and Benefits

7.1 Social Security Regulations

France has introduced a right to social security linked to professional activity which has evolved (7.1.1) but which now faces new challenges (7.1.2).

7.1.1 Main Features of Social Security Law

At the beginning of the XXth century, France introduced non-contributory assistance benefits based on need, while contributory benefits depended on contributions. In 1945, French social security, initially intended for workers, was extended to the entire population, including the self-employed and the unemployed, on the basis of solidarity and universality. This process heralded the possible future autonomy of social security from labour law, although these two branches of law remain highly interdependent.

The French social security system is made up of several schemes, the largest of which is the general scheme, covering around 2/3 of the population, mainly private sector employees.[388] It is based on the contributory principle,[389] whereby benefits are linked to social security contributions and professional activity. However, there is a trend towards universalisation, resulting in rights that are increasingly linked to the individual and less and less to employment status, and from the point of view of financing social protection, increasing taxation.

7.1.2 Evolution, Contemporary Challenges and the Role of Collective Bargaining

Two main challenges can be identified. The first is the ageing of the population. Numerous studies and public reports have shown that as the population ages, appropriate measures need to be taken in terms of public policy on prevention, combating isolation[390] and situations of vulnerability and dependency, or loss of

[388] Today, it comprises 6 branch: the health branch (Cpam, Carsat, etc.) provides social healthcare cover for everyone; the ATMP branch (Cpam, Carsat, etc.) manages the occupational risks faced by workers; the retirement branch (Carsat, CnaV, etc.) pays pensions to retired workers in industry, services and commerce. It follows employees throughout their careers and helps them prepare for their retirement; the collection branch (which, unlike the others, does not manage a risk, but collects social security contributions to redistribute them for the benefit of the other branches); the autonomy branch (CNSA), created in January 2021, manages expenditure linked to the autonomy of the elderly and disabled; the family branch (Caf) helps families in their daily lives and develops solidarity with vulnerable people (maternity, invalidity, etc.).

[389] This principle is largely dominant in social security law. The contributory principle is the founding element common to all schemes, even if a certain amount of taxation is levied on social security contributions.

[390] See in particular Act no. 2015-1776 of 28 December 2015 on adapting society to ageing, chap. III.

autonomy for the elderly.[391] Two laws have attempted to meet this challenge. The first is Article 1st of Law no. 2015-1776 of 28 December 2015 on adapting society to ageing, which states that "adapting society to ageing is a national imperative and a priority for all of the nation's public policies".[392] The aim is to define "the principles and objectives of a coordinated policy of social action to preserve the independence of the elderly",[393] conducted by the State and the various bodies managing the schemes of the social security system, namely the Caisse nationale d'assurance vieillesse des travailleurs salariés, the Caisse centrale de la mutualité sociale agricole, the Caisse nationale du régime social des indépendants and the Caisse nationale de retraites des agents des collectivités locales.

Then, the law of 7 August 2020 on the social debt and autonomy established that

> the Nation affirms its attachment to the universal and mutually supportive nature of the provision of autonomy support, provided by social security. Everyone, regardless of age or state of health, is guaranteed cover against the risk of loss of independence and the need for independent living support.[394]

As a result, in 2021, a 5th branch dedicated to independent living has been created to meet this challenge.

To improve the governance of autonomy policies, bodies such as the Haut Conseil de la Famille, de l'Enfance et de l'Age[395] and the Caisse Nationale de Solidarité pour l'Autonomie[396] have been set up at national level. However, local governance is an important marker of public policy, since the coordination of actions to prevent and support loss of autonomy is the responsibility of the département[397] and in particular the Conseil départemental de la citoyenneté et de l'autonomie.[398]

The second challenge is the difficulty of financing the social security system and repaying the deficits that have accumulated year after year. The issue of funding is at the heart of the latest policies to prevent and combat isolation and preserve autonomy. By way of illustration, the aforementioned 2015 law amends IV of article L. 14-10-5-2° of the Family Social Action Code as follows:

[391] The aforementioned 2015 law reinforces the improvement of the APA, the overhaul of home help (previously covered by law no. 2005-841 of 27 July 20005 on the development of personal services and various measures to promote social cohesion), the support and enhancement of family careers, and the improvement of social and medico-social services across the country.

[392] Article 1 of the law of 28 December 2015.

[393] New Article L. 115-9 of the Social Security Code.

[394] Article 5 of the 2020 Act introduces a new III to Article L. 111-2-1 of the Social Security Code.

[395] Articles L. 142-1 et seq. of the French Social Action and Family Code.

[396] Article L. 14-10 -1 of the French Social Action and Family Code.

[397] Article L. 113-2 of the French Social Action and Family Code.

[398] Articles L. 149-1 et seq. of the French Social Action and Family Code.

> the financing of expenditure on modernising services that provide assistance with everyday tasks in the homes of the frail elderly and disabled people, expenditure on professionalising their staff and workers directly employed for this purpose by the frail elderly and disabled people, expenditure on supporting projects to create and consolidate multi-purpose home help and care services, expenditure on supporting family carees, expenditure on training family carees [...], expenditure on training and support for volunteers who help to maintain social ties for the elderly and disabled, and expenditure on training and qualifications for care staff in the establishments and services mentioned in 1e and 3e of Article L. 314-3-1.

In addition, an analysis of the various social security financing laws shows a gradual and increasingly marked shift towards tax-based financing of the social protection system and, conversely, a relative decline in financing through social contributions. As a result, the State is playing an increasingly important role in the direction and strategic choices governing social security law. An emblematic example of this is the latest pension reform introduced by law no. 2023-270 of 14 of April 2023 of the amended social security financing act for 2023,, the flagship measure of which is the increase in the statutory retirement age from 62 to 64.

While public policy is largely focused on protecting vulnerable people in care, it is also concerned with care workers. From the point of view of care workers, the challenge lies in fighting for recognition of their daily commitments and their difficult working conditions. Several provisions deal with their training, qualifications and working conditions, at a time when their deterioration is being denounced in recurring collective labour disputes.

The COVID-19 health crisis highlighted the extent of this deterioration in working conditions and led to a wide-ranging consultation between the various social players in the medico-social sector, which resulted in the signing of major agreements on 13 July 2020[399] known as the "Ségur de la santé", with the aim of upgrading jobs in health establishments and establishments providing accommodation for dependent elderly people and making public hospitals more attractive. The latest political developments also reflect a resurgence in the issue of improving working conditions for careers (night work, on-call duty, pay). This led to an announcement by the government that it would raise the pay of nurses and nursing assistants (in the public sector) for night work, which will now be paid at a rate of +25%.

7.2 Social Security Benefits (Coverage of Social Risks: Sickness, Maternity, Disability, Death, Occupational Injuries, Unemployment)

On 14 June 1974, France ratified ILO Convention no. 102 concerning Social Security (Minimum Standards), 1952, and Convention no. 3 concerning Mater-

[399] The Ségur healthcare agreements were signed on 13 July 2020 by the Prime Minister, the Minister for Solidarity and Health, and a majority of trade unions representing non-medical professions (FO, CFDT, UNSA) and public hospital medical staff (INPH, SNAM-HP, CMH).

nity Protection, 16 December 1950. As a result, the social protection system covers both private-sector careers s and public-sector employees in the *care* sector.

The French system provides social cover for private-sector careers (7.2.1) and a special scheme for public-sector careers (7.2.2).

7.2.1 Social Security Cover for Care Workers in the Private Sector

Social cover for careers includes ordinary social benefits (7.2.1.1) and cover for accidents at work and occupational illnesses (7.2.1.2), supplemented by unemployment insurance benefits (7.2.1.3).

7.2.1.1 Social Insurance

Social insurance includes sickness and maternity insurance benefits (7.2.1.1.1), disability insurance benefits (7.2.1.1.2) and old age and death insurance benefits (7.2.1.1.3).

7.2.1.1.1 Sickness and Maternity Insurance Benefits (Specific Provisions for Pregnant Women)

In France, the social insurance scheme provides health insurance benefits subject to certain eligibility conditions,[400] including membership of a social security scheme, residence in France and payment of social security contributions.

Health insurance benefits cover the partial reimbursement of medical expenses, the cost of hospitalisation in public or private establishments, including the fixed hospital charge, dental expenses (treatment, prostheses, orthodontics) and optical expenses (glasses, contact lenses), full cover for maternity expenses, including pre-natal consultations and post-natal care, specific cover for patients with long-term conditions, cover for workers who have suffered accidents at work or occupational illnesses with daily allowances and care abroad, both within the European Union and in certain countries outside the European Union. Details of benefits vary according to the situation of each insured person and changes in legislation, so it is advisable to consult your health insurance fund (CPAM, MSA, etc.) for specific information and applicable reimbursement rates.

Careers are covered by the same maternity insurance scheme as all employees. Maternity leave lasts for 16 weeks for normal pregnancies and gives rise to the payment of daily allowances to compensate for the loss of income[401] (paternity

[400] Article L. 411-1 or article L. 411-2 of the French Social Security Code.

[401] With particular regard to the private employer branch, the national collective agreement provides that an employee on maternity leave may receive daily allowances paid by the Social Security under the same conditions as other employees. However, the collective agreement does not provide for continued payment of wages. The employer is therefore under no obligation to pay any additional salary. Nor is the IRCEM (provident fund) obliged to guarantee additional remuneration in the form of supplementary benefits).

leave and childcare leave). Medical care related to pregnancy and childbirth is covered at 100%, including prenatal consultations, ultrasounds and childbirth. Parental leave is provided for after maternity leave. The employment protection rights of pregnant careers have been strengthened, with the right to return to work after maternity leave. In the event of exposure to occupational risks, specific measures may be put in place (e.g. night work, shorter working hours, carrying heavy loads), or even adjustments to working hours (due to recognition of occupational risks; rest; night work; absences; care cover; maternity leave; daily allowances; parental leave; job protection.[402]

7.2.1.1.2 Disability Insurance Benefits

In France, disability insurance benefits are designed to provide financial support for individuals who become disabled, i.e. who are totally or partially unable to work due to illness or accident. These benefits are mainly managed by the Social Security system. In addition, supplementary health insurance provides a guarantee of income in the event of temporary incapacity for work, disability or death.[403]

When a person is recognised as disabled by the Social Security system, they may be entitled to an invalidity pension. This pension is calculated on the basis of the person's degree of invalidity, previous income and ability to work. It is intended to compensate for the loss of income caused by the inability to work.

Adults of working age may also be entitled to the Allowance for Disabled Adults (Allocation aux Adultes Handicapés-AAH), a benefit designed to guarantee a minimum income for people with severe disabilities who are unable to work.

The criteria for entitlement and the amounts of these benefits vary according to the situation of each worker, in particular their resources and the severity of their disability.

7.2.1.1.3 Old-Age and Death Insurance Benefits[404]

Like all employees, care workers are entitled to a retirement allowance, but their agreement is required if they have not reached statutory retirement age. If they agree, the employment contract ends with the payment of retirement pay, equivalent to redundancy pay. Some sectors, such as the private hospital

[402] Art.8 of the NCC for personal services companies- Maternity and night work.

[403] A compulsory collective provident scheme applies to non-managerial and managerial employees, without any seniority requirement, in accordance with the collective agreement, subject to certain conditions: appendix no. 3 of the NCC for individual employers and home based employment.

[404] With regard more specifically to the arrangements for voluntary retirement and compensation for employees, the legal and regulatory provisions of ordinary law are not referred to as applying to employees in the professional branch of the private individual employers and home employment sector. Only the NCC for employees of individual employers and home based employment of 24 November 1999, extended by ministerial Ordinance dated 2 March 2000, IDCC 2111, covered the legal and regulatory provisions relating to voluntary retirement.

sector,[405] provide additional cover under collective bargaining agreements. In the event of death or serious disability, a lump sum is paid to the beneficiaries or to the insured person himself. Terms and conditions vary according to the employee's family situation and the cause of death, and funding varies between employers and employees, ranging from full coverage by the employer to an equal contribution for disability and death, subject to collective agreements.[406] Contribution rates vary according to occupational category, with a legal limit of 50% employer participation.

For civil servants in France, the retirement scheme and associated benefits differ from those in the private sector. The legal retirement age varies depending on the status of the employee. In general, civil servants have the option of retiring at a minimum age with a required number of years' service. Retirement pay for civil servants is not necessarily equivalent to redundancy pay in the private sector. It depends on the employee's status, grade, career (indexed salary, length of service) and the rules specific to each *civil* service (State, local authority, hospital). Pensions for civil servants are managed by the State Pensions Department and the Caisse Nationale de Retraite des Agents des Collectivités Locales (CNRACL) for local authority and hospital employees.

7.2.1.2 Coverage for Accidents at Work and Occupational Illnesses

7.2.1.2.1 Definition of Occupational Risks

Insurance against accidents at work and occupational diseases covers employees,[407] workers treated as employees[408] and certain categories exposed to occupational risks,[409] while public employees are covered by a dedicated national fund.[410] An accident at work is defined as a sudden and brutal action resulting in psychological bodily injury occurring during work or while commuting to and from work, with similar benefits for commuting accidents,[411] but without the possibility of invoking the employer's inexcusable fault[412] or benefiting from protection against dismissal in the event of an accident.[413] Occupational illnesses

[405] Article 84 of the NCC for private hospital article 84.3 and article 13.04 of the NCC for private non-for-profit hospital and nursing establishment.

[406] Article 13.05 of the NCC for private non-for-profit hospital and nursing establishment.

[407] Article L. 411-1 of the French Social Security Code.

[408] Article L. 412-2 of the French Social Security Code.

[409] Article L. 412-8 of the French Social Security Code.

[410] Book VIII, Title I of the General Civil Service Code: Health Prevention and Occupational Safety, Chapter IV: National Fund for the Prevention of Industrial Accidents and occupational diseases: articles L814-1 à L814-2.

[411] Article L. 411-2 of the French Social Security Code.

[412] Cass. 2e civ., 8 July 2010, no. 09-16.180.

[413] Suspension of the contract and impossibility of termination except for serious misconduct on the part of the person concerned or impossibility of maintaining the contract for a reason unrelated to the accident or illness.

are those listed in the tables,[414] but may also be recognised by a personal assessment outside these tables, in accordance with law no. 93-121 of 27 January 1993.

7.2.1.2.2 The Legal System and Social Cover for Occupational Risks

The occupational injury and disease scheme provides lump-sum compensation to victims or their dependants in the event of an occupational injury or disease, with benefits in kind to cover health expenses and cash benefits to compensate for loss of earnings. Daily allowances represent 60% of gross salary for the first 28 days of absence from work,[415] rising to 80% thereafter. A disability pension is provided for permanently disabled victims, based on the degree of disability and previous salary, financed by employer contributions and, in some cases, conditional on the worker's seniority under the applicable collective agreements.[416] Supplementary benefits may not exceed the net salary that the employee would have received had he or she continued to work.[417]

The fault of an employee who is the victim of an accident at work or occupational disease, or that of the employer, can have an impact on the right to compensation. In the event of intentional misconduct on the part of the employee,[418] he or she is entitled to ordinary health insurance benefits, while inexcusable misconduct may lead to a reduction in the pension, and serious misconduct on the part of the employer may give rise to additional compensation for the victim.[419]

7.2.1.3 Unemployment Insurance Benefit

Unemployment insurance is designed to compensate for loss of income due to involuntary loss of employment or activity. France ratified the ILO Unemployment Convention, 1919 (no. 2) on 25 August 1925. The unemployment insurance scheme is based on specific contributions and follows an insurance principle based on income prior to job loss. Eligibility criteria are strict, but certain specific situations, such as termination of the contract on the death of the individual employer, may make it easier to qualify for compensation. The scheme is governed jointly by representatives of employees and employers. What sets it apart for the self-employed is that it is more assistance-based, with conditions of access linked to financial situation and events such as compulsory liquidation.

[414] Article L. 461-1 al. 2 of the French Social Security Code.

[415] On the day of the accident, the employer pays the salary.

[416] For example, Article 84.1 and Article 84.2 of the NCC for private hospitals. See also articles 13.01.2.1 et seq. and article 13.03 of the NCC for private non-profit hospitals and nursing establishment.

[417] Article 13.01.2.4 of the NCC for private non-profit hospitals and nursing establishment.

[418] Article L. 453-1 of the French Social Security Code.

[419] Articles L. 452-1 et seq. and L. 453-1 of the French Social Security Code.

7.2.2 Social Security Cover for Public Sector Workers

In France, civil servants are covered by special schemes (with the exception of contract employees, who are covered by the general scheme)[420], managed by dedicated bodies and offering comprehensive social protection. Benefits are financed by self-insurance by the public employer, with the exception of retirement, where civil servants contribute together with their employer.

Benefits under the special civil service schemes are at least equivalent to those under the general Social Security scheme. Civil servants are divided between the three civil service schemes (State, hospital and local authority), with specific management arrangements for sickness,[421] family allowances[422] and retirement[423] depending on their status.

7.3 Supplementary Social Protection Schemes

In France, supplementary social protection is, in principle, optional, but strongly recommended to supplement basic cover. It is organised and offered by private insurers, mutual insurers and provident societies. This protection is contributory, paying and accessible according to the contributory capacity of each worker, thus complementing the compulsory social security system.

However, membership of supplementary pension schemes has been compulsory in France since the law of 29 December 1972. Similarly, since 1st January 2016, all private sector companies have been required by law to set up a compulsory collective health insurance scheme for all their employees, in accordance with article L. 911-7 of the French Social Security Code. This measure is the result of the 2013 Employment Security Act. As a result, the General Civil

[420] Article L. 829-1 of the General Civil Service Code. More generally, see Livre VIII, titre II: Protections related to illness, accident, disability or death, Chapter IX: Provisions specific to contract staff (Articles L. 829-1 à L. 829-2).

[421] Sickness benefits for civil servants are managed by mutual benefit organisations for State civil servants; a specific national fund, the Caisse nationale militaire de Sécurité sociale (CNMSS), for military personnel and the general social security scheme for local authority and hospital civil servants.

[422] Since 1st January 2005, family benefits have been paid by the family allowance funds on behalf of the State.

[423] Old-age and disability pensions are paid in three ways: - directly by the State to permanent civil servants, the cost of which is included in the State budget; - through a special fund for workers in public industrial and commercial establishments (EPICs): the Fonds spécial des pensions des ouvriers des établissements industriels de l'État (FSPOEIE), which is managed by the Caisse des dépôts et consignations (CDC); - through a national public administrative body, the Caisse nationale de retraite des agents des collectivités locales (CNRACL), for permanent local authority and hospital civil servants. CNRACL is also managed by CDC. <https://www.cnracl.retraites.fr/employeur/accompagnement-partenariat/laccompagnement-des-employeurs/demander-des-statistiques-relatives-la-population-retraitee> (accessed January 19, 2026).

Service Code devotes an entire chapter to the supplementary social protection scheme for civil servants.[424]

In general terms, the supplementary scheme places great importance on parity and collective bargaining. This takes place in three stages: first at industry level, then at company level, and finally by unilateral decision of the employer. No employee may be excluded from health cover on the grounds of a seniority clause, but certain seniority conditions remain for other benefits.[425]

7.3.1 The Supplementary Health Insurance Scheme for Careers

Supplementary health cover may vary depending on the employer, sector of activity, professional status and collective agreements in force.

Generally speaking, and particularly in the health sector, employers are obliged to offer their employees a group health insurance scheme and to contribute towards the cost of health expenses not covered by the national health insurance system. Certain self-employed healthcare professionals, such as nurses, may benefit from contractual schemes negotiated with their professional organisations for supplementary health cover. Similarly, self-employed healthcare professionals who are not covered by contract may take out private health insurance or mutual insurance to supplement their health cover.

In addition, hospital and local authority civil servants may have supplementary health cover depending on their civil service status (State, local authority, hospital).[426] From 1st January 2023, a new scheme will be introduced for public-sector employees in France. Under the Ordinance of 17 February 2021, public-sector employers will be required to fund at least 50% of supplementary social health protection for their employees, covering various risks (maternity, illness, accident, incapacity for work, disability, unfitness for work or death). Supplementary cover is offered either by the employer in the form of a group contract, or taken out individually to supplement compulsory health insurance under a majority collective agreement.[427] This obligation, which will come into effect for the French State *in* 2024, will gradually be extended to all public employers by 2026, including all civil servants, regardless of their status. The sup-

[424] General Civil Service Code, Livre VIII, Titre II: Protections related to illness, accident, disability or death, Chapter VII: Supplementary social protection: art. L. 827-1 to L. 827-12.

[425] For example, the NCC for individual employer and home based employment provides that the death benefit, education annuity and critical illness guarantees are accessible with a reduced seniority of 3 months, unlike the IRCEM (pension and provident institution) supplementary allowance, which requires 6 months. See also Title XIII, article 13.01.2.1 of the NCC for private non-for-profit hospital and nursing establishment. In the event of work stoppage due to a recognised illness or long-term condition, employees with at least 12 months' work experience in the establishment receive supplementary compensation from IRCEM (employee of a private employer).

[426] Articles L. 827-1 and L. 827-4 of the General Civil Service Code.

[427] Article L. 827-2 of the General Civil Service Code.

plementary health insurance scheme provides full cover for co-payments, daily subsistence allowances and dental expenses (at 125% of the standard rate), as well as flat-rate cover for optical expenses, ranging from €100 to €200 depending on the correction.

In any event, careers in precarious situations can access social assistance and specific schemes for their healthcare needs.

7.3.2 Supplementary Pension Scheme for Care Workers

The supplementary pension scheme for care workers in the private sector is mainly managed by the Association générale des institutions de retraites des cadres and the Association pour le régime de retraite complémentaire des salariés (Agirc-Arrco). Agirc-Arrco covers the vast majority of private-sector employees in France, including care workers (nurses, orderlies, home helps). These schemes are funded by employee and employer contributions.[428] Employees contribute to Agirc-Arrco on bracket B of their salary, in addition to their Social Security contributions. The amount of their supplementary pension therefore depends on their salary, years of contributions and the value of the pension point. Supplementary pension schemes are constantly evolving in France, and specific conditions may vary according to current reforms.

Similarly, local authorities and public establishments may sign up to participation agreements[429] designed to cover civil servants, including retired local authority employees.[430] The social protection rules for contract staff are similar to those for civil servants, with the exception of the health insurance and old age insurance schemes.[431]

8. Concluding Discussion

The legal framework for care work in France is the sole responsibility of the legislator in the public sector. In the private sector, it is the joint result of the legislator and the social partners, giving rise to systematic interactions on all working and employment conditions. In this sector, 6 extended national collective agreements are applicable, covering virtually all workers.

Employers are divided between public bodies, private not-for-profit (voluntary or mutual) or for-profit establishments and individual employers, which results in a wide variety of statuses and contractual rights. The private individual employer branch has the highest number of specific features: direct employment by the beneficiary, multiple employers, activity in the home—not accessible

[428] NCC for private non-for-profit hospital and nursing establishment, rider of 27 January 2015 relating to the generalisation of healthcare costs, article 13.1 and article 14.06. See also NCC préc. 2015 rider, article 13.1.

[429] Article L. 827-6 al. 1 of the General Civil Service Code.

[430] Article L. 827-6 al. 3 of the General Civil Service Code.

[431] CGFP, art. L. 829-1.

without authorisation from the Labour Inspectorate -, absence of a prevention policy in terms of health and safety at work, etc.

That said, whatever the sector (private/public), whatever the branch, the problems are similar: the care sector is understaffed due to a lack of attractiveness; the organisation of working hours is constrained by the needs of the people being cared for and the need for continuity of service/care (weekend and night work; non-standard working hours) impacting on the reconciliation of professional and private life; the persistent undervaluation of these activities is reflected in low wages; the physical and mental hardship of the work is reinforced by the nature of the care to be provided and by the working environment. Overall, the sector as a whole is affected by a demographic problem resulting from the historical over-feminisation of these professions and their high average age. It is also over-determined by public funding, which leads to a fragmentation of work.

The "Ségur de la santé" negotiations in 2020 following the COVID-19 were an opportunity to reveal the level of quantitative and qualitative deficits in human resources and funding in this sector and to alert people to the urgent need to remedy them. Some progress was made as a result, such as the adoption of a new collective agreement in the private employer sector, the creation of a certificate of aptitude for the duties of home help, followed by a state diploma in social support, etc. At the same time, a number of reports have recommended measures based on key areas such as training, qualifications and working conditions. Forced to face up to the structural difficulties mentioned above on a daily basis, workers and employers are finding short-term remedies that amount to a band-aid on a wooden leg.

To cope with staff shortages in both the public and private sectors, in institutions and at home, the players are resorting to a variety of solutions, including atypical forms of employment (temporary work), self-employed or self-employed contractors, and digital platforms, which can lead to workers who are already employed by the organisation but need to increase their income holding a number of jobs and statuses at the same time. These solutions are not without legal and economic risks for the organisation and without risk to the health and safety of the workers.

While the need to develop dependency-related activities, and therefore to create jobs in this sector, is clearly stated by the public authorities, the funding is still not forthcoming. Yet this funding is needed to improve training and qualifications and to recognise the work of professionals. If the aim is to improve working conditions, then we need to rethink the entire economic model of the care sector. This presupposes close collaboration between players in the sector and public funders to guarantee decent working conditions and employment for all care workers.

Abbreviations

AJFP	Actualité juridique Fonction publique
AJF	Actualité juridique Famille
AJDA	Actualité juridique de droit administratif
Droit ouv.	Revue droit ouvrier

Dr. soc.	Revue droit social
JCP S	JurisClasseur périodique – Edition Sociale
RDT	Revue de droit du travail
RFDA	Revue française de droit administratif
Dr. soc.	Revue droit social
RTD eur.	Revue trimestrielle de droit européen
Sem. soc. Lamy	Revue Semaine sociale Lamy
JCP S	Jurisclasseurs périodique sociale
GISTI	Groupe d'information et de soutien des immigrés
Cons. Const.	Conseil constitutionnel
Cass. soc.	Chambre sociale de la Cour de cassation
CJCE	Cour de justice des communautés européennes
CJUE	Cour de justice de l'Union européenne
CEDH	Cour européenne des droits de l'homme
CA	Cour d'appel
TA	Tribunal administratif
Lebo	Recueil des décisions du Conseil d'Etat

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CHAPTER 3

German Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Ziga Podgornik-Jakil, Dominic Andres, Eva Kocher

1. Introduction

The aim of this national report is to analyse job quality and inclusive working conditions of care workers in Germany. The report will include analysis of law and policy, labour market characteristics, and industrial relations, as well as analysis of the interplay between national law and EU/European and international law. A socio-legal research methodology will be applied.

The outline of the national report is as follows. Section 2 discusses various aspects of care work and domestic work, including occupations, labour market characteristics, overall regulatory framework, and current debates. Section 3 addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations. Section 4 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 5 presents a discussion on wages and benefits. Section 6 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 7 discusses social security coverage and benefits. Section 8, finally, contains a concluding discussion.

[1] The contents of this report were finalized on December 31, 2023.

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1.1 Main Characteristics of German Labour Law, Industrial Relations System and Welfare State Model

1.1.1 Labour Law System

With labour law, we here consider the rules applicable to the employment relationship; it is intimately linked to the industrial relations system which structures the collective bargaining system. The working conditions in an individual employment relationship are governed both by individual and collective labour law. Instruments of labour law in this sense are only applicable to relationships based on private contract, thus excluding e.g. career civil servants (Beamte), which are covered by public law.

The origins of German labour law date back to the late 19th century, when the first trade unions emerged; they often organised works committees to demand the right of workers to represent their demands in their workplaces (especially factories).[2] With the founding of the Weimar Republic in November 1918, the signing of the Stinnes-Legien[3] Agreement between a number of employers' associations and trade unions in the same month laid the foundation for what was then called the new labour constitution (Arbeitsverfassung).[4] With the agreement, the employers' associations and trade unions laid the foundation, among other things, for the regulation of working conditions through collective agreements, the regulation of which was then further implemented in December 1918 in the Ordinance on Collective Agreements, Workers' and Employees' Committees and Arbitration of Labour Disputes (Verordnung über Tarifverträge, Arbeiter- und Angestellten-Ausschüsse und Schlichtung von Arbeitsstreitigkeiten).

At the same time, the agreement created the conditions for the establishment of works councils (Betriebsräte) in companies, which was officially incorporated into legislation with the passing of the Works Councils Act (Betriebsrätegesetz, BRG) in 1920.[5] While collective bargaining and works councils were abolished during the Nazi dictatorship (1933–1945), in the Federal Republic of Germany collective agreements have been reintroduced and ratified in the Collective Agreements Act (Tarifvertragsgesetz, TVG) since 1949; works councils are regulated in the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG) since 1952 (revised, in particular, in 1972)—since 1990 expanded to the territories of the former German Democratic Republic.[6]

[2] Wolfgang Däubler und Michael Kittner, *Geschichte der Betriebsverfassung* (Frankfurt: Bund-Verlag GmbH, 2020).

[3] Named after its signatories, the industrialist Hugo Stinnes und the trade unionist Carl Rudolf Legien.

[4] Term going back to Sinzheimer, cf. Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford: Oxford University Press, 2017), 212 ff.

[5] Peter Berg, Eva Kocher und Dirk Schumann, hrsg. von *Tarifvertragsgesetz und Arbeitskampfrecht: Kompaktkommentar* (Frankfurt: Bund-Verlag, 2021[7]).

[6] Däubler und Kittner, *Geschichte*.

1.1.2 Industrial Relations System: Dual System of Representation

Germany has a dual system of employee representation. While trade unions are organised based on the principle of freedom of association and generally operate at the supra-company level, Works Councils are regulated by law in the *BetrVG* and operate on the level of undertaking.

Collective bargaining system: Unlike tripartite industrial relations system, the government in Germany is largely excluded from the collective bargaining; Art. 9 (3) German Constitution (Grundgesetz, GG) guarantees "collective bargaining autonomy" of social partners (Tarifautonomie). There are no formally regulated rules on union representativeness in Germany. However, longstanding jurisprudence establishes that in order to have the legal capacity to take part in collective bargaining ("Tariffähigkeit"), a trade union must not only meet formal conditions as to the internal statute, but also show that it can be effective and put the other side under pressure (social power, "soziale Mächtigkeit"). Courts acknowledge social power mostly according to membership and organisational strength.[7]

Industry agreements are typically negotiated at regional rather than national level. Only those collective agreements that are intended for general application on the basis of the Posted Workers Act (Arbeitnehmerentsendegesetz, AEntG) (see 2.3.3. & 3.1.2.) have to be negotiated on national level.

Works Council system: Works councils are elected in companies with normally five or more permanent employees (Sec. 1 BetrVG), and represent the interests of all employees to the employer, whether or not the workers are union members or have taken part in the election. It can conclude binding collective agreement with the employer (works agreements) (see 3.1.3.). A works council consists of a single person in small firms with up to 20 employees and grows in numbers commensurate with the size of the company (Sec. 9 BetrVG).

Corporate codetermination system: At the company level there is also a system of corporate codetermination (Unternehmensmitbestimmung), in which employees are involved in company decisions through representation on company supervisory boards. This system is restricted to large companies—firms with more than 500 employees must have worker representatives on their supervisory boards, alongside shareholder representatives. Employee representatives can be employees of the firm, but also external trade-union representatives.[8] The proportion of employee representation on the supervisory board changes depends on the number of employees and on the sector:

[7] Berg, Kocher und Schumann *Tarifvertragsgesetz*, Sec. 2, marg. 26–30a; 31–34b; the Federal Constitutional Court holds that this jurisprudence is in accordance with the constitution ((2019) 1 BvR 1/16 (BVerfG)).

[8] Simon Jäger, Shakked Noy and Benjamin Schoefer, "The German Model of Industrial Relations: Balancing Flexibility and Collective Action." *IZA DP* 15500 (2022): <https://docs.iza.org/dp15500.pdf> (Accessed October 10, 2023).

- For companies between 500 and 2000 employees, co-determination is regulated by the One-Third Participation Act (Drittelbeteiligungsgesetz, DrittelbG), with employee representatives occupying one third of the positions on the supervisory board.
- For companies with more than 2000 employees, the Co-Determination Act of 1976 (Mitbestimmungsgesetz, MitbestG) applies. Here, employees make up for half of the members on the supervisory board, but the chairman, whose vote is decisive in the event of a deadlock, is always a shareholder representative.
- For companies in the mining, coal, iron, and steel industries with more than 1000 employees, the Coal, Iron and Steel Co-determination Act (Montanmitbestimmungsgesetz, MontanMitbestG) applies. Employees and capital (shareholders) are also represented equally on the supervisory board; the vote of the chairman of the supervisory board (a further shareholder representative) is balanced by another neutral member elected by mutual agreement of both sides.

This system of corporate codetermination is important for understanding the German cooperative industrial relations system. However, it relates to company law and corporate governance, and does not come with specific rules in labour law and on working conditions; that's why it will not be covered further in this report.

1.1.3 Welfare State Model

According to Art. 20 (1) GG, Germany is a democratic and social state. Its social insurance system is based on the so-called "Bismarck model". In the era of the German Reich, Chancellor Otto von Bismarck in the 1890s, welfare policies were implemented in the form of compulsory, state-regulated insurance systems, such as health insurance, accident insurance, and pensions. These policies were at the time also intended to push back against the growing influence of social democracy and socialist movements.

In the Bismarckian social insurance model of social security, benefits are not universal but connected to employment status or similar, with financial contributions shared between employers and employees.[9] As a consequence, neither self-employed, non-workers nor career civil servants are included in this system. In this model, social insurance institutions (Sozialversicherungsträger) are self-governed, the Verwaltungsrat (administrative board/supervisory board) being elected in equal parts by workers/insured persons and employers. Elections (Sozialwahlen) take place every six years (see 7.1.).

[9] Henry E. Sigerist, "From Bismarck to Beveridge: Developments and Trends in Social Security Legislation," *Journal of Public Health Policy* 20, 4 (1999): 474.

There are five social insurance schemes, regulated by the Social Security Code (Sozialgesetzbuch, SGB) in several books. In 1995, Germany introduced long-term care insurance as the fifth and currently final pillar of the German social insurance system. Today, five branches are covered: Health (SGB V), long-term care (SGB XI), pension (SGB VI), unemployment (SGB III) and accident insurance (SGB VII, covering employers' liablity for injuries at work). Social insurances are supplemented by numerous tax-financed state welfare programmes, such as income support (Sozialhilfe, SGB XII), but also parental allowance (Elterngeld) and other benefits.

In Esping-Andersen's (1990) typology of modern Western welfare state models, Germany is classified as belonging to what he calls the conservative welfare model, as opposed to the liberal and social democratic.[10] The conservative model tends to value traditional ideas of family responsibility, based on the idea of the male breadwinner and the woman as caretaker, prioritizing, for example, home-based long-term care for the elderly. According to this model, care work is largely privately organized, with women bearing the main burden of unpaid care work.[11]

Although labour law and in some instance social security today in many aspects also represent double earner models,[12] the normative regulation of long-term care still largely reflects the familiaristic conservative model. For example, Sec. 3 SGB XI states that

> long-term care insurance primarily supports home care and the willingness of relatives and neighbours to provide care, so that those in need of care can remain in their home environment for as long as possible (our translation).

Short-term care and outpatient care are prioritized over stationary inpatient care (Sec. 3 SGB XI).

[10] Gøsta Esping-Andersen, "The Three Political Economies of the Welfare State," *International Journal of Sociology* 20, 3 (1990): 92; H. Rothgang H. et al., "Migrantization of long-term care provision in Europe: A comparative analysis of Germany, Italy, Sweden, and Poland," *SFB 1342 WorkingPapers* (2021): 11; Cornelius Torp C., "International Transfers and National Path Dependencies: Pension Systems in Britain and Germany after the Second World War," in *International Impacts on Social Policy*, edited by Frank Nullmeier, Delia González de Reufels, and Herbert Obinger (Global Dynamics of Social Policy. Berlin: Springer International Publishing, 2022).

[11] Kirsten Scheiwe, "Existenzsicherung zwischen Sozial- und Familienrecht in der BRD—individualisiert, ehebezogen, familialistisch, care-orientiert? Ein Beitrag mit rechtsvergleichenden Anmerkungen," in *Soziale Sicherungsmodelle revisited—Existenzsicherung durch Sozial- und Familienrecht und ihre Geschlechterdimensionen*, hrsg. von Kirsten Scheiwe (Baden-Baden: Nomos, 2007); Sigrid Leitner S., "Familialismus in konservativen Wohlfahrtsstaaten: Zum Wandel des Geschlechterleitbilds in der Kinderbetreuungs- und Altenpflegepolitik," in *Selektive Emanzipation. Analysen zur Gleichstellungs- und Familienpolitik,* hrsg. von Diana Auth, Eva Buchholz und Stefanie Janczyk (Opladen: Verlag Barbara Budrich, 2010).

[12] Eva Kocher et al., *Das Recht auf eine selbstbestimmte Erwerbsbiographie: Arbeits- und sozialrechtliche Regulierung für Übergänge im Lebenslauf* (Ein Beitrag zu einem Sozialen Recht der Arbeit) (Baden-Baden: Nomos, 2013); Bundesregierung, "Zweiter Gleichstellungsbericht: Erwerbs- und Sorgearbeit gemeinsam neu gestalten," (BT-Drucks. 18/12840).

1.2 Remarks on Research Methods

In conducting our socio-legal analysis, we drew on a number of databases, statistics, and reports.

When providing figures, Section 2 (especially 2.2. and 2.3.) largely draws on statistics from the Federal Employment Agency (Bundesagentur für Arbeit, BA), which publishes detailed annual reports on the labour market situation in the German care sector (Arbeitsmarktsituation im Pflegebereich, BA Report).[13] These annual reports include all care workers who are regularly employed in inpatient (including hospitals) and outpatient facilities. Persons who perform nursing work as part of marginal employment, e.g. on a mini-job basis (see 4.5.), are thus excluded. Also excluded are people who are self-employed (including bogus self-employment), au pairs, and midwifes (the latter due to their different occupational classification) (see 2.1.2.). The sources used in the annual reports are compiled from the Data Collection and Transmission Ordinance Reports (Datenerfassungs- und –übermittlungsverordnung, DEÜV-Meldungen)[14] of the companies to the social insurance institutions and temporary employment agencies' reports on their employees according to the Temporary Employment Act (Arbeitnehmerüberlassungsgesetz, AÜG).

On other times, we also refer to figures made available by the Federal Statistical Office (Statistisches Bundesamt). The main difference with the BA is that the Federal Statistical Office uses additional sources, which are listed in the "health personnel account" (Gesundheitspersonalrechnung) on its website (see WP3 Report for details).[15]

As there is no official data on the number of "live-in" workers in Germany, we rely on estimates published in reports by public expert organisations working in this field, such as MINOR,[16] and in scientific publications.

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

2.1 Main Characteristics of the German Care Sector

2.1.1 Care Providers and Actors: Overview

The care sector in Germany is characterized by a mix of public, private nonprofit (including church), and private commercial providers of inpatient (including hospitals) and outpatient care services.

[13] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich" (2023), <https://statistik.arbeitsagentur.de/DE/Statischer-Content/Statistiken/Themen-im-Fokus/Berufe/Generische-Publikationen/Altenpflege.pdf?__blob=publicationFile> (Accessed October10, 2023).

[14] Employers are legally obliged to report the data of their employees to the social insurance institutions.

[15] Statistisches Bundesamt, "Gesundheitspersonalrechnung," 26 January, 2023, <https://www.destatis.de/DE/Methoden/Qualitaet/Qualitaetsberichte/Gesundheit/gesundheitsersonalrechnung.pdf?__blob=publicationFile> (Accessed September, 11 2023).

[16] "Minor Kontor," <https://minor-kontor.de/> (Accessed September 21, 2023).

Publicly owned facilities in the care sector are mainly operated by municipal bodies as well as by the federal states (Länder).

Charitable organisations of protestant (Diakonie) and catholic churches (Caritas) together with other private non-profit organisations such as Arbeiterwohlfahrt (AWO, Workers' Welfare), Deutsches Rotes Kreuz (DRK, German Red Cross), Zentralwohlfahrtsstelle der Juden in Deutschland (ZWST, Central Welfare Office of the Jews in Germany) make up the sector "Freie Wohlfahrtspflege" in Germany (represented by Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege, BAGFW (Federal Working Group of the Freie Wohlfahrtspflege). Part of this network of non-profit institutions is also „Der Paritätische Wohlfahrtsverband", an umbrella organisation for over 10.000 independent organisations in social and health sectors, among them Volkssolidarität (East-German welfare organisation), Arbeiter-Samariter-Bund Deutschland (Workers' Samaritan Federation), Deutsche AIDS-Hilfe (Aids support), Sozialverband VdK Deutschland. In 2017, these organizations employed around 4% of all workers in Germany (2016: around 1.9 million).[17]

In addition, there are private commercial providers. Most of these organize care work in small-scale structures. But there are also commercial companies, such as Asklepios, Rhön, Helios und Sana, that organise large hospitals.

There are currently 1.887 hospitals operating in Germany, out of which 29% are publicly operated, 32% are operated by private non-profit organisations, and almost 38% are operated by private commercial providers.[18] Hospitals employed around 686,000 out of almost 1,700,000 care workers in inpatient and outpatient care in 2021.[19]

Nationwide, there were around 16,100 fully or partially inpatient nursing homes licensed under SGB XI in December 2021. The majority of the homes (53% or 8,500) were run by non-profit organizations (e.g., Diakonie or Caritas); the share of commercial operators was 43%, with public providers having the smallest share at 5%. Of the total of 15,400 licensed outpatient nursing and care services, the majority were operated commercially (10,400 or 68%); the share of non-profit providers was 31% and public providers of only 1%.[20] Particularly important is the role of the protestant and catholic churches with their chari-

[17] Karl Gabriel, "Auf dem Weg in eine faire Dienstleistungswirtschaft: Die Mitverantwortung der kirchlichen Wohlfahrtsverbände," in *Freiheit - Gleichheit - Selbstausbeutung: Zur Zukunft der Sorgearbeit in der Dienstleistungsgesellschaft*, hrsg. von Bernhard Emunds et al., (Metropolis-Verlag, 2021; Die Wirtschaft der Gesellschaft Jahrbuch 6).

[18] Statistisches Bundesamt, "Vorläufige Eckwerte der Krankenhäuser 2022 nach Trägern und Bundesländern," 13 September, 2023, <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Krankenhaeuser/Tabellen/eckzahlen-krankenhaeuser.html> (Accessed September 20, 2023); similar (for 2017): Gabriel, "Auf dem Weg in eine faire Dienstleistungswirtschaft," 270.

[19] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[20] Statistisches Bundesamt, "Pflegestatistik - Pflege im Rahmen der Pflegeversicherung - Deutschlandergebnisse - 2021," (2022), <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Pflege/Publikationen/_publikationen-innen-pflegestatistik-

table organizations Diakonie and Caritas, respectively, which collectively employ around two thirds of all employees in the non-profit sector; between 1960 and 1980, their numbers more than doubled, and grew at around 50% again between 1990 and 2000.[21]

2.1.2 Care Occupations

Paid Care work has become an important part of the labour market in Germany and a sector in its own right, mainly due to the continuing need for care resulting from demographic factors (increasing life expectancy), social factors (increased labor market participation of women, decreasing disposition of women to take on private informal care), and work-related factors (decreasing willingness to work in care due to bad working conditions), the recognition of care as an independent part of social insurance, state-regulated and recognised training programmes for care workers, and specific labour law regulations governing various forms of care work.

Care work can be analysed and categorised as part of the so called SAHGE occupations, an acronym which refers to social work, household-related services, health and care, and education (Soziale Arbeit, Haushaltsnahe Dienstleistungen, Gesundheit und Erziehung).[22] In labour market policy, the term "person-related services" (personenbezogene Dienstleistungen) is also used for care activities.[23] The SAHGE occupations can be analysed (in part) with the help of the 8th occupational domain of the Classification of Occupations (Klassifikation der Berufe KldB 2010),[24] a standardized classification system that was developed under the leadership of the Federal Employment Agency and its Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung, IAB) with the participation of the Federal Statistical Office and federal ministries as well as experts in occupational and empirical (social) research. It categorizes occupations according to their field of activity, realistically represents the current occupational landscape in Germany and at the same time offers a high degree of compatibility with the international occupational classification (ISCO-08, International Standard Classification of Occupations 2008). This system separates care work from academically trained

deutschland-ergebnisse.html> (Accessed October 10, 2023); similar (for 2017): Gabriel, "Auf dem Weg in eine faire Dienstleistungswirtschaft," 270.

21 Gabriel, Gabriel, "Auf dem Weg in eine faire Dienstleistungswirtschaft," 271.

22 Bundesregierung, "Zweiter Gleichstellungsbericht".

23 Rudolph Bauer, *Personenbezogene soziale Dienstleistungen: Begriff, Qualität und Zukunft* (1st ed. Wiesbaden: Westdeutscher Verlag, 2001.)

24 Bundesagentur für Arbeit, "Klassifikation der Berufe 2010 (KldB 2010)," <https://www.arbeitsagentur.de/datei/Klassifikation-der-Berufe_ba017989.pdf> (Accessed October 10, 2023).

health professions (such as physicians etc.).[25] Similarly, Germany's Federal Statistical Office categorizes care work under the heading of health care workers, but separates it from academically trained physicians.[26]

For the purposes of this report, we divide care workers in Germany into two main groups in order to analyse their position in the labour market and the labour regulations that apply to them: nursing staff and domestic workers. The former can be employed in different care settings such as hospitals, health clinics, nursing homes, and home care services, but perform different tasks and undergo different levels of training. Live-in workers, a sub-category of domestic workers, perform work exclusively in domestic households.

In the table below, we break down the two main groups of care workers into occupational categories (nursing assistants, nursing professionals, and health care professionals in nursing, domestic workers). These occupational categories partially correspond to the categories mentioned in the European Commission's Communication on the European Care Strategy (home-based personal care workers, nursing associate professionals, and nursing professionals).[27] We further divide them based on their function and level of training. We align these categories with the ones used by the report of the German Federal Employment Agency to better analyse the labour market characteristics in the German care sector later (see Section 2.1.4. for more details). For the sake of comparison with other EU countries, we use the European Qualifications Framework (EQF) [28] to which the German Qualifications Framework (Deutscher Qualifikationsrahmen, DQR) is adapted.[29]

The columns A1-A3 refer to functions: care/assistance to people with disability (physical and mental) (A1), elderly people (A2) and/or sick people (A3).

[25] The keys for the Main Occupational Groups in the Classification of Occupations (KldB 2010) for care workers are: 8130 Health care, nursing (without specialization), 8131 Specialist nursing, 8132 Specialized pediatric nursing, 8138 Health care, nursing (*other specific job specification*), 8139 Supervision, leadership - nursing, emergency services, and 821 Elderly care (including leadership).

[26] Statistisches Bundesamt, "Gesundheit - Pflege," <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Pflege/_inhalt.html> (Accessed September20, 2023).

[27] European Commission, "European care strategy: Communication from the Commission" (COM(2022)440 7 September 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0440> (Accessed October10, 2023).

[28] Council of the European Union, "Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning: 2017/C 189/03 OJ C 189" (2017).

[29] Bundesministerium für Bildung und Forschung, "Deutscher Qualifikationsrahmen (DQR)," <https://www.dqr.de/dqr/de/der-dqr/der-dqr_node.html> (Accessed September 20, 2023).

Table 1.

Occupations	A1	A2	A3
Nursing Assistants: Care workers with no or low professional qualifications - up to two years. They take care of people who need support because of their age, a disability, or an illness. They take on nursing tasks such as helping with personal hygiene, preparing meals, walking exercises, and ensure order and hygiene in the living environment of those in need of care. They also report the care-recipients condition to nursing specialists. They can work in inpatient (senior homes, day-care facilities, and hospitals) and outpatient care. Professions: a) Nursing assistants/helpers (*Pflegeassistenz/Pflegehilfskraft*) must complete one to two years of vocational training, which is regulated by the individual federal states and ends with a state final examination (*staatliche Abschlussprüfung*—not an academic degree). Their educational level corresponds to level 4 of the European Qualifications. Framework (EQF). b) Elderly care nurse assistants (*Altenpflegehelfer*) specialize in elderly care. They require one to two years (depending on the federal state) of specialized training in elderly care at vocational schools, which ends with a state final examination. Their educational level corresponds to level 4 of the EQF. c) Curative education nurse assistants (*Heilerziehungspflegehelfer*) work with people with disabilities. Depending on the federal state, they undergo one to two years of specialized training in curative education at vocational schools, which concludes with a state final examination. Their educational level corresponds to level 4 of the EQF.	X	X	X
Nursing Professionals: care workers with professional training. They take on nursing tasks, but are also allowed to take on more demanding tasks than nursing assistants. Professions: Nursing Specialists (*Pflegefachkräfte*) care for people of all ages in the areas of nursing, paediatric care, care for the disabled, and care for the elderly. They perform similar tasks to nursing assistants, but because of their professional training, they may also administer prescribed medications and perform other medical tasks in coordination with physicians (e.g., wound care, blood collection, punctures). They also take on administrative and organizational tasks, such as planning and documenting nursing measures. They work in residential care (hospitals, health centers, nursing homes, etc.) and home care and can be responsible for day care, night care, preventive care, full-time care, short-term care, intensive care, and hospice care. Their professional training is federally regulated and lasts three years in nursing schools, hospitals, and care facilities. It takes the form of generalist training to become a nursing specialist, but in the third year it is possible to opt for specialisation as a paediatric nurse or elderly care nurse. The training ends with a state final examination (*staatliche Abschlussprüfung*—not an academic degree). Their educational level corresponds to level 4 of the EQF.	X	X	X

Occupations	A1	A2	A3
Health Professionals in Nursing: a) Nursing specialists with a bachelor's degree generally perform the same activities as nursing specialists with vocational training, but additionally incorporate scientific knowledge to improve nursing work. The academic degree for nursing specialists has been available since 2020 and takes three years to complete at a university that offers the program. Their educational level corresponds to level 6 of the EQF. b) Nursing specialists with a master's or PhD degree assume leadership, instruction, supervisory, and managerial roles and are responsible for challenging and specialized clinical tasks. In doing so, they utilize an expanded range of tasks and responsibilities to promote needs-based and evidence-informed long-term care. They may also engage in research or teaching. Their educational level corresponds to level 7 (MA) and 8 (PhD) of the EQF. c) Specialized nurses work for specialized healthcare professionals, such as anaesthesiologists, psychiatrists, etc. Their training takes place as professional development education (berufliche Weiterbildung/Fortbildung) and corresponds to level 6 of the EQF. d) Curative education nurses (Heilerziehungspfleger) perform educational and nursing tasks for people with disabilities. Their training is regulated by individual federal states and is composed of an additional vocational training at trade and technical schools (Fachschule) and takes place for 2 to 3 years, followed by state final examination. Their educational level corresponds to level 6 of the EQF.	x	x	x
Domestic Workers: care workers with no or basic professional qualifications. Their main task is to support the person in need of care in their everyday life and to ensure their participation in social life. This mainly includes helping with everyday tasks (housework, shopping, preparing meals, etc.) and offer leisure activities that promote exercise and creativity. Professions: a) Care Assistants (Betreuungsassistent) (also called daily companions (Alltagsbegleiter) can work in residential care (nursing homes, day care facilities, etc.) and in home care with people with physical or mental disabilities or the elderly. Their training is regulated at the level of the individual course providers—however, care assistants usually complete at least 3 to 4 months of vocational training. b) Live-in workers provide "24-hour care" in Germany and are mainly women from Central and Eastern Europe. They usually stay in a private household of the person in need of care for between four and twelve weeks and have similar tasks to care assistants. A large proportion of live-in workers are employed through agencies and suffer from low wages and poor working conditions, as this type of work is the least regulated in the German care sector.	X	X	

2.1.3 "Quasi-Markets": the Funding Framework for Social Care Services

The German care sector is framed by social policy and, at least in part, financed by social insurance institutions (Sozialversicherungsträger) in accordance with the Social Security Code (SGB). Services are carried out by care service providers (Leistungsträger) who are employers of care workers. Patients (as insured persons) are entitled to benefits from insurance institutions, but (as cus-

tomers) conclude contracts with the care service providers they choose. Thereby, a trilateral/triangular contractual structure is at the basis of care services. This design leads to the establishment of "quasi-markets".[30] In this triangular contractual structure, the risks are often shifted to customers and/or employees.

Long-term care insurance only establishes partial financing of care costs (Teilleistungsversicherung). Social security law places informal and formal care as well as non-profit and private service providers on an equal footing and into competition with each other (e.g. Sec. 3 SGB XI). Since working conditions in care are also decisively influenced by the scope of the legally regulated financing systems and personnel costs account for a high proportion of total costs, they are used in quasi-market economy systems as almost the only way to reduce costs.

The funding system can be explained with the example of long-term care: In order to be eligible for long-term care coverage, an individual has to be in need of care for at least six months (Sec. 14 (1) SGB XI) and have a degree of severity ("Pflegegrad") specified in a legally defined five-point scale (Sec. 15 of the SGB XI).

In Germany, around 5 million people are beneficiaries of long-term care coverage, out of which 4.2 million are taken care of at home, mainly only by their relatives (2.553.000), followed by relatives assisted by outpatient care services (1.046.000), and 793.000 in full-inpatient care facilities.[31] The familiaristic, "conservative" features of the German long-term care system is reflected in the way private care by family members or other persons is being promoted and partially financed by care insurance. Insured persons in need of care are entitled to the so-called "care allowance" (Pflegegeld, Sec. 37 SGB XI), the amount of which depends on the degree of severity of the condition of the person in need of care ("Pflegegrad", from 316 Euro monthly in degree 2 to 901 Euro monthly in degree 5) (Sec. 37 (1) SGB XI). This allowance can but need not be used to employ care workers.[32] Persons who are cared for at home can also use the additional benefits provided by Secs. 45a and 45b SGB XI for professional support in daily life (between 290 Euro (degree 2) to 800 Euro (degree 5), plus 125 Euro monthly). However, only the federal state Nordrhein-Westfalen has so far established criteria for the quality assurance of such services via the "Anerkennungs- und Förderungsverordnung" (AnFöVO (NRW) 2019).[33]

Another example is the funding of sick care in hospitals. Different laws regulate the funding of inpatient care: Nursing Workforce Strengthening Act

[30] Georg Cremer, Roland Fritz und Nils Goldschmidt, "Soziale Dienstleistungen und Quasi-Märkte in der Sozialen Marktwirtschaft" *Zeitschrift für Politik* 65, 3 (2018): 335, <https://www.nomos-elibrary.de/10.5771/0044-3360-2018-3-335.pdf?download_full_pdf=1>.

[31] Statistisches Bundesamt, "Pflegebedürftige nach Versorgungsart, Geschlecht und Pflegegrade" (31 December 2022), <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Pflege/Tabellen/pflegebeduerftige-pflegestufe.html> (Accessed October 10, 2023).

[32] Bernhard Emunds et al., hrsg. von, *Pflegearbeit im Privathaushalt: Sozialethische Analysen* (Paderborn: Brill Ferdinand Schöningh, 2021).

[33] Emunds et al., *Pflegearbeit im Privathaushalt*.

(Pflegepersonal-Stärkungsgesetz, PpSG), Hospital Financing Act (Krankenhausfinanzierungsgesetz, KHG), Hospital Reimbursement Act (Krankenhausentgeltgesetz, KHEntgG), and Hospital Rate Ordinance (Bundespflegesatzverordnung, BPflV). Hospital reimbursement is based on a combination of per-case flat rates and a nursing staff cost allowance. Secs. 137i-k SGB V now set sublimits to improve nursing staffing, for example via the Nursing Staff Lower Limits Ordinance (Pflegepersonaluntergrenzen-Verordnung, PpUGV) which regulates the establishment of nursing staff sublimits in nursing-sensitive areas in hospitals. A government commission (Regierungskommission für eine moderne und bedarfsgerechte Krankenhausversorgung) proposed in December 2022[34] to change the system and reimburse hospitals based on criteria of retention services, levels of care, and service groups. The system of per-case flat rates would then be abolished. At the moment (summer 2023), the federal government is implementing these proposals in agreement with federal states and actors of the health sector.[35] According to the Federal Health Ministry's plans, 60% of clinics' costs would in the future be covered by retention fees.

For the Nursing Professions Act (Pflegeberufegesetz, PflBG) see below 6.4.

2.1.4 General Regulatory Framework

Germany does not have a comprehensive Labour Code. Instead, labour law is regulated by the Civil Code (Bürgerliches Gesetzbuch, BGB) which regulates the employment contract (secs. 611a BGB), and numerous special acts, such as the Minimum Wage Act (Mindestlohngesetz – MiLoG), Federal Paid Leave Act (Bundesurlaubsgesetz – BUrlG), etc. (see 4–6). At the top of the hierarchy of labour law sources are the German Constitution and European Union law. Collective agreements as well as works agreements have binding effect and are therefore also sources of labour law. There is a special jurisdiction for labour law disputes, regulated by the Labour Courts Act (Arbeitsgerichtsgesetz, ArbGG).

There is hardly any specific statutory labour law regulation for the care sector. (Specific rules on working time are discussed under 6.1., specific rules for live-in-workers are discussed under 2.3.3.) Otherwise, specific rules are established by collective bargaining: While statutory laws serve as the base for minimum standards of all employees, further collectively established legal frameworks exist for care workers who work in the public sector or for church organisations. For instance, care workers who work in facilities operated by municipalities or

[34] Regierungskommission für eine moderne und bedarfsgerechte Krankenhausversorgung, "Dritte Stellungnahme und Empfehlung" (2022), <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/K/Krankenhausreform/3te_Stellungnahme_Regierungskommission_Grundlegende_Reform_KH-Verguetung_6_Dez_2022_mit_Tabanhang.pdf> (Accessed October 10, 2023).

[35] Bundesministerium für Gesundheit, "Eckpunktepapier Krankenhausreform" (10 July 2023), <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/K/Krankenhausreform/Eckpunktepapier_Krankenhausreform.pdf> (Accessed October 10, 2023).

other public-law institutions such as public hospitals are covered by the collective agreements for the public sector (see 3.2.2.).

As for church institutions, including Caritas and Diakonie, the constitution (Art. 140 GG, referring to Art. 137 (3) of the Weimar Constitution) is largely understood as granting rights of self-determination to the Christian churches, including the freedom to regulate employment relationships. In other words, the protestant and catholic (regionally organised) churches have established their own labour law in Germany (for care see below 3.2.2.). Due to the important role of these employers in the care sector, a specific mechanism for the general applicability of collectively established minimum standards has been regulated (see 3.2.3.).

After the attempt of using this mechanism for extending a collective agreement for minimum conditions in care failed in 2021 (see 3.2.3.), the legislator opted for an indirect regulation of working conditions in long-term care, via incentives in social security law. In particular, since September 2022, service contracts funded by social insurance institutions can only be concluded with providers who guarantee the minimum standards of a collective agreement (or a respective church regulation, see 3.2.2.) (Sec. 72 Abs. 3 Satz 1 Nr. 2, Abs. 3a, Abs. 3b SGB XI, so-called compliance with collective agreements (Tariftreue)).[36] According to Sec. 82c Abs. 1 und 2 SGB XI, social insurance institutions are now no longer allowed to decline funding for the economic consequences of collective bargaining.

2.2 Labour Market Characteristics in the German Care Sector

2.2.1 Composition of the Work Force in the Care Sector

According to the 2021 report of the German Federal Statistical Office,[37] which also includes marginally employed care workers, more than 1.2 million people were employed in inpatient (excluding hospitals) and outpatient care. Inpatient care employed 814.042 people, with nearly two-thirds (63%) or 577.144 working part-time and less than one-third (27%) or 236.898 working full-time. 82% of the employed were women. The most common age group is 50–60 years old (28.9%), followed by 40–50 years old (20.4%), 30–40 years old (18.7%), 20–30

[36] Felix Hartmann, "Tariftreue in der Pflegebranche.: Unions- und verfassungsrechtliche Bedenken gegen §§ 72, 82c SGB XI nF," *RdA* (2023): 90; Michaela Evans, '"Tariftreue" in der Altenpflege: Neue Governance zwischen Tarifpolitik und Sozialstaat" *WSI-Mitteilungen* 76, 3 (2023): 221; Wolfgang Schroeder, Lukas Kiepe und Saara Inkinen, "Die Grenzen selbstorganisierten Handelns: attraktive Pflegeberufe durch Tarifautonomie?" *WSI-Mitteilungen* (2022): 355; on the implementation in the region of North Rhine Westphalia, see in detail J. Lenzen und Michael Evans-Borchers, "Tarifreue in der Altenpflege: Expertise zur Umsetzung des Gesetzes zur Weiterentwicklung der Gesundheitsversorgung (GVWG) in Nordrhein-Westfalen" (2023) <https://www.iat.eu/aktuell/veroeff/2024/Tariftreue_in_der_Altenpflege_Evans-Borchers_Lenzen.pdf> (Accessed October 10, 2023).

[37] Statistisches Bundesamt, "Pflegestatistik".

years old (14.9%), 60–65 years old (11.2%), 65+ years old (3%), and under 20 years old (2.8%). Outpatient care, on the other hand, employed 443,000 people, most of them part-time (279.090 or 68%) and 124,040 (28%) full-time. 85% of the employees were women. The most common age group is 50–60 (27.8%), followed by 40–50 (23%), 30–40 (22.4%), 20–30 (12.4%), 60–65 (9.7%), 65+ (3.5%) and under 20 (1.2%).

On the other hand, the recent report of the Federal Employment Agency (BA Report) offers the most comprehensive analysis of the labour market situation in the German care sector to date.[38] It distinguishes nursing staff according to their professional training: health professionals in nursing, nursing professionals, and nursing assistants, and their workplace (hospitals, inpatient care, and outpatient care). These categories are equivalent to the units of analysis outlined in 2.1.2.

The BA report shows that in 2021 there were 1.7 million employees[39] working in inpatient (including hospitals) and outpatient care, which corresponds to 23% of the total 6 million employees in the German health sector. Out of 1.7 million employees in nursing occupations, nursing professionals are most represented with 1.1 million employees (63%), followed by nursing assistants with 448.000 employees (29%); the remaining 8% (about 20.000) are health professionals in nursing.

In terms of workplace setting, 686.000 (40%) care workers were employed in hospitals, 506.000 (30%) in inpatient care (including full and partial inpatient care), and 280.000 (17%) in outpatient care, totalling 1.500.000. The rest of 200.000 are most likely employed through agencies and not directly by care providers. Out of the 1.5 million employed in the three workplace settings, nursing professionals are most prevalent, with 79% (541.940 out of 686.000) working in hospitals, 49% (247.940 out of 506.000) in inpatient care, and 55% in outpatient care (154.000 out of 280.000). In the same order, nursing assistants make up 11% (hospitals) (75.460), 47% (inpatient care) (237.820), and 39% (outpatient care) (109.200) of the nursing workforce, while health professionals in nursing make up only 10% (68.600), 4% (20.240), and 6% (16.800) of the nursing workforce, respectively.

2.2.2 Unemployment

According to the BA report,[40] the number of unemployed nursing staff has been declining over the longer term, and the Corona pandemic-related increase in unemployment has been below average. The unemployment rate in nursing occupations (2.6%) in 2021 was significantly lower than the rate across all occupations (about 5.5%). On average, 46.000 nursing staff were registered as unemployed in Germany in 2021, compared to 42.000 in 2017, 40.000 in 2018, 40.000 in 2019, and 42.000 in 2020.

[38] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[39] For an explanation of the different numbers of care workers, see 1.2.

[40] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

Unemployment particularly affects nurses who are looking for a job at the assistant level. For instance, in 2021 out of 46.000 registered unemployed nursing staff, 37.000 (81%) were nursing assistants against an average of 7.000 (16%) nursing professionals and 1.000 (3%) of health professionals in nursing. This ratio has not significantly changed in the past ten years. Two-thirds of unemployed nursing assistants do not have any completed vocational training (25,000), 8,000 have training outside their field, and only 4,000 have completed training in nursing.

Considering long-term unemployment among nursing staff, in 2016 the share of long-term unemployed among all unemployed nursing staff was 30% (37% in the whole labour market); it fell to 25% in 2020 (30% in the whole labour market). Of the unemployed nursing professionals, only 15% were long-term unemployed. Over the course of the Corona pandemic, however, there was a marked increase in long-term unemployment—as across all occupations. After an increase of seven percentage points, the share of long-term unemployed nursing staff averaged 32% in 2021, still seven percentage points lower than across all occupations (39%). The reason for this is likely to be the Corona pandemic-related restricted job filling processes that affected other professions more.

In 2021, nursing staff were unemployed for an average of 202 days, 68 days less than all unemployed persons (270 days) in the overall German labour market. The unemployment period for nursing professionals was on average 128 days, while for nursing assistants it was 226 days. Unemployment thus primarily affects nursing assistants without a finished nursing qualification. By contrast, nursing professionals and nursing assistants who have completed nursing assistant training are generally much less likely to be affected by unemployment or can end it within a short period of time.

Against the backdrop of growing demand for nursing staff in recent years, an average of 36.000 vacancies for nursing staff were registered at the Federal Employment Agency in 2021. The number and proportion of unemployed persons for jobs in this area (46.000) considerably exceeded the number of vacancies reported (36.000 or 80%). The clear majority of job offers were directed at nursing professionals (24.000). Only a good quarter of the job offers were directed at unemployed persons with an assistant (9.000) and 7% to the health professionals in nursing (3.000). There are only 31 unemployed nursing professionals compared with 100 registered vacancies for nursing professionals. In the case of nursing assistants, on the other hand, the picture is quite different: Here, the number of unemployed nursing assistants outweighs the number of jobs, and there are 405 unemployed compared to 100 registered jobs.

Half of the nursing vacancies registered at the Federal Employment Agency in 2021 were offered by inpatient (25%) and outpatient care facilities (25%). 12% of all nursing jobs reported as vacant to the Federal Employment Agency were available in hospitals. The proportion of vacancies reported by temporary employment agencies was at 24%.

2.2.3 Demographics

According to the BA report, nursing occupations are predominantly carried out by women. While there were more men (54%) than women (46%) in the German labour market as a whole, 83% of employees in the care sector were women, with only 17% men. Given that more women (83%) than men take nursing professions, the unemployment rate is higher among women in these professions. While in 2016, women composed 80% (45% in the entire labour market) of all registered unemployed nursing staff, their percentage slightly fell to 78% in 2021 (44% in the entire labour market).

The BA report further indicates that around 66% of nursing staff is younger than 50, and the average for all employees in the German labour market as a whole is only slightly lower (64%). Even beyond 50, there is no difference in the age distribution, and the share of employees who have passed the age of 60 is at about the same amount of 9% in the care sector and in employment in general. There is only a noticeable difference in the proportion of nurses under 25, which at 13% in 2021 was significantly higher than across all occupations (10%). The proportion of employees with dual vocational training is above average in nursing, while that of university graduates is below average—the BA report does not provide any figures. Unemployed nurses are younger on average than the unemployed in the whole labour market. In 2021, the proportion of unemployed nurses younger than 50 was 78%, compared with only 66% across all occupations.

To alleviate the shortage of skilled workers, the care sector is increasingly relying on foreign workers, even though the language barrier and professional recognition are major hurdles in some cases. All of this is reflected in a growing proportion of employees without German citizenship. While the proportion of foreigners among employed care workers was still a good 7% in 2016, it rose to a good 13% by 2021 (+108.000 employees to 218.000) and to 16% (270.460) by March 2023.[41] This means that the proportion of foreigners in the care sector is roughly on a par with the German labour market as a whole (for live-in workers, see 2.3.1.).

By residency status, third-country nationals make up the majority of foreigners working as nursing staff with 120.000, followed by EU citizens with 88.000, and asylum seekers with about 16.000. The number of asylum seekers in the care sector increased significantly after 2015 (when only 2.000 asylum seekers were employed in the care sector); in this year the number of asylum seekers increased sharply (so-called "refugee crises") (in 2015 there were only). The top five countries of origin of foreign nursing staff employed in Germany have not changed between 2016 and 2021: Most foreign care workers came from Poland, Bosnia and Herzegovina, Turkey, Romania, and Croatia. Foreigners constituted 20% registered as unemployed nursing staff in 2016 and rose to 28% in 2021 (13.000;

[41] The figures come from the requested statistical evaluation of the BA.

33.000 unemployed German nationals)—one third (around 4.333) came from one of the eight main countries of origin of the refugees.

There is a difference between Germans and foreigners in the level of their professional training working in the care sector: while almost two-thirds of employed Germans are nursing professionals, the figure for foreign employees is half.

2.3 Domestic and Live-In Work

In this report, we refer to domestic care work provided by workers who temporarily live in a private household where they work as "live-in-work." The term refers to the coincidence of place of work and place of residence, which often results in the central problem of live-in work: the excessive working hours. Although live-in workers (live-ins) are often expected to be available almost 24 hours a day, seven days a week, their contracts as well as the law limit their working time, which makes the term "24-hours-care" misleading.[42]

It can be assumed that the majority of live-ins work in elderly care. Live-in usually take on domestic (e.g. housekeeping) and basic care activities in private households. In addition to on-call services, their tasks range from physical and psychosocial support in everyday life to occupation and cognitive activation as well as household management to basic and (contrary to legal regulations) sometimes even treatment care.

Due to the prevalence of the home-based long-term care in Germany (80%)[43] and the resulting need for home care workers, live-ins came to form, unintentionally, what the research and consulting organisation Minor calls a fourth pillar[44] of the German care system, as the current supply of outpatient care does not meet the demand.[45]

[42] Bernhard Emunds und Eva Kocher, "Modelle von Live-in Care: Rechtswissenschaftliche und sozialethische Vorschläge zur Weiterentwicklung einer personenbezogenen Dienstleistung" *WSI-Mitteilungen* (2022): 407; Bernhard Emunds et al., "Gute Arbeit für Live-In-Care: Gestaltungsoptionen für Praxis und Politik". *NBI-Positionen* 2 (2021), <https://nbi.sankt-georgen.de/blog/2021/policy-paper-zur-weiterentwicklung-von-live-in-care-gute-arbeit-fuer-live-in-care-gestaltungsoptionen-fuer-praxis-und-politik> (Accessed October 9, 2023).

[43] Statistisches Bundesamt, "Bevölkerung - Mehr Pflegebedürftige" (2023) <https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/Hintergruende-Auswirkungen/demografie-pflege.html> (Accessed October 10, 2023

[44] First pillar are family members, followed by outpatient (second pillar) and inpatient care (third pillar) (Minor – Projektkontor für Bildung und Forschung, "Die „vierte Säule" der Pflege: Aktuelle Bedarfe und Erwartungen von 24-Stunden-Betreuungskräften (Live- Ins) in Bezug auf ihre Arbeit in Deutschland" (2023), <https://minor-kontor.de/die-vierte-saeule-der-pflege/> (Accessed October 10, 2023

[45] Minor – Projektkontor für Bildung und Forschung, "Tragende Säule bröckelnder Versorgungssicherheit ohne regulären Untergrund: Situation und zukünftige Entwicklung in der ambulanten Pflege und die Perspektive von Betreuerinnen aus der 24-Stunden-Betreuung (Live-Ins) auf die Pflegesituation vor Ort" (2022) <https://minor-kontor.de/wp-content/

2.3.1 Market Incidence of Domestic Care Work

The exact number of live-in workers in Germany is hard to determine. On the one hand, because home care is not financed (directly) from long-term care insurance benefits (see 2.1.4.), and on the other hand, because of the high number of undeclared and irregular employment of live-in workers, most of whom commute from abroad. Estimates range from about 160.000 German households employing migrant caregivers to about 500,000 migrant caregivers.[46] Similarly, estimates from non-governmental organizations suggest that between 300,000 and 700,000 live-in workers were working in Germany in 2020/2021.[47]

Slightly more than 90% are supposed to be female. Their average age is around 50 years old.[48] As a rule, they do not have their own household in Germany. They usually work for two to three months in a private household in Germany and then return to their country of origin for several weeks (commuter/pendulum/circular migration).[49] The majority commute from Central and Eastern EU countries, especially Poland (almost 50%),[50] and about 133,000 come from non-EU countries, mainly from Southern and Eastern European countries (Serbia, Ukraine, etc.).[51]

Most of the live-in-workers are posted by agencies from other EU countries.[52] According to research by Minor, in 2007, there were 28 agencies in "24-hour care" employment in Germany; in 2017, there were already around 400 agencies, and in February 2022, the online comparison portal "24h-Pflege-Check"

uploads/2022/10/FE_WP_Tragende-Saeule-broeckelnder-Versorgungssicherheit-ohne-regulaeren-Untergrund_22-10-20.pdf> (Accessed October 10, 2023

46 Eva Kocher und Nastazja Potocka-Sionek, "Rechtsfragen beim Einsatz polnischer Betreuungskräfte (Live-ins) in Deutschland durch Vermittlung polnischer Agenturen" (Berlin, 2022) <https://www.eu-gleichbehandlungsstelle.de/eugs-de/analysen/rechtsfragen-beim-einsatz-polnischer-betreuungskraefte-live-ins-in-deutschland-durch-vermittlung-polnischer-agenturen-2124804> (Accessed October 10, 2023).

47 Greta Schabram und Nora Freitag, *Harte Arbeit, wenig Schutz: Osteuropäische Arbeitskräfte in der häuslichen Betreuung in Deutschland* (Berlin: Deutsches Institut für Menschenrechte / Minor – Projektkontor für Bildung und Forschung, 2022).

48 Schabram und Freitag, *Harte Arbeit, wenig Schutz.*

49 Schabram und Freitag, *Harte Arbeit, wenig Schutz*; Związkowa Alternatywa, "Badanie o polskich pracownikach opieki w Niemczech – niepokojące dane" (2021) <https://www.za.org.pl/badanie-o-polskich-pracownikach-opieki-w-niemczech-niepokojace-dane/> (Accessed October 9, 2023); Kocher E. and Potocka-Sionek N., "Rechtsfragen beim Einsatz polnischer Betreuungskräfte (Live-ins) in Deutschland durch Vermittlung polnischer Agenturen" (Berlin 2022) <https://www.eu-gleichbehandlungsstelle.de/eugs-de/analysen/rechtsfragen-beim-einsatz-polnischer-betreuungskraefte-live-ins-in-deutschland-durch-vermittlung-polnischer-agenturen-2124804> (Accessed October10, 2023).

50 Aranka V. Benazha et al. "Live-in-Care im Ländervergleich," in *Gute Sorge ohne gute Arbeit?: Live-in-Care in Deutschland, Österreich und der Schweiz,* hrsg. von Brigitte Aulenbacher, Helma Lutz, und Karin Schwiter (Weinem: Beltz Juventa, 2021), 50.

51 Schabram and Freitag, *Harte Arbeit, wenig Schutz,* 24.

52 Simone Habel, "Die neuen Akteure auf dem „grauen Markt"ff: Vermittlungsagenturen in der Live-In-Pflege," in Emunds et al. *Freiheit - Gleichheit - Selbstausbeutung.*

listed 784 German providers working together with providers from other EU countries who do the posting.[53]

2.3.2 Forms of Employment in Live-in-Work

It used to be common to summarize the possible contractual forms for live-in work as employment, self-employment, and posting of workers.[54] This categorising is however slightly misleading. Employment contracts and civil-law contracts (self-employment) are the only contractual forms available for this kind of work (see 4.1.). Agencies who are in most cases involved as intermediaries between household and live-in worker and which often post live-in workers to Germany from other EU-countries conclude or broker employment contracts or civil-law contracts (self-employment).[55]

Scholars who have assessed the typical live-in situation in employment law terms usually conclude that the typical live-in work relationship is one of employment or bogus self-employment.[56]

The transnational character of this employment entails the question which law is applicable to the employment relationship. This concerns both labour law and social security law (EU social security coordination regulations 883/2004 and 987/2009). Many agencies rely on posting rules, although in practice the live-in worker only ever works in Germany. Agencies tend to obscure the fact that the contract is concluded for work in Germany by contractually establishing additional and minor service obligations in the host country (such as recruiting of co-workers). Closer looks show that these are mostly just on paper, leading to what one could call bogus posting.[57]

2.3.3 Labour Law Regulation for Live-in-Workers

In the case of a posting, the employment relationship is generally governed by the law of the country of origin (Art. 8 Rome I Regulation). In addition, the

[53] Schabram and Freitag, *Harte Arbeit, wenig Schutz.*

[54] Barbara Bucher, *Rechtliche Ausgestaltung der 24-h-Betreuung durch ausländische Pflegekräfte in deutschen Privathaushalten* (Baden-Baden: Nomos, 2018).

[55] Benazha et al., "Live-in-Care im Ländervergleich"; Eva Kocher and Nastazja Potocka-Sionek, "Rechtsfragen beim Einsatz polnischer Betreuungskräfte (Live-ins) in Deutschland durch Vermittlung polnischer Agenturen" (Berlin, 2022) <https://www.eu-gleichbehandlungsstelle.de/eugs-de/analysen/rechtsfragen-beim-einsatz-polnischer-betreuungskraefte-live-ins-in-deutschland-durch-vermittlung-polnischer-agenturen-2124804> (Accessed October 10, 2023). For data on the incidence of employment/self-employment, see Kocher and Potocka-Sionek, "Rechtsfragen," 8 and Związkowa Alternatywa "Badanie o polskich".

[56] Gregor Thüsing, "Rechtskonforme Betreuung in den eigenen vier Wänden: Regelungen für die Betreuung in häuslicher Gemeinschaft (24-Stunden-Betreuung) de lege lata und de lege ferenda" (Bonn: Gutachten auf Anfrage des Bundesministeriums für Gesundheit, 2019); Emunds und Kocher, "Modelle von Live-in Care"; Kocher und Potocka-Sionek, "Rechtsfragen".

[57] Kocher und Potocka-Sionek, "Rechtsfragen".

posting of workers regulation superimposes another legal system by establishing the application of minimum standards of the host country. According to Sec. 2 AEntG (which implements the Posting of Workers Directive 96/71/EC in German law), most minimum standards under German law must be applied to the employment relationship—provided the workers can be classified as "employees" (Sec. 611a BGB) (see 4.1.).

There are no specific legal rules for this type of work in Germany. However, according to Sec. 1 (2) 1 Occupational Safety and Health Act (Arbeitsschutzgesetz, ArbSchG), domestic workers are excluded from health and safety law. Nevertheless, they are included in the Working Time Act (Arbeitszeitgesetz, ArbZG). In June 2021, the Federal Labour Court (Bundesarbeitsgericht, BAG) decided on the understanding of on-call work in these cases and held that most of the on-call time of the live-in-worker concerned had to be considered working time for which minimum wage had to be paid (BAG, decision of June 24, 2021 – 5 AZR 505/20).[58]

Sec. 10 (1) ArbZG allows for exceptions to the prohibition of work on Sundays in cases of "treatment, care and supervision of persons" (Sec. 10 (1) 3 ArbZG) or for activities "in the household" "insofar as the work" "cannot be performed on working days" (Sec. 10 (1) 4 ArbZG). There is a doctrinal debate as to the application of Sec. 18 (1) 3 ArbZG to live-in-work.[59] According to this provision, employees who live in a household with the persons entrusted to them and who raise, care for, or look after them autonomously, do not fall within the scope of working time protection. The prevailing expert opinion is that the exemption (that was created in view of SOS children's villages) does not apply to live-in employees in private households.[60] Moreover, an extension of the scope of application to live-

[58] Theresa Tschenker, "24 Stunden Arbeit - 24 Stunden Lohn: Besprechung zum Urteil des Bundesarbeitsgerichts vom 24. Juni 2021" *NZA* 26, 12 (2021): 641; A Bulgarian live-in, sued her employer - a Bulgarian care company - for payment of outstanding wages. She had been posted to Germany by this company in 2015 to work as a live-in, on a Bulgarian employment contract, which provided for remuneration of 950 euros for a weekly working time of 30 hours. After termination of the employment relationship at the end of September 2016, the live-in claimed in court that she had worked around the clock or, respectively, had been on standby beyond the agreed 30 hours per week. The employees are entitled to remuneration for fulltime work und on-call duty at least in the amount of the statutory minimum wage (Schabram und Freitag, *Harte Arbeit, wenig Schutz*, 37)

[59] Rudolf Herweck und Marianne Weg, ""24-Stunden-Pflege": Abschaffen oder neu gestalten?: Ein Beitrag zur aktuellen Diskussion," *NDV* (2022): 399; Eva Kocher E. und Scheiwe K., "Welche Regelungen sind für eine sozial verantwortliche Absicherung der häuslichen Betreuung erforderlich?: Eine Erwiderung auf den Beitrag von Herweck und Weg im NDV 8/2022," *NDV* (2022): 494.

[60] Kirsten Scheiwe, "Arbeitszeitregulierung für Beschäftigte in Privathaushalten – entgrenzte Arbeit, ungenügendes Recht?" in *(K)Eine Arbeit wie jede andere?: Die Regulierung von Arbeit im Privathaushalt*, hrsg. von Kirsten Scheiwe und Johanna Krawietz, Juristische Zeitgeschichte/ Abteilung 2 vol 20 (Berlin: De Gruyter, 2014); Kocher E., "Die Ungleichbehandlung von Hausangestellten in der 24-Stunden-Pflege gegenüber anderen Arbeitnehmerinnen und Arbeitnehmern – eine Frage des Verfassungsrechts," in Scheiwe und Krawietz, *(K)Eine Arbeit wie jede andere?*

in workers would be highly problematic from a constitutional point of view because the legislator has a constitutional mandate and obligation to protect health and safety even of "self-employed" persons working in strong power imbalances.[61]

In the event of labour law violations, live-ins can assert their rights before German labour courts (for posted workers, see Sec. 15 AEntG), but they encounter numerous hurdles. The landmark case of a Bulgarian live-in worker posted to Germany, which was decided by the German Federal Labour Court in June 2021 (see above BAG, decision of June 24, 2021 – 5 AZR 505/20), was supported and represented by the trade union organisation "Faire Mobilität". However, live-ins seem to prefer to enforce their rights in Polish courts, with little success.[62]

2.3.4 Impact of ILO Convention no. 189 on Domestic Workers

Germany ratified ILO Convention No. 189 on "Decent Work for Domestic Workers" in 2013; it became effective in September 2014.[63]

As a signatory to the Convention, Germany is subject to a regular review according to ILO rules which takes place every five years by the ILO's Committee of Experts for the Implementation of the Conventions and Recommendations (Sachverständigenausschuss für die Durchführung der Übereinkommen und Empfehlungen). In the first review in 2020, the committee called on Germany to outline how domestic workers are informed about their rights. In addition, the German government has to outline how domestic workers are protected from abuse, harassment, and violence in the workplace and how they are informed of the protections in place. It invites the German government to consider incorporating definitions of domestic work and domestic worker into national legislation or collective agreements that take into account the specific characteristics of domestic work and domestic workers. The Committee also called on the German government to provide information for the upcoming State Report on the fact that measures have been taken to include the workers mentioned in Sec. 18 (3) ArbZG within the scope of protection of ILO Convention No. 189. The number and nature of related complaints should be recorded and reported to the Committee (Domestic Workers Convention, 2011 [No. 189] - Germany, Direct Request' (adopted 2020, published 109th ILC session [2021]).

2.4 Current Debates

Current debates in the German public concerning the care sector focus on the labour market shortages.[64] Even debates about working conditions tend to

[61] Kocher, "Die Ungleichbehandlung".

[62] Kocher und Potocka-Sionek, "Rechtsfragen".

[63] See Eva Kocher, "Hausangestellte im deutschen Arbeitsrecht: Ratifikation der ILO-Konvention 189," *NZA* (2013): 929, on the demands the Convention makes on German labour law.

[64] Clarissa Rudolph und Katja Schmidt, "Vergeschlechtlichung und Interessenpolitik in Care-Berufen - das Beispiel Pflege," in *Arbeitskonflikte sind Geschlechterkämpfe: Sozialwissenschaftliche*

be mostly looking for the reasons for the lack of nursing staff. In 2017, the nurse-to-patient-ratio was calculated as 1:13.[65] For the future, the BA estimates that 150.000 additional nursing staff will be needed in Germany by 2025;[66] the Federal Institute for Vocational Education and Training (Bundesinstitut für Berufsbildung, BIBB) estimates that there will be an additional need for up to 270,000 nursing and healthcare staff by 2035; other experts predict that approximately 500,000 more nurses will be needed by 2030.[67] After all, there seems to be a wide consensus that investment is needed in that respect. According to the representative survey commissioned by the Macroeconomic Policy Institute (Institut für Makroökonomie und Konjunkturforschung, IMK), a broad majority of people in Germany favour public investment in the coming years—a good 86% of respondents are in favour of "strongly" or "somewhat" increasing investments and staffing ratios in the health and care sector.[68]

However, recognizing the social value of care work requires systemic change at many levels. For example, the Commission of Experts on the Second Report on Gender Equality presented a broad policy concept in 2018,[69] covering both the redesign of occupational profiles, of education, training, and career advancement opportunities, as well as the redesign of demand and funding structures, i.e. social care policies. Policy debates tend to focus on occupational profiles, training, actors, as well as advancements in pay and working conditions. In order to guarantee the sufficient staffing levels, some legislative and collective agreement changes have been achieved in the past years. The Nursing Care Strengthening Act II (Pflegestärkungsgesetz II, PSG II) amended the Sec. 113 SGB XI and ordered the development of a new staffing system by 2020. In addition, strikes at the Charité University Hospital in Berlin have led to an in-house collective agreement (TV Gesundheitsfachberufe) that sets lower limits for the staffing

und historische Perspektiven, hrsg. von Ingrid Artus et al. (Westfälisches Dampfboot, 2020; Arbeit - Demokratie - Geschlecht Band 27).

[65] Christina Schildmann und Dorothea Voss, *Aufwertung von Sozialen Dienstleistungen: Warum sie notwendig ist und welche Stolpersteine noch auf dem Weg liegen* (Düsseldorf 2018). Forschungsförderung Report 4 <https://www.boeckler.de/pdf/p_fofoe_report_004_2018.pdf> (Accessed October 9, 2023).

[66] Bundesagentur für Arbeit, "Programm Triple Win - Pflegekräfte," <https://www.arbeitsagentur.de/vor-ort/zav/projects-programs/health-and-care/triple-win/das-programm> (Accessed September 2, 2023).

[67] Heinz Rothgang, Rolf Müller und Reiner Unger, "Themenreport „Pflege 2030". Was ist zu erwarten – was ist zu tun?" (2012) <https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/GP_Themenreport_Pflege_2030.pdf> (Accessed October 9, 2023).

[68] Jan Behringer, Sebastian Dullien und Christoph Paetz, "Überwältigende Mehrheit der Deutschen will kräftige Investitionsausweitung," *IMK Policy Brief* 112 (November 2021), <https://www.boeckler.de/fpdf/HBS-008181/p_imk_pb_112_2021.pdf> (Accessed October 9, 2023).

[69] Bundesregierung, "Zweiter Gleichstellungsbericht".

of shifts and departments; similar collective agreements have been concluded for some other hospitals (see 6.2.3.).

As for education and training, the PflBG was a major and important reform. Its regulatory model, however, remains disputed. In particular, the difference of payments between the hospital sector and elderly care has been noted as a problem, generalistic training enabling nurses to change more easily between these professions.[70] While the number of people starting nursing training has actually increased in the past years, it has fallen in 2022—50.494 in 2017, 51.879 in 2018, 56.118 in 2019, 56.259 in 2021, and 52.299 in 2022.[71] Also, a strengthening of academic education via the Nursing Studies Strengthening Act (Pflegestudiumstärkungsgesetz, PflStudStG) has been suggested (see 6.4.).[72]

As far as pay is considered, at least in elderly care the mainstream German employment model based on comprehensive sectorial collective agreements has never taken hold.[73] As even sectorial minimum pay relies on collective bargaining, specific models had to be developed for the care sector, due to the fragmented provider structure, and the prevalence of church institutions that won't subscribe to collective bargaining. Although an initiative to have a new collective agreement for the sector be declared generally applicable failed in 2021 (see 3.2.3), the debate is still on-going. It has been defended that the specific structure of wage bargaining in the care sector should be accepted as a reason for interpreting Sec. 5 TVG in a way that makes the declaration of general applicability possible notwithstanding the presence of several parallel relevant wage systems in the sector.[74] In this respect, in May 2021 several federal states proposed a bill[75] on changes to the TVG (Entwurf eines Gesetzes zur Änderung des Tarifvertragsgesetzes)—unsuccessfully, only the SPD-governed states

[70] Bundesregierung, "Zweiter Gleichstellungsbericht"; ver.di, *Steigender Pflegemindestlohn löst Grundproblem in der Altenpflege nicht* (2022).

[71] Bundesministerium für Familie, Senioren, Frauen und Jugend, "Die Ausbildungssituation in der Pflege: Aussagen der AG Statistik zur Ausbildungssituation in der Pflege" (Zwischenbericht, September 2022), <https://www.pflegeausbildung.net/fileadmin/de.altenpflegeausbildung/content.de/user_upload/Zwischenbericht_AG_Statistik.pdf> (Accessed October 10, 2023).

[72] Wissenschaftsrat, "Empfehlungen zu hochschulischen Qualifikationen für das Gesundheitswesen" (Berlin 13 June 2021) Drs. 24 11-12 <https://www.wissenschaftsrat.de/download/archiv/2411-12.pdf?__blob=publicationFile&v=5> (Accessed September 4, 2023).

[73] Diana Auth, "Ökonomisierung der Pflege – Formalisierung und Prekarisierung von Pflegearbeit" (2013). WSI-MItteilungen 6.

[74] Thomas Beyer, "Bestrebungen für einen allgemein-verbindlichen Tarifvertrag „Soziales" – Ein Zwischenbericht," in *Arbeitsverhältnisse in der Kirche - Anspruch und Wirklichkeit?: Dokumentation der Vorträge der 18. Fachtagung zum kirchlichen Arbeitsrecht*, hrsg. von Renate Oxenknecht-Witzsch (Ketteler-Verl., 2015; Eichstätter Schriften zum kirchlichen Arbeitsrecht 1), 62.

[75] Länder Bremen, Berlin, Thüringen, "Entwurf eines Gesetzes zur Änderung des Tarifvertragsgesetzes" (BR-Drs. 317/21).

Bremen, Berlin, Thüringen supported the bill, Hamburg abstaining, all other states voting against).

In any case, the United Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di) questions if "considerable wage increases" will be an effective solution for the basic problems. In particular in nursing care for the elderly, more is needed to make this nursing profession attractive, or stop the migration of nursing professionals to hospitals.[76] The reasons why people abandon nursing training (according to various estimates, the dropout rate is between 20 and 30% (28% in 2021)[77] were outlined in a survey of around 3,000 nursing trainees conducted by ver.di:[78] fewer than 43% are satisfied with their training, citing high time pressure (62%), lack of work-life balance (48%) and lack of breaks (43%). More than 58% say they always or often have problems taking time off, and more than 43% of trainees report that they are rarely or never introduced to their job duties by practice supervisors. Another recent survey (2022) entitled "I will become a nurse again if…", sponsored by the trade union-affiliated Hans Böckler Foundation (Hans Böckler Stiftung, HBS) and conducted in cooperation with the Bremen's state chamber of labour (Arbeitnehmerkammer Bremen), included a survey of nearly 13.000 nurses who had left the profession or were working part-time. The study concluded that better working conditions and higher salaries would encourage a return to the nursing profession (in the case of those who had previously left the profession) or an increase in working hours (in the case of part-time workers), even more so in long-term care (elderly care) than in hospitals. It estimates that the German care sector would benefit from 300,000 additional care workers in this case.[79] On the other hand, a survey of 5.500 nurses from hospitals and long-term care conducted by the Federal Ministry of Health (Bundesministerium für Gesundheit) adds that the designing of future policies in the care sector must take into account the family situation of nurses next to their salaries and working conditions.[80]

The bpa-Argeitgeberverband (see 3.2.1.) is of the opinion that the average salaries of full-time nursing professionals are high enough compared to the av-

[76] ver.di, *Steigender Pflegemindestlohn löst*.

[77] Daniel Garcia González, und Miriam Peters, *Ausbildungs- und Studienabbrüche in der Pflege – ein integratives Review* (Bonn, 2021).

[78] ver.di, "Ausbildungsreport Pflegeberufe 2021" (2022), <https://gesundheit-soziales-bildung.verdi.de/themen/reform-der-pflegeausbildung/++co++be127818-4a1a-11ed-8d35-001a4a160111> (Accessed October 9, 2023).

[79] Jennie Auffenberg et al., "„Ich pflege wieder, wenn …": Potenzialanalyse zur Berufsrückkehr und Arbeitszeitaufstockung von Pflegefachkräften" (2022), <https://www.arbeitnehmerkammer.de/fileadmin/user_upload/Downloads/Politik/Rente_Gesundheit_Pflege/Bundesweite_Studie_Ich_pflege_wieder_wenn_Langfassung.pdf> (Accessed October 10, 2023).

[80] Bundesministerium für Gesundheit, "Pflegearbeitsplatz mit Zukunft: Die Ergebnisse der Studie zur Arbeitsplatzsituation in der Akut- und Langzeitpflege auf einen Blick" (May 2023), <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/K/Konzertierte_Aktion_Pflege/BMG_Ergebnisse_der_zweiteiligen_Studie_Arbeitsplatzsituation_bf.pdf> (Accessed October 10, 2023).

erage salaries in the German labour market and other framework conditions and working conditions must be addressed politically in order to increase the attractiveness of the nursing profession (e.g. making working hours more flexible to improve work-life balance).

The recruitment of migrants is another important policy issue, although only short of 5,000 care professionals have been recruited by special placement schemes so far, e.g. "Triple Win Programme" (see numbers given in WP 3 report).[81]

At the same time, the live-in-sector has become more and more an object of public debate, as many German household rely on Eastern European short-term migrants for private elderly care, knowing the working conditions are extremely precarious. In particular, the Federal Labour Court's judgment on the need to remunerate on-call time has sparked discussions. The coalition agreement for the 2021–2025 federal government contains an explicit intention to create "legal certainty for 24-h-care".[82] However, while many experts call for a better funding of the care system in general and clear rules that would guarantee employment rights and decent work for live-in-workers, [83] others rather ponder following the Austrian model of "legalising" bogus self-employment[84] or enabling 24-h-work.[85]

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

3.1 Collective Bargaining System in General

Both the trade union system and the works council system enable the conclusion of collective agreements that regulate individual employment contracts with normative effect. As a consequence of the dual system of representation (see 1.1.2.), there are two kinds of collective agreements in German labour law: 1) agreements between trade unions and single employers, or employers' asso-

[81] Bundesagentur für Arbeit, "Programm Triple Win - Pflegekräfte".

[82] SPD, Bündnis 90/Die Grünen und FDP, "Koalitionsvertrag 2021-2025: Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit" (2021).

[83] Emunds und Kocher, "Modelle von Live-in Care"; Verena Rossow und Simone Leiber, "'Mehr Fortschritt wagen' auch im Feld der Live-in-Pflege?" *DIFIS Impuls* 1 (2022); Eva Kocher, "Arbeitsverhältnisse für transnationale Live-in-Care: Handlungsempfehlungen aus arbeitsrechtlicher Sicht," *DIFIS Impuls* 12 (2022), <https://difis.org/institut/publikationen/publikation/34>.

[84] Verband für häusliche Betreuung und Pflege, "Betreuung in häuslicher Gemeinschaft (BihG, sog. 24-Stunden-Pflege): Professionelle Memorandum Dienstleistung für Menschen mit umfassendem Hilfebedarf" (16 October 2020) <https://www.vhbp.de/fileadmin/user_upload/201016_VHBP_-_Memorandum_BihG_see.pdf> In contrast: Theresa Tschenker, "Regulierungsperspektiven nach den Urteilen zur Vergütung in der Live-In-Pflege - dient Österreich als Vorbild?" *AuR* (2022): 155.

[85] Herweck und Weg "24-Stunden-Pflege"; in contrast: Kocher und Scheiwe, "Welche Regelungen".

ciations (TV, collective agreements in the strict sense); 2) agreements between employers and works councils (Betriebsvereinbarungen, works agreements).

3.1.1 Trade Union Rights and Autonomy ff Collective Bargaining

Freedom of association and collective bargaining autonomy are guaranteed in Art. 9 (3) GG. Freedom of association on the one hand establishes the individual freedom of association of workers, on the other hand it also grants rights for coalitions themselves, including both trade unions and employers' associations.[86] These rights include "collective bargaining autonomy" of social partners (Tarifautonomie) (see above 1.1.2.). It also guarantees the right to strike and collective action (without expressly mentioning it).

Trade unions must be formed freely and voluntarily with the purpose of improving working conditions, including engaging in labour disputes. They are independent of third parties in terms of personnel, financial, and organizational matters. In order to be able to take part in collective bargaining, they must also own some "social power" (above 1.1.2.).

The TVG regulates collective bargaining which can take place on the sectorial level between trade unions and employer associations, or on company level between trade unions and individual employers/firms. The resulting collective agreement (TV) governs the rights and obligations of the parties to the TV (Sec. 1 (1) TVG) and the employment contracts of their members. According to Sec. 4 (1) TVG, normative clauses only cover employment contracts between trade union members and an employer who is a member of the employer's association that signed the respective collective agreement (or has signed the collective agreement himself). However, each employer may individually decide to make standards of collective agreements binding on the level of the individual employment contract by means of a reference clause.

Collective agreements take precedence over employment contracts and works agreements (Secs. 77, 87 BetrVG).[87] While collective agreements are often time limited, their legal provisions continue to apply until they are replaced by another agreement (Sec. 4 (5) TVG; similarly Sec. 77 (6) BetrVG).

3.1.2 Mechanisms for the Extension and General Applicability of Collective Agreements

Collective bargaining standards can be made binding within their scope by a declaration of general applicability which binds employers not bound by collective agreements and their employees (so-called "outsiders"). The following instruments exist in order to extend the normative effect of a collective agreement to outsiders:

[86] Berg, Kocher und Schumann, *Tarifvertragsgesetz und Arbeitskampfrecht*, Sec. 1 Rn. 69a.

[87] Berg, Kocher und Schumann, *Tarifvertragsgesetz und Arbeitskampfrecht*, Sec. 1 Rn. 81.

a) Under Sec. 5 TVG the Federal Ministry of Labour and Social Affairs may declare a collective agreement to be generally binding (Allgemeinverbindlicherklärung) at the joint request of the parties to the collective agreement if the declaration of general applicability appears to be in the public interest. A committee consisting of three representatives of each of the central organizations of employers and employees on federal level ("Tarifausschuss", collective bargaining committee) has to agree. Due to changes in the general policy of the Confederation of German Employers (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA), it used its de facto veto position in this committee since the 2000s; few agreements have been declared generally binding since.[88]
b) To compensate for the weaknesses of the veto position of social partners in the Tarifausschuss, Secs. 7, 7a AEntG enable the Federal Ministry of Labour and Social Affairs to make the legal standards of a collective agreement binding for all employers and employees within the scope of the collective agreement by means of a statutory order/Ordinance. Here, too, the prerequisite is a joint application by the parties to the collective agreement. The collective bargaining commission has to be consulted, but its agreement is not required. The collective agreement must have nationwide scope to be eligible for this instrument. This instrument only allows for the extension of "minimum standards", in contrast to Sec. 5 TVG, which also allows for the general applicability of "adequate" standards.
c) For trade unions and employers' associations with members who are active in the temporary employment sector and who have agreed on minimum hourly wages in the area of temporary employment that are subject to nationwide collective bargaining agreements, Sec. 3a AÜG provides for a special regulation. Procedures are similar to those of the AEntG.

3.2 Collective Bargaining System in the Care Sector

3.2.1 Social Partners and Other Actors in the Care Sector

Ver.di is the largest trade union in the care sector, with a high level of collective bargaining activity and all together 1.955.080 members.[89] It is associated to the DGB (which in turn is a member of ETUC). ver.di also represents employees in the following sectors: transport, public services, retail, finance, post, telecommunications, the graphical and media sector. The trade union komba represents employees on the municipal and regional levels and is a sectorial organisation of the association "dbb beamtenbund und tarifunion"; it is of minor importance in the care sector. The newly (2020) founded Bochumer Bund specialises in professional carer workers.[90] The trade union Public Service and Ser-

[88] Berg, Kocher und Schumann, *Tarifvertragsgesetz und Arbeitskampfrecht*, Sec. 5 TVG Rn. 28.

[89] (2022) 1 ABR 24/21 (BAG).

[90] Bochumer Bund, "Wer wir sind," <https://www.bochumerbund.de/wer-wir-sind/> (Accessed September 21, 2023).

vices Union (Gewerkschaft Öffentlicher Dienst und Dienstleistungen, GÖD), a member of the Christian Trade Union Federation of Germany (Christlicher Gewerkschaftsbund Deutschlands, CGB), also organises workers in the care sector. Both, the dbb and the CGB, are members of the Confédération Européenne des Syndicats Indépendants (CESI), but not of the ETUC.

The unions do not publish their respective degree of organization to avoid drawing conclusions about their concrete ability to action. Only estimates are possible. Ver.di is estimated to have an organisation rate in the care sector of approx. 9–12% (2017).[91] Ver.di is also committed to the interests of care workers through its trade union organization "Berliner Krankenhausbewegung" (Berlin Hospital Movement). The low level of organization is the main challenge of the trade unions in the care sector. For example, workers in metal industry are much more organized, with an average level of organization of 21.9%.[92]

When ver.di concluded a collective agreement on minimum conditions with an employers' association in 2021 and requested that it be declared generally binding (see 3.2.3.), the Arbeitgeberverband Pflege e. V. (Employer association for care work) questioned whether ver.di had sufficient "social power" in the care sector to enter into a collective agreement, i.e. whether ver.di was a "trade union" at all in this sector. However, the BAG ruled that social power and thus the ability to conclude collective agreements is not sector-specific, but must be established for the union as a whole.[93] Therefore, ver.di is legally considered to be a trade union for all its members and for all the sectors it covers, including the care sector. On the other hand, the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) in 1964 recognized an organization of catholic domestic workers as a party to a collective bargaining agreement, even though the organization had expressly declared that it neither wanted nor was able to take industrial action. The decision assumed that the "natural antagonisms that otherwise exist between employers and employees" would not work in this sector.[94]

Representation of employers in the care sector is highly fragmented. Details on the provider structure can be found under 2.1.1. The three largest employers' associations in the care sector are: Arbeitgeberverband Pflege e.V. (AGVP), bpa Arbeitgeberverband, and Vereinigung der kommunalen Arbeitgeberverbände

[91] Manfred Schroeder, "Altenpflege zwischen Staatsorientierung, Markt und Selbstorganisation," *WSI-Mitteilungen* (2017): 189.

[92] GESIS - Leibniz-Institut für Sozialwissenschaften, "Allgemeine Bevölkerungsumfrage der Sozialwissenschaften ALLBUS 2021" (2022).

[93] (2022) 1 ABR 24/21 (BAG).

[94] (1964) 1 BvR 79/62 (BVerfG); for criticism of the decision see: Eva Kocher, "Tariffähigkeit ohne Streikbereitschaft?: Funktionale Alternativen zur Arbeitskampfbereitschaft im Fall von Hausangestelltenvereinigungen," in *Festschrift für Otto Ernst Kempen,* hrsg. von Jens Schubert (Baden-Baden: Nomos, 2013); Eva Kocher, Laura Krüger und Clemens Sudhof, "Streikrecht in der Kirche im Spannungsfeld zwischen Koalitionsfreiheit und kirchlichem Selbstbestimmungsrecht: Ein goldener Mittelweg zwischen Kooperation und Konflikt?" *NZA* (2014): 880, 887.

(VKA). AGVP has published figures according to which it represents 955 member companies with 80,000 employees. Also bpa Arbeitgeberverband has published figures: It represents 6000 member companies with 230,000 employees. An association of providers of elderly care (Bundesvereinigung Arbeitgeber in der Pflegebranche (BVAP)) has been formed exclusively with the aim to establish a representative collective agreement in elderly care that could in the future be declared generally applicable (see 3.2.3.).

Furthermore, the interests of care workers are represented by non-governmental organisations. The following NGOs are committed to care workers:

Table 2 – NGOs committed to care workers.

Official Name	Translation	Counselling	Political organising
Arbeit und Leben – Migration und gute Arbeit, Programm Faire Integration	Work and life - migration and good work, programme fair integration	x	x
Care Revolution Netzwerk	Care Revolution Network		x
Berliner Bündnis Gesundheit statt Profite	Berlin Alliance Health instead of Profits		x
Antidiskriminierungsverband Deutschland	Anti-Discrimination Association Germany	x	x
Bundesarbeitsgemeinschaft der kommunalen Frauenbüros und Gleichstellungsstellen (BAG)	Federal working group of municipal women's offices and equality bodies		x
Deutscher Pflegerat	German Nursing Council		x

The composition of the nursing commission (Sec. 12 AEntG, 8 members) gives an idea of the importance of these organisations in the care sector (excluding hospitals). Represented are on the employees' side are one representative each of Caritas and Diakonie employees, two representatives of ver.di, and on the employers' side, one representative each of Caritas and Diakonie, one representative of bpa-Argeitgeberverband, and one representative for a coalition of DRK, VKA, and AGVP.

Nursing chambers (Pflegekammern), public institutions with an obligatory membership of professional care workers, are other public actors that have been established in the federal states Rheinland-Pfalz (2016) and Nordrhein-Westfalen (2022); Baden-Württemberg is in the planning phase. It is an institution for the professional self-governed representation that is meant to contribute to the development and distribution of quality standards in care work. A Federal Nursing chamber which represents the existing nursing chambers on state level, exists since 2019. The nursing chambers in Schleswig-Holstein and Nieder-

sachsen were abolished in 2021.[95] In both states a clear majority of the members voted for the dissolution of the chambers (70.6%[96] in Niedersachsen, 91,8%[97] in Schleswig-Holstein).

3.2.2 Organisation of Collective Bargaining

Because of different statuses of service providers, the care sector is highly fragmented when it comes to setting collective working conditions. Accordingly, working conditions and wages are heterogeneous, both in comparisons between branches and between providers/companies.

In the public sector, mainly the TVöD applies, differentiated according to the public services on the federal and municipal levels level (TVöD-B and TVöD-K) (see 5.2). Also, in public sector collective bargaining, there are still some differences between the "Western" collective agreement area (that covers former West Germany) in contrast to the "Eastern" collective agreement area (that covers former East Germany.

The sector of private non-profit organisations ("freie Wohlfahrtspflege"), with the exception of church organisations, is also mainly covered by collective agreements, such as the company agreement for the German Red Cross (TVÜ-DRK), for AWO (TV AWO), or for some hospitals (TV GS (Gesundheitsschutz und Demographie – health protection and demography). For the large number of small non-profit institutions organised in the Paritätische Wohlfahrtsverband (see 2.1.1.), the organisation proposes general conditions for employment contracts (Arbeitsvertragsbedingungen, AVB).[98] Many non-profit and private-sector organizations have long been modelling their employment contracts on the collective agreements of the public sector, mostly by means of references in their employment contracts.

As far as the Christian churches and their organizations (Diakonie and Caritas) are concerned, many of them reject the conclusion of collective agreements in the sense of the TVG ("Second Way"). Instead, with reference to the church autonomy constitutionally guaranteed (see 2.1.4.), they establish working conditions based on church law, through their own labour law commissions (Arbeitsrechtliche Kommissionen). These commissions (in which trade unions are

[95] Alexandra Heeser, "Pflegekammern: Wie sich die Pflege in Deutschland organisiert," 27, 10 (2022): 70.

[96] Niedersächsische Landesregierung, "Presseinformation: "70,6 Prozent stimmen gegen Fortbestand der Pflegekammer"" (7 September 2020), <https://www.ms.niedersachsen.de/download/158633/Pflegekammer_Presseinformation.pdf> (Accessed October 10, 2023).

[97] Pflegeberufekammer Schleswig-Holstein, "Jahresabschlussbericht" (2020/2021) <https://www.schleswig-holstein.de/DE/fachinhalte/P/pflege/Downloads/Pflegeberufekammer/Jahresabschlussbericht_PBK_SH_2020_2021.pdf?__blob=publicationFile&v=1> (Accessed October 10, 2023).

[98] For the legal character of these general terms and conditions, see (2023) 3 AZR 19/22 (BAG).

represented) elaborate general conditions for employment contract, so-called guidelines, (Arbeitsvertragsrichtlinien, AVR) which are then included in the individual employment contracts ("Third Way"). These guidelines are modelled on the TVöD. The BAG approved the "third way" in principle in 2012, stating that church institutions may replace the right to strike with their own "cooperative" conflict resolution procedures if these meet certain minimum requirements as to trade union participation.[99]

In 2022, 55% of care workers in Germany worked in a company covered by a collective agreement, in comparison to 51% in the German labour market as a whole. At the same time, only 28% of companies in Germany's healthcare and social services sector are bound by collective agreements, in comparison to 25% in the German labour market as a whole.[100] This can be explained by the fact that large companies with large workforces in particular are bound by collective agreements, both in the healthcare and social services sectors and cross-sectorial.

3.2.3 Extension of Sector-Specific Minimum Standards

Against the background of the fragmented structure of collective bargaining in the care sector, and the difficulties of integrating the Christian churches in collective bargaining autonomy, the statutory mechanism of AEntG for the setting of minimum standards on the basis of collective agreements does not work in the care sector. Therefore, special rules were introduced for this sector.

Firstly, according to Secs. 10–13 AEntG, the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales, BMAS) can declare minimum working conditions to be generally applicable, if they are recommended by a Nursing Commission (Pflegekommission) set up specifically for this purpose. This applies to care workers in outpatient, day-care or inpatient care services, but not to employees in hospitals (Sec. 10 AEntG). The Commission is composed of employee and employer representatives of non-church and church service providers as well as representatives of the employers' association and the trade union ver.di. On this basis, ordinances on mandatory working conditions for the care sector (PflegeArbbV) have been regularly issued. At the moment (spring 2024), the minimum wage in the German care sector is set via the Sixth Nursing Working Conditions Ordinance (6. Pflegearbeitsbedingungenverordnung, 6. PflegeArbbV) which will be in force until June 30, 2026.

[99] (2012) 1 AZR 611/11 (BAG); (2012) 1 AZR 179/11 (BAG).; criticism: Peter Stein, *Das kirchliche Selbstbestimmungsrecht im Arbeitsrecht und seine Grenzen* (Frankfurt: Bund-Verlag, 2023; HSI-Schriftenreihe 47), 63; Kocher, Krüger und Sudhof, "Streikrecht in der Kirche," 884.

[100] IAB, "Tarifbindung und betriebliche Interessenvertretung. Ergebnisse aus dem Betriebspanel 2022: Aktuelle Daten und Indikatoren" (20 July 2023) <https://iab.de/daten/daten-zur-tarifbindung-und-betrieblichen-interessenvertetung/> (Accessed September 20, 2023); see also Lenzen und Evans-Borchers, "Tarifreue in der Altenpflege," 26–35 who also show the fragmentation of collective bargaining and labour standards in the sector of long-time care.

Secondly, in the event of an extension of a collective agreement, Sec. 7a (1a) AEntG determines that in the care sector, such declaration of general applicability needs the written consent of the church organizations that have established working conditions according to the "third way" (with the help of labour law commissions, see 3.2.2.). In 2021, ver.di and BVAP concluded a collective agreement on minimum wages for the sector of elderly care.[101] The attempt, however, failed in 2021, due to the rejection by Caritas' labour commission.[102]

Shortly after this failed attempted, the rules on "compliance with collective agreements" in long-term-care were established by law (see 2.1.4. and 5.4.).

3.2.4 Industrial Conflicts in the Care Sector

Although there is no specific legislation on collective labour law with regard to care workers, general rules may affect them in particular ways. However—and although demands for a more restrictive law on industrial action are regularly voiced[103]—there is no general proportionality principle in German strike law.[104] Also, no general restrictions of strikes in "essential services" or specific sectors as permitted by international law[105] are recognized in German law.

The employer may not unilaterally order emergency work during a strike. However, the need to conclude emergency service agreements ("Notdienstvereinbarung") that specify which workers have to work during a strike in order to carry out the necessary emergency work, may restrict the right to strike. Although emergency service agreements are not in principle a requirement for the lawfulness of collective action, in the event of disagreement over emergency services

[101] According to this agreement, a nursing professional would earn an hourly wage of 18.75 euros from 1 June 2023.

[102] Caritas Deutschland, "Tarifvertrag Altenhilfe FAQ: Der Tarifvertrag in der Altenpflege kommt nicht. Was nun?" <https://www.caritas.de/fuerprofis/fachthemen/gesundheit/der-tarifvertrag-in-der-altenpflege-komm> (Accessed March 18, 2021); Beyer, "Bestrebungen," 62.

[103] Martin Franzen, Gregor Thüsing und Christian Waldhoff, *Arbeitskampf in der Daseinsvorsorge: Vorschläge zur gesetzlichen Regelung von Streik und Aussperrung in Unternehmen der Daseinsvorsorge* (Tübingen: Mohr Siebeck, 2012); Lena Rudkowski, *Der Streik in der Daseinsvorsorge* (München: C.H. Beck, 2010; Schriften des Instituts für Arbeits- und Wirtschaftsrecht der Universität zu Köln 113).

[104] Berg, Kocher und Schumann, *Tarifvertragsgesetz und Arbeitskampfrecht,* AKR Rn. 137; Eva Kocher, "The Protection of the Strike in the National Legal Systems - National Report: Germany," in *The Right to Strike in the EU. The Complexity of the Norms – Safeguarding Efficacy*, edited by Carmen La Macchia (Rome: Ediesse, 2011).

[105] ILO, "Compilation of decisions of the Committee on Freedom of Association: Right to strike" (2006) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3945742,3> (Accessed October 10, 2023); Mironi M. M. and Schlachter-Voll M., edited by, *Regulating strikes in essential services: A comparative "law in action" perspective* (2019); Knäbe T. and Carrión-Crespo C., "The scope of essential services: Laws, Regulations and Practices" (Geneva: ILO, 2019). ILO Working Paper 334 <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_737647.pdf> (Accessed October10, 2023).

one of the two sides may apply to the labour court.[106] The labour court shall issue an emergency regulation if the principle of proportionality, which balances the competing fundamental rights and requires the least possible interference, so requires. Usually, employer and trade-union conclude an emergency service agreement before the strike begins. However, in the sector of elderly care, usual staffing levels are already so precarious that an emergency staffing may correspond to them and therefore make a strike run empty.[107]

There have been several strikes by ver.di in hospitals in the last years, mostly on the question of staffing levels (see below 6.2.3.). In 2021, there was a strike in Berlin. In 2022, in the context of a strike at six university hospitals in North Rhine-Westphalia, the Regional Labour Court held that the strike was lawful.[108]

3.3 Works Constitution, Information, and Consultation

Due to the dual system of representation (see 1.1.2.), collective agreements are not only negotiated at sector level, but also at company level (Betriebsvereinbarungen, works agreements). As there are no specific rules for care sectors in that area, the general rules apply; however, there are difference between the works constitution in private enterprises, the (federally organised) public sectors and Christian churches:

The legal framework for the negotiations on works agreements between employers and works council in the private sector is set in the BetrVG. In every undertaking with five or more employees, employees can elect a works council. Every employee of full age (18 years old) who has been employed by the company for six months is eligible for election (Sec. 8 (1) BetrVG). Trade unions can submit a list of candidates for the works councils (Sec. 14 (3) BetrVG), but may not appoint members to the works council.

A works council serves as a representative body of employees and engages in on-going cooperative dialogue with the management (Sec. 2 (1) BetrVG). It is not a legal entity, but it has rights of codetermination that can be legally enforced. In issues subject to co-determination, the employer can only issue effective directions with the consent of the works council. These include "social matters" concerning wage supplements, working time, professional development, company pension schemes and other issues (Sec. 87 BetrVG), changes to work processes (Secs. 91 and 111/112 BetrVG), personnel assessment principles (Sec. 94 BetrVG), personnel selection guidelines (Sec. 95 I BetrVG) and in-company vocational training (Sec.s 97, 98 BetrVG). The resulting works agreements between the works council and the employer are subsidiary to collective agreements, but

[106] Michael Meyer, "Notdienstvereinbarung und Notdienst beim Streik im Gesundheitswesen," *Österreichisches Arbeitsrecht und Sozialrecht* (2023): 67.

[107] Theresa Tschenker, "Effektiver Streik und Notdienstarbeiten," *NZA-RR* (2022): 337.

[108] (2022) 10 SaGa 8/22 (LAG Köln); on the reasons see below at n. 148.

also have normative effect on the individual employment relationship. In addition, the works council has consultation and information rights in employer's decisions on individual personnel matters (such as recruitment or dismissal) as well as in "economic"/managerial decisions.

The public sectors (federal level and states) have their own systems of works councils, the staff councils (Personalräte), which represent the interests of private-law employees as well as career civil servants. The service agreement (Dienstvereinbarung) is the equivalent of the works agreement. Staff councils for the federal public sector are regulated by the Federal Staff Representation Act (Bundespersonalvertretungsgesetz, BPersVG); the public sectors of the federal states are regulated by the respective states' Staff Representation Acts (for example Personalvertretungsgesetz für das Land Brandenburg, PersVG Bbg)).

In contrast to the private sector and the public sector, the employees of the churches in Germany have their own type of representative bodies, regulated in church laws. For regional protestant churches and Diakonie, the Church Employee Representation Act (Mitarbeitervertretungsgesetze, MVG-EKD) is the relevant regulatory model. For the Catholic Churches, the Church Employee Representation Act (Mitarbeitervertretungsordnung, MAVO) is the regulatory model for regional church rules. They are designed on the model of public-sector staff councils.

3.4 Regulation on Whistleblowing

On July 2, 2023, the German Whistleblower Protection Act (Hinweisgeberschutzgesetz, HinSchG) came into force; it implements EU Directive 2019/1937/EU on the protection of persons who report breaches of Union law. The HinSchG protects against reprisals that whistleblowing workers may be exposed to. Companies are required to establish internal reporting channels and procedures (Secs. 12–18 HinSchG); the Federal Office of Justice (Bundesamt für Justiz) is one of the competent external reporting channels (Secs. 19–26 HinSchG). In a private company, the works council has a right of co-determination as regards the details in the establishment of an internal reporting office (Sec. 87 I No. 1 BetrVG).[109]

In principle, whistleblowers are protected regarding information on violations of German criminal law (Sec. 2 (1) No 1 HinSchG) or health and safety as well as rights of employees and employee representatives (Sec. 2 (1) No 2 HinSchG). Equally protected are whistleblowers who report administrative offences or violations of European Union law, as listed in Sec. 2 (1) 1–10 HinSchG. The protection applies if the whistleblower had reasonable grounds to believe that the information reported or disclosed was true and correct (Sec. 33 (1) No 2 HinSchG).

[109] Frank Bayreuther, "Hinweisgeberschutz und Betriebsverfassung," *NZA* (2023): 666.

4. Employment Status, Flexible Forms of Employment, and Employment Protection

4.1 Employment Status

The employment relationship in Germany is defined in the German Civil Code in Sec. 611a BGB which says that

> through a contract of employment, an employee will be obliged to work in the service of another person, observing the instructions issued by that person and being in a position of heteronomy (Fremdbestimmung) and personal dependence. The power of issuing instructions may either affect the content, mode of work performance, time, or location of the activity. A person is subject to instructions if he or she is not essentially free to arrange his or her professional activities at his or her own discretion and to determine his or her working hours.

According to Sec. 611a (1) 4–6 BGB, the principle of primacy of facts applies in order to uncover situations of bogus self-employment.[110] It is irrelevant for the overall assessment if the income is treated as self-employment by the tax office.

Employees do not only have full access to labour and employment rights, but are also covered by social insurance (which in many instances also goes beyond employment). Similarly to Sec. 611a BGB, Sec. 7 (1) SGB IV requires "non-self-employed" work, in particular in an employment relationship; indications are an activity according to instructions and integration into the work organization of the person giving the instructions. However, there is no formal/legal link between the classification under labour law and under social security law.[111]

For self-employed care workers, the protective provisions of labour law generally do not apply. For some self-employed persons, however, German law offers partial social protection. For instance, self-employed persons are entitled to financial support through unemployment benefits under SGB II if their income does not cover their expenses;[112] self-employed mothers are also entitled to daily sickness benefits insurance (Krankentagegeldversicherung).[113]

In addition, some employment and labour laws extend their applicability to employee-like persons (arbeitnehmerähnliche Personen) who are thus guaranteed rights to holiday leave (Sec. 2 BUrlG), health and safety protection (Sec. 2(2) ArbSchG), data protection (Sec. 26(8) Federal Data Protection Act

[110] Bernd Waas, "Comparative Overview," in *Restatement of Labour Law in Europe: Vol I: The Concept of Employee*, edited by Bernd Waas and Guus H. van Voss (Oxford: Hart Publishing, 2017).

[111] Cf. (1961) 3 RK 57/57 (BSG); (2003) V B 80/03 (BFH).

[112] For the calculation of benefits and details on financial support for self-employed, see ver.di, "Independent Basic security in Corona times: Lifeline for solo self-employed?" (15 January 2022) <https://selbststaendige.verdi.de/beratung/corona-infopool/++co++c6fa490a-a3fb-11ea-824a-001a4a160100> (Accessed October 10, 2023).

[113] Bundesministerium für Arbeit und Soziales, "Social Security at a Glance 2020" (2020) <https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a998-social-security-at-a-glance-total-summary.pdf?__blob=publicationFile&v=2> (Accessed October 10, 2023).

(Bundesdatenschutzgesetz, BDSG)), access to labour courts (Sec. 5 (1 and 3) ArbGG), and collective bargaining (Sec. 12a TVG), but not to minimum wage (Sec. 22 MiLoG,) or protection against unfair dismissal (Secs. 1 and 14 Unfair Dismissal Act, Kündigungsschutzgesetz, KSchG).[114] "Employee-like persons" are those who are "economically dependent". According to (e.g.) Sec. 12a (1) TVG, workers are economically dependent if they work for one single client or receive more than half of their income from a single client, services are rendered in person, and if the worker needs social protection "comparably to an employee" due to, for instance, the lack of organisational resources and means of production. Classification as an employee-like person also depends on an overall assessment of the individual case, for which the primacy of facts principle applies.

Case law shows that employers in the care sector have on several occasions used bogus self-employment until they were corrected by courts. Cases of nurses working on-demand in nursing homes as vigils/night watches have been decided both ways.[115] In cases in which care professionals were employed, through the mediation of agencies, as caregivers for various care facilities, social courts found bogus self-employment.[116] Other cases of self-employment in on-demand outpatient (basic or intensive) care have also been found by courts to constitute employment.[117]

A care profession which regularly works in forms of self-employment is midwifery. In 2007, the BAG held that self-employed midwifes with cottage-hospital affiliation are neither to be considered employed nor employee-like persons.[118]

On bogus self-employment in the live-in sector, see 2.3.2.

4.2 Fixed-Term Work

Fixed-term work, including care work, in Germany is regulated in the Part-Time and Fixed-term Employment Act (Teilzeit- und Befristungsgesetz, TzBfG) which implements Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. According to Sec. 14 (1) TzBfG, in general, fixed-term employment contracts need a substantive justification. However, the first fixed-term contract with an employer can be extended three times up to a total maximum of two years without the employer having to justify it (Sec. 14 (2) TzBfG).

For employment contracts covered by collective agreements in the public sector, Sec. 30 (2) TVöD limits fix-term employment further. Even fixed-term contracts with a substantive justification may not exceed five years. Workers

[114] For an overview, see Waas, "Germany," 273-74.

[115] Employment: (2012) L 4 R 761/11 (LSG Baden-Württemberg); self-employment: (2016) L 11 R 4602/15 (LSG Baden-Württemberg).

[116] (2012) L 2 R 13/09 (LSG Hamburg); (2017) L 1 KR 551/16 (Hessisches LSG).

[117] (2020) L 1 KR 358/18 (LSG Berlin-Brandenburg); (2021) B 12 R 6/20 R (BSG).

[118] (2007) 5 AZB 52/06 (BAG).

with fixed-term contracts are to be given preferential consideration when filling permanent positions. Fixed-term contracts without a substantive justification may not fall below twelve months (Sec. 30 (3) TVöD).

4.3 On-Call-Work

The general labour law regulation that regulates on-call-work is the Working Time Act (Arbeitszeitgesetz, ArbZG). German law still differentiates two types of on call-work: On-call duty (Arbeitsbereitschaft) requires the worker to be at a location specified by the employer or within a certain radius to be deployed immediately if needed; On-call at home (Rufbereitschaft) is when the worker determines his or her own whereabouts during the waiting period, but is required to show up for work when called. However, considering the definition of working time in the jurisprudence of the European Court of Justice (ECJ), this model is misleading, as the ECJ lately uses a range of criteria to establish if waiting time/on-call time is considered working time: Call time, work location, modalities of assignment (especially the need to wear work clothes and the availability of a company car), frequency with which assignment times occur in on-call time, and the causality of the on-call situation for the restrictions on time management, all has to be taken into account.[119] As for live-in-work, the BAG has already established that the typical on-call time of live-in-workers is considered working time.[120]

Under German law, the concept of zero-hour contracts does not exist as a legal concept. If employer and employee agree that the employee shall perform work in accordance with the workload (work on call, Arbeit auf Abruf), the agreement must specify a certain duration of weekly and daily working time. If the duration of the weekly working time is not specified, a working time of 20 hours is deemed to be agreed (Sec. 12 (1) TzBfG); if the duration of the daily working time is not specified, the employer has to employ the worker for at least three consecutive hours. If the duration is specified, the employer may only employ the worker for an extra 25% and not less than 80% of the agreed weekly working time (Sec. 12 (2) TzBfG). The employee has to be notified of the working hours at least four days in advance (Sec. 12 (3) TzBfG).

4.4 Temporary Agency Work

Temporary agency work in Germany is regulated through the AÜG, which implements the Temporary Agency Work Directive 2008/104/EC.

According to a report of the BA,[121] the number of employees subject to social insurance contributions who work in care via a temporary employment agency

[119] (2021) C-344/19 (ECJ); (2021) C-580/19 (ECJ); see the analysis in Eva Kocher, "Bereitschaftszeit und Rufbereitschaft: eine europarechtliche Dogmatik," *RdA* (2022): 50.

[120] (2021) 5 AZR 505/20 (BAG) (see 2.3.3).

[121] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

has increased in recent years. Overall, temporary employment seems to have been established in the care sector, however at a somewhat lower level than in overall employment. 2% of all employees among the nursing staff (1.7 million) were employed by a temporary employment agency in June 2021, compared to slightly more than 2% in the whole labour market at the same time. While less than 2% of all female employees in the nursing sector were employed through temporary employment agencies, the figure for male nursing staff was more than 3%. 11% of all secondary (marginal) jobholders in the care sector were employed through temporary employment agencies; across all occupations, the figure was just under 2%.

The media[122] and trade unions[123] report that the number of nursing staff working through temporary employment agencies has increased in recent years. Nursing staff switch to temporary employment because working hours are supposed to be more predictable, and, especially in elderly care, pay would also be higher. In fact, temporary employment agencies allow nurses to organize their working hours in a more flexible way; they also get to work in different care facilities if they are unhappy with their current workplace.[124] Nevertheless, ver.di criticizes this form of employment as devastating for the care of patients and for teamwork, with the lack of familiarization with the respective facility placing an additional burden on permanent staff. Another aspect highlighted by the union is the motive of temporary employment agencies: profit, instead of providing good care.[125]

4.5 Part-Time Work

Part-time employment is regulated by the TzBfG which implements EU Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

Employees may apply to their employer to change from full-time to part-time employment (and back) if they have worked in the employer's company for more than six months (Secs. 8 and 9a TzBfG). For employment contracts covered by collective agreements in the public sector, Sec. 11 TVöD gives even better rights in this respect.

The nursing professions are characterized by an above-average proportion of part-time employees.[126] In 2021, full-time employed nursing workforce (51%)

[122] Gottlob Schober, "Warum Heime Pflegebetten unbesetzt lassen," *Tagesschau* (6 March 2023), <https://www.tagesschau.de/wirtschaft/pflege-leiharbeit-101.html> (Accessed August 28, 2023; Andreas Molitor, "Jeder kämpft für sich allein," *Mitbestimmung* (2023): 26.

[123] ver.di, "Leiharbeit in der Pflege" <https://gesundheit-soziales-bildung.verdi.de/themen/leiharbeit> (Accessed August 28, 2023).

[124] Isabelle Riedlinger, Gabriele Fischer und Tanja Höß, "Pflegeberufe und Arbeitskampf - ein Widerspruch?" in Artus et al., *Arbeitskonflikte sind Geschlechterkämpfe*; Molitor, "Jeder kämpft für sich allein," 26.

[125] ver.di, "Leiharbeit in der Pflege".

[126] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

only slightly outweighs those who are employed part-time (49%), while the number of full-time employees is 71% compared to 29% part-time employees in the German labour market as a whole. Around 62% of women and 40% of men work part-time as nursing staff. However, if one includes the entire number of the nursing staff employed in the inpatient and outpatient care (excluding hospitals) as reported by the Federal Statistical Office of Germany (1.2 million),[127] 65% work part-time, with 63% (512.820 out of 814 000) in stationary care, of which 82% are women, and 68% in outpatient care (301.240 out of 443 000), of which 85% are women.

4.6 Other Aspects of Flexible, Casual, and Precarious Forms of Work, in Particular "Mini-Jobs"

The so called mini-job is a casual type of employment. Mini-job is a marginal employment with up to max. 70 days per year or a maximum remuneration of 520 euros/month (10h/week on minimum wage basis) (Sec. 8 (1) 1 SGB IV, numbers for 2023). Workers on the mini-job basis enjoy the same labour and employment rights as other part-time workers,[128] but are largely exempt from paying social security contributions. As a consequence, the employee is not covered by health or other forms of social insurance through this type of employment.

Mini-jobs tend to be of minor importance in the care sector. Across all occupations, 11% of employees are mini-jobbers; in nursing, the figure is only 4%.[129]

Another form of casual employment concerns live-in work, where workers are often posted by foreign agencies on a temporary basis or come to Germany as self-employed workers (see 2.3.2).

4.7 Employment Protection

Employment protection concerns the protection of employees from unlawful dismissal. The Dismissal Protection Act (Kündigungsschutzgesetz, KSchG) protects employees from a termination of their employment relationship without social justification; it applies if the employment has existed in the same establishment or enterprise without interruption for more than six months (Sec. 1 (1) KSchG).

In addition, Sec. 622 BGB specifies the notice periods in the event of termination - for example, if the employee has been employed for two years, the notice period is one month to the end of a calendar month (Sec. 622 (2) 1 BGB); if the employee has been employed for five years, the notice period is two months (Sec. 622 (2) 2 BGB). The notice periods are further extended for those to whom the TVöD applies—in the public sector, the notice period for employment of more

[127] Statistisches Bundesamt, "Pflegestatistik".

[128] (2023) 5 AZR 108/22 (BAG).

[129] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

than one year is six weeks (Sec. 34 (1) TVöD), and three months in the case of employment of five years (Sec. 34 (1) TVöD). Furthermore, Sec. 34 (2) TVöD protects employees who have reached the age of 40 and to whom the Western collective agreement area (see above 3.2.2.) applies, from termination after a period of employment of more than 15 years (Sec. 34 (2) TVöD).

As far as live-in-workers and other domestic workers concerned, there is a debate on the question if the private household can be considered an establishment ("Betrieb"). This is not only relevant for the application of the Works Constitution Act (BetrVG), but also for notice periods in the event of a dismissal. Sec. 622 (2) BGB provides for longer notice periods depending on the time of employment. The Federal Labour Courts has refused to apply this provision to employment in private households.[130]

Social Code Book IX on rehabilitation and participation of disabled persons (SGB IX) protects disabled people. They may only be dismissed with the consent of the competent authority (Integrationsamt, integration office). If an employee has been repeatedly unable to work, the employer is obliged to involve various representatives of the interests of the employee concerned in order to jointly find ways of overcoming the incapacity to work so that the job can be retained (occupational integration management, Betriebliches Eingliederungsmanagement, BEM) (Sec. 167 (1–2) SGB IX). In addition, employees who have been officially certified as being disabled are entitled, among other things, to a workplace in which they can use and develop their skills and knowledge as fully as possible (Sec. 164 (4) 1 SGB IX), as well as to a workplace suitable for disabled persons (Sec. 164 (4) 4 SGB IX).

Further protections apply to pregnant workers before and after childbirth under the Maternity Protection Act (Mutterschutzgesetz, MuSchG), see 7.3.

5. Wages and Benefits

Wages in Germany are regulated by statutory laws and collective agreements. Legislation only regulates the national minimum wage via the Minimum Wage Act (MiLoG). Minimum wages of nursing staff employed in inpatient and outpatient facilities are additionally regulated by the 6. PflegeArbbV (see 3.2.3.).

5.1 Minimum Wages

At the statutory level, the minimum wage in Germany has been implemented by the MiLoG since 2015 and applies to all employees with a few exceptions (Sec. 22 MiLoG). The minimum wage has been reset by law in 2022 at 12 eu-

[130] (2020) 2 AZR 660/19 (BAG); for a critical discussion: Viktoria Steinke, "Wie privat ist privat?: Betrachtungen zur Beschäftigung im Privathaushalt," *RdA* (2018): 232; Kirsten Scheiwe, "Ist ein Privathaushalt, der Hausangestellte beschäftigt, ein Betrieb?: Kontroversen über den arbeitsrechtlichen Betriebsbegriff," *AuR* (2019): 446; Barbara Bucher, "Keine Anwendbarkeit des KSchG auf Privathaushalt," *AuR* (2016): 515.

ros/hour; it is regularly adjusted by an independent Minimum Wage Commission (Mindestlohnkommission), which is appointed every five years (Secs. 4–12 MiLoG). It comprises a chairperson plus six permanent members with voting rights from trade unions and employer associations (three members each) and two members chosen from the scientific community without voting rights (Sec. 4 (2) MiLoG). The commission reviews the level of the statutory minimum wage every two years, on the basis of the past development in collective agreements (Sec. 9 MiLoG). The commission's decision in 2023 was the first to be decided by majority vote (against the trade union representatives) instead of unanimously. According to this decision, the minimum wage will be 12.41 euros on 1 January 2024 and 12.82 euros on 1 January 2025.

The German care sector has, however, its own statutory minimum wage, which is set by the 6. PflegeArbbV (see 3.1.2.). Sec. 2 of 6. PflegeArbbV (see 3.2.3.), in force from February 2024 until June 2026, splits minimum wages into three minimum nursing wages. Since 1 February 2024, it is at 14.15 euros for nursing assistants without qualifications, 15.25 euros for nursing assistants with one year qualification, and 18.25 euros for nursing professionals.

5.2 Legal Bases for Wages

Collective agreements for the public sector (TVöD) usually regulate wages depending on the type of work and responsibility. Wages are set in pay-tables (for example: P-Table for nursing staff), which break down wages according to pay groups (Entgeltgruppe), determined mainly by level of education (Entgeltgruppe (salary group), E 1(lowest) to E 15 (highest); for nursing staff, Entgeltgruppe Pflege, P 5–16), and the length of work experience (Entgeltstufe (pay grades) 1 (lowest) to 6 (highest)). In the care sector, these wages are set at the municipal and federal level and outlined in the pay tables of the collective agreements for nursing and care facilities (TVöD Pflege- und Betreuungseinrichtungen, TVöD-B) and TVöD Hospitals (TVöD Krankenhäuser, TVöD-K). In this respect, the TVöD-K is specific to the TVöD-B: the TVöD-B applies to all care workers except for those who fall within the scope of the TVöD-K. However, this has no effect on remuneration. The P-table applies equally in the special parts of TVöD-B and TVöD-K.

In employment relationships that are not covered by collective agreements, the individual contract specifies wages and benefits—in church institutions by reference to the AVR established by labour law commissions (see 3.2.2.)), in other cases sometimes by reference to the TVöD, sometimes by rules established by the employer. For example, AVR although generally modelled on TVöD differ in terms of definition of "Entgeltgruppe" as well as in wages and benefits.

5.2.1 Wages (TVöD)

In the following summary, we only mention examples taken from TVöD-B at the municipal and federal level as example for collective agreements in the

German care sector. Annex 1, Part B Nr. XI TVöD-B regulates the Entgeltgruppen for employees in healthcare professions: Nursing assistants without a degree are classified in P 5 or P 6 (with at least one year training) (2,376 euros – 2,473 euros)[131] and nursing professionals with three-year training who graduate with a state examination in P 7 or P 8 (2,932 euros – 3,108 euros). The Entgeltgruppen E 9b to E 12 are reserved for employees with a university degree (Sec. 1 TVöD-B, Annex 1 Part B Sec. XI; Annex E). Nurses with further specialized training are classified in P 9 up to P 16 (3,373 euros – 4,490 euros).

The Entgeltstufen, in turn, are based on the length of service with the employer. Relevant professional experience with other employers is taken into account. In the case of care workers, there are special provisions on the waiting time to the next Entgeltstufe in Sec. 16. Accordingly, care workers reach Entgeltstufe 2 after one year in Entgeltstufe 1, Entgeltstufe 3 after three years in Entgeltstufe 2, Entgeltstufe 4 after four years in Entgeltstufe 3, Entgeltstufe 5 after four years in Entgeltstufe 4 and Entgeltstufe 6 after five years in Entgeltstufe 5. In order to reach Entgeltstufe 3 and Entgeltstufe 4, care workers without state exam (P 5, P 6, P 9) must work one year longer than other employees within the scope of the TVöD-B. However, the terms of the Entgeltstufen may be shortened or extended in exceptional cases if the employees' performance is significantly above or below the average.

In 2022, compared to other employees in the public sector, the collective wage for nursing staff with three years of education and maximum work experience (3,654 euros, P7 Entgeltstufe 6) were higher in the care sector than the average monthly gross salaries of public sector employees with three years of professional training and maximum work experience (3,421 euros, E7 Entgeltstufe 6). However, the situation is different for nursing assistants without professional training but with maximum work experience, whose minimum salary (3,042 euros, P5 Entgeltstufe 6) is lower than that of public sector employees with a similar level of training and maximum work experience (3,184 euros, E5 Entgeltstufe 6). Nursing assistants with one year of vocational training and maximum work experience earn slightly more (3,392 euros, P6 Entgeltstufe 6) than public sector employees with a similar level of training and maximum work experience (3,314 euros, E6 Entgeltstufe 6). By way of comparison, according to the Employment Contract Guidelines for Diakonie Institutions (Arbeitsvertrags Richtlinien für Einrichtungen der Diakonie 2022, AVR, belonging to the protestant churches)[132] which has its own pay scale, nurses with maximum pro-

[131] The figures refer to the stated level of education of nursing staff with less than one year of professional experience (Entgeltstufe 1).

[132] Diakonie, "Arbeitsvertragsrichtlinien für Einrichtungen, die der Diakonie Deutschland angeschlossen sind, beschlossen von der Arbeitsrechtlichen Kommission der Diakonie Deutschland" (1 October 2022), <https://www.diakonie-wissen.de/documents/4999827/13352553/958_STAND+01.+Oktober+2022+mit+Inhaltsverzeichnis.pdf/7e15c118-f99e-418f-bcd5-7da8829bfa75> (Accessed October 10, 2023).

fessional experience earn euros 3,217 gross per month in Entgeltgruppe 5 (EG 5, Entgeltstufe 4) and euros 3,845 in Entgeltgruppe 7 (EG 7, Entgeltstufe 5).

5.2.2 Inconvenience Pay (TVöD)

Inconvenience pay is generally regulated by collective agreements or works agreements. For the limitation of working time, see 6.1. Here are the rules of TVöD as an example:

1) Overtime: Sec. 7 (7) TVöD defines overtime as hours worked at the employer's request which exceed the regular working hours of full-time employees. While employees should not work beyond the working hours agreed upon in their contract with the employer, employers may include a special clause in the contract specifying a certain number of overtime hours that may already be included in the salary (for limits on overtime, see 6.1.).[133] Whether overtime is remunerated or converted into time off depends on which collective, company or individual contractual regulations apply. Overtime surcharges are regulated, for example, in Sec. 8 (1) TVöD.
2) Sunday and holiday rest remuneration: As compensation, employees who work on these days receive a compensatory day off (Sec. 11 (3) ArbZG), or remuneration by collective agreement (e.g. Sec. 8 (1) TVöD: 25% Sunday work; 35% for holiday work that has been compensated by days off; 135% for holiday without time compensation). Sec. 8 (1) TVöD also stipulates a benefit of 20% for work on Saturdays. On the limits on sunday work, see 6.1.
3) For night work (for the definition, see 6.1.), the employer has to give the employees an appropriate number of days off or a wage supplement (Sec. 6 (5) ArbZG). A wage supplement is normally given as a surcharge on the respective gross hourly wage (usually this is 25%–30%).[134] Sec. 8 (1) TVöD provides for 20%.
4) On-call work (for limits, see 6.1.): Sec. 8 (3) TVöD: A daily flat rate per pay group is paid for on-call at home (Rufbereitschaft).[135] This amounts to twice the collectively agreed hourly rate of pay for the days Monday to Friday, and four times the collectively agreed hourly rate of pay for Saturday, Sunday and public holidays. If the on-call at home is interrupted in less than twelve hours, then 12.5% of the collectively agreed hourly pay is paid for each hour of on-call at home in accordance with the pay scale. Moreover, for employees whose work regularly and to a not insignificant extent includes on-call time (Arbeitsbereitschaft), half of the on-call time shall be counted as working time (Sec. 9 (1) TVöD).

[133] According to a ruling by the BAG in 2010, overtime must be sufficiently clearly defined ((2010) 5 AZR 517/09 (BAG)).

[134] (2015) 10 AZR 423/14 (BAG).

[135] For these definitions, in contrast to the ECJ jurisprudence, see above 4.2.

5) Shift work: Employees who constantly perform alternating shift work receive an alternating shift allowance of 105 euros per month. Employees who do not constantly perform alternating shift work receive an alternating shift allowance of 0.63 euros per hour (Sec. 8 (5) TVöD). In addition, Employees who constantly perform shift work receive a shift allowance of 40 euros per month. Employees who do not perform shift work continuously receive a shift allowance of 0.24 euros per hour.
6) Hardship allowances: Nursing staff can benefit from special hardship allowances due to the nature of their work. These allowances are usually regulated in collective agreements are paid as surcharges insofar as the exceptional hardship is not adequately taken into account by suitable precautions, in particular with regard to occupational health and safety. As a rule, the surcharges amount to 5% (121 euros) to 15% (365 euros) of the hourly portion of the monthly table remuneration of Entgeltstufe 2 of Entgeltgruppe 2 (Sec. 19 (4) TVöD). For nursing staff employed as civil servants (if that still exists), allowances are regulated in the Sec. 21 Hardship Allowance Ordinance (Erschwerniszulagenverordnung, EZulV).

5.2.3 Benefits and Wage Supplements (TVöD)

Other wage supplement and bonuses or other additional payments are generally set out in individual employment contracts or regulated by collective agreements and works agreements. As an example, here are the rules of TVöD:

1) Special Annual Payment (Jahressonderzahlung) (Sec. 20 TVöD): employees who are in an employment relationship on December 1 are entitled to an annual special payment. For employees covered by the Western collective agreement area, this amounts to 90% of the basic salary in Entgeltgruppen 1 to 8, 80% in Entgeltgruppen 9 to 12, and 60% in Entgeltgruppen 13 to 15. For employees to whom the regulations of the Eastern collective agreement area apply, the annual special payment amounts to 75% of the percentages specified for the Western collective agreement area.
2) Other special payments (Besondere Zahlungen) (Sec. 23 TVöD): (1) In accordance with the German Capital Formation Act (Vermögensbildungsgesetz, VermBG), as amended, employees whose employment is expected to last at least six months are entitled to capital-forming benefits. For full-time employees, the capital-forming benefit amounts to 6.65 euros for each full calendar month (Sec. 23 (1) TVöD). According to Sec. 23 (2) TVöD, employees receive an anniversary bonus (Jubiläumsgeld) upon completion of a period of employment: for 25 years the amount of 350 euros, and for 40 years the amount of 500 euros. Part-time employees receive the anniversary bonus in full. And Sec. 23 (3) TVöD establishes that in the event of the death of an employee, a grant is paid to the spouse or civil partner within the meaning of the Civil Partnership Act (Lebenspartnerschaftsgesetz, LPartG) or to the children.

5.3 Average Wages

According to the BA report,[136] the average gross monthly salary of full-time nursing staff was 2,972 euros in 2015 and 3,392 euros in 2020 (14% growth), compared with 3.083 euros in 2015 and 3,427 euros in 2020 (11% growth) for the national average. Over the course of these five years, remuneration in the nursing sector has thus risen more strongly than the national average. Whereas in 2015, pay in care occupations was still just under 4% below the average pay across all occupations, the gap had narrowed significantly by 2020 and was now only 1% below the average.

Significant wage differences were found depending on the training level of the nursing staff: The median gross salary of all full-time nursing professionals was 3,039 euros in 2015 and 3,503 euros in 2020 (15% growth), compared to national average of 2,843 euros in 2015 and 3,166 euros in 2020 (11% growth) for professionals with the same level of training. As for full-time nursing assistants, the median gross salary was 2,055 euros in 2015 and 2,442 euros in 2020 (19% growth), compared to national average of 2,117 euros in 2015 and 2,357 euros in 2020 (11% growth). Hence, as of 2020, average salaries of nursing professionals and nursing assistants became higher than the employees with the same level of training on the national level.

Differences also exist among nursing staff working in different workplace settings. At 3,771 euros per month, the average pay of nursing professionals employed in hospitals was above average. In comparison, the salaries of nursing professionals in inpatient care facilities (3,200 euros) and outpatient care services (2,885 euros) were below nursing professionals' average. Compared to the remuneration of all assistants employed in nursing professions, nursing assistants in hospitals achieved a significantly higher remuneration. In terms of the three workplace settings, their average gross monthly pay in 2020 was 2,997 euros in hospitals and clinics, 2,312 euros in inpatient care facilities, and 2,158 euros in outpatient care.

5.4 Promoting Compliance with Collective Agreements ("Tariftreue")

Sec. 97 (3) of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB) allows for social or environmental aspects to be taken into account when awarding public contracts. One such aspect is the payment of minimum wages or compliance with collective agreements ("Tariftreue"). With a declaration of compliance with collective agreements, public contracting authorities make it a requirement for contractors tendering for contracts that they pay their employees in accordance with the relevant collective agreements. Currently (June 2020), collective agreement compliance laws (Tariftreuegesetze) apply in all federal states (Länder) except Bavaria and Saxony. According to the coalition agreement of the governing parties, public procure-

[136] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

ment by the federal government shall in future also be tied to compliance with a representative collective agreement in the respective sector.

In addition, 11 federal states have procurement-specific minimum wages that stipulate a certain minimum wage for the performance of public contracts (Baden-Württemberg, Berlin, Brandenburg, Bremen, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein); in Brandenburg 13 euros/hour.

For a specific compliance rule in the long-term care sector see 2.1.4.

5.5 Directive 2022/2041/Eu

In Germany, the Directive has been widely considered ultra vires.[137]

Nevertheless, there is no real policy or legal debate on its implementation, as most experts are of the opinion that the latest legislative raise of the minimum wage (12 euros/h) complies with Art. 5 of Directive 2022/2041/EU.[138] The oppositional political party "Die Linke" in June 2023 proposed, as a consequence of the Directive, adapting the minimum wage yearly instead of every two years, and explicitly regulating 60% of the median gross wage as the standard.[139] The government's plans for a federal collective agreement compliance obligation (Tariftreue, see 5.4.), have been pushed by the Federal Ministry for Labour and Social Affairs possibly with a view to Art. 4 of the Directive.[140]

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

6.1 Regulation of Working Time

Working time in Germany is regulated by statutory law and by collective agreements as well as works agreements. The ArbZG implements EU Working Time Directive 2003/88/EC and regulates working hours, rest periods, and breaks during the workday.

The allowable working time for most full-time employees is 8 hours daily, considering a statutory working week of 6 days (Sec. 3 ArbZG). However, em-

[137] Felix Hartmann, "Der Aktionsplan zur Förderung von Tarifverhandlungen – Bloßer Papiertiger oder Gefahr für die deutsche Tarifautonomie?" *EuZA* (2023): 121; Katharina Vogt K., "Mindestlohn ohne Kompetenz – Die Unvereinbarkeit der Richtlinie über angemessene Mindestlöhne in der Europäischen Union mit Art. 153 Abs. 5 AEUV," *EuZA* (2023): 50.

[138] Hartmann, "Der Aktionsplan zur Förderung von Tarifverhandlungen"; Regina Viotto, "Neue europäische Richtlinie zu Mindestlöhnen und Tarifbindung. Ein Beitrag zur sozialen Transformation der EU?" (June 2023) <https://www.boeckler.de/fpdf/HBS-008644/p_fofoe_WP_292_2023.pdf> (Accessed October 9, 2023).

[139] Die Linke, "Gesetzlichen Mindestlohn gemäß EU-Mindestlohnrichtlinie erhöhen: BT-Drs. 20/7254" (15 June 2023) <https://dserver.bundestag.de/btd/20/072/2007254.pdf> (Accessed October 9, 2023).

[140] Hartmann, "Der Aktionsplan zur Förderung von Tarifverhandlungen".

ployment contracts for full-time employees typically specify slightly less than 40 hours per week. For those bound by collective agreements in the public sector, Sec. 6 (1) TVöD states that the regular working time, excluding breaks, for federal employees is 39 hours per week. For municipal employees in the Western collective agreement area, working time is 38.5 hours per week on average, and 40 hours per week on average in the Eastern collective agreement area (The Sec. 6 (2) TVöD).

Work on Sundays (and public holidays) is generally restricted (Sec. 9 ArbZG; Art. 139 GG). There are exceptions for certain activities, including nursing staff (treatment, care and supervision of persons in hospitals and other institutions (Behandlung, Pflege und Betreuung von Personen in Krankenhäusern und anderen Einrichtungen, Sec. 10 (1) 3 ArbZG). If employees work on statutory regulated work-free days, they are entitled to a compensatory day off (Sec. 11 (3) ArbZG). At least 15 Sundays per year must remain free (Sec. 11 ArbZG).

The regular rest period of 11 hours daily may be shortened by one hour for employees working in hospitals and other facilities for the treatment, nursing, and care of persons (Sec. 5 (2) ArbZG), if this is compensated by the extension by one hour within four weeks. Interruptions of rest made during on-call at home (Rufbereitschaft)[141] can be compensated for at other times if the interruption does not exceed half of the rest period (Sec. 5 (3) ArbZG).

Paid leave is regulated by the BUrlG. After six months of employment (Sec. 4 BUrlG), every employee is entitled to at least 24 days of paid vacation on working days (Sec. 3 BUrlG). Usually, additional paid vacation is added by collective agreement or individual employment contract. According to Sec. 4 of 6. Pflege-ArbbV, nursing staff working in inpatient and outpatient care are entitled to nine additional days of paid leave in 2023 and 2024 (5 days in 2022). For employees within the TVöD, Sec. 26 entitles employees under 30 years of age to 26 days of paid leave, 29 days for employees between 30 and 40 years of age, and 30 days for employees over 40 years of age.

Furthermore, according to the Sec. 27 TVöD, (1) employees who perform shift work continuously and partially get an one extra day for: a) in the case of alternating shift work, for every two consecutive months, and b) in the case of shift work, for every four consecutive months; (2) employees who partially perform predominantly shift work: one extra day for: a) each three months in a year in which they performed predominantly alternating shift work, and b) each five months in a year in which they performed predominantly shift work.

Overtime may generally only be ordered if it has been agreed in advance; the employer's right of direction alone does not give him the authority to order overtime.[142] Overtime may only be ordered in agreement with the works council (Sec. 87 (1) BetrVG). However, employees covered by the TVöD are obliged under Sec. 6 (5) TVöD, within the framework of justified operational/service re-

[141] For the definition, see above 4.2.

[142] (2010) 5 AZR 517/09 (BAG).

quirements, to work on Sundays, public holidays, nights, alternating shifts, shifts and (in the case of part-time employment on the basis of an employment contract or with their consent) on-call duty, standby duty, overtime and extra work.

Atypical or strenuous forms of work such as shift work and night work are defined in Sec. 6 ArbZG and Sec. 7 TVöD. Work between 11 p.m. and 6 a.m. is considered night work for employees who work alternating shifts with night work or perform night work on at least 48 days per year (Sec. 2 (3–5) ArbZG)—according to the Sec.7 (5) TVöD, night work is between 9 p.m. and 6 a.m. The company must give the employees an appropriate number of days off or a wage supplement for night work (Sec. 6 (5) ArbZG) and employees are entitled to have occupational health examinations prior to the start of employment and at regular intervals thereafter (Sec. 6 (3) ArbZG) (For flexible work, part-time work and on-call work see 4.2., 4.4., and 4.5.).

6.2 Regulation of Health and Safety

6.2.1 General Rules and Procedures

The Occupational Safety and Health Act (ArbSchG) implements EU-Directive 89/391/EEC.

According to Sec. 3 ArbSchG, the employer is obliged to take the necessary occupational health and safety measures, taking into account the circumstances that affect the safety and health of employees at work. He must check the effectiveness of the measures and, if necessary, adapt them to changing circumstances. All measures to be taken must be based on the principles laid down in Sec. 4 ArbSchG (e.g. hazard reduction, structural measures before individual measures, consideration of scientific findings, non-discrimination, special protection needs).[143] Sec. 4 No. 1 ArbSchG also covers hazards to mental health.

The framework regulations of the Act are concretized by legal ordinances, which prescribe which measures the employer and other responsible persons must take and how employees must behave in order to fulfill their respective obligations arising from the Act (Sec. 18 (1) ArbSchG). Specific committees can be formed to advise the Federal Government or the competent Federal Ministry on the application of the statutory instruments, of determining rules and other established occupational science findings corresponding to the state of the art, occupational medicine and hygiene, and of determining rules on how the requirements set out in the statutory instruments can be met (Sec. 18 (2) No. 5 ArbSchG).

The works council also has a right of say and co-determination in the setting of regulations for the prevention of occupational accidents and illnesses and for health protection within the framework of statutory regulations or ac-

[143] Marc Becker, Michael Holthaus und Bernhard Ulrici, "Gesamtes Arbeitsrecht," in *Beck-online* Bücher, 2, hrsg. von Winfried Boecken et al. Auflage (Baden-Baden: Nomos, 2023), ArbSchG par. 4 Rn. 1.

cident prevention regulations (Sec. 87 (1) No. 7 BetrVG). The requirements of Art. 11 OHS Framework Directive 89/391/EEC is implemented in Secs. 80 (1), 87 (1), 89 (1) BetrVG.

There is also an Occupational Safety Act (Arbeitssicherheitsgesetz, ASiG) that obliges the employer to appoint company physicians and occupational safety specialists that support him in occupational safety and accident prevention (Sec.1 ASiG). The occupational safety specialists and the company doctors advise the works council on this (Sec. 9 (1, 2) ASiG).

6.2.2 Violence and Harassment at Work

Germany ratified ILO Convention 190 concerning the elimination of violence and harassment in the world of work in April 2023; it will come into force in July 2024.[144] The German government considers labour law already being in accordance with the Directive.

Apart from general health and safety protection which is supposed to cover risks of violence and harassment, Sec. 3 (3) and (4) AGG ban discrimination by sexual harassment or discriminatory harassment, implementing Directives 2000/43/EC, 2000/78/EC and 2006/54/EC.

6.2.3 Care Work: Regulation of Staffing Levels

Health and safety, relief in case of high workloads and the prevention of stress has been the most important subject of new collective bargaining initiatives in the care sector for the last years. Already in 2015, the employees of the Charité hospital (Berlin) went successfully on strike for relief.[145] They demanded regulations that would specify a certain minimum staffing level for shifts, either in the form of a specification of a minimum number of employees per shift (quantitative staffing regulation) or in the form of a specification of the minimum qualification that must be present among the employees in each shift in any case (e.g. a minimum number of registered nurses; qualitative staffing regulation).

The first collective agreement in this respect (Tarifvertrag Gesundheitsschutz und Demografie, TV GS) has been concluded between ver.di and Charité Berlin in 2016; collective agreements at other university hospitals in Germany followed.[146]

However, such regulations are often not complied with. Trade unions' collective bargaining initiatives are therefore increasingly calling for "consequence management" in the event of breaches of staffing regulations. The main issue here

[144] Bundesregierung, "Entwurf eines Gesetzes zum Übereinkommen Nr. 190 der Internationalen Arbeitsorganisation vom 21. Juni 2019 über die Beseitigung von Gewalt und Belästigung in der Arbeitswelt" (BT-Drs. 20/5652).

[145] "Vergeschlechtlichung und Interessenpolitik in Care-Berufen".

[146] Theresa Tschenker, "Kollektivverträge über Personalschlüssel in der Altenpflege," *IndBez* 26, 4 (2019): 366, 375–76.

is compensation in the event of non-compliance with staffing regulations.[147] In this regard, the collective agreement between ver.di and Charité was amended in 2021 following a strike that year.[148] The resulting collective agreement "Charité Health Professions" (TV Gesundheitsfachberufe), which is valid from Jan. 1, 2022, to Dec. 31, 2024, not only regulates the staffing levels on the individual wards of the university hospital, but also individual compensation in case of non-compliance. If the staffing levels fall below the limits set by the collective agreement, the care workers concerned receive relief points. With these relief points, care workers can invest in recreational allowances, childcare allowances, partial retirement accounts and sabbaticals or receive compensatory time off. Similar strikes have spread to other public health care companies in Berlin (e.g. Vivantes hospital group) and hospitals in other German states; in particular, employees of university hospitals in North Rhine-Westphalia organized a strike in 2022, and a similar collective agreement (Tarifvertrag Entlastung) was concluded.

Some doubted whether strikes for this kind of norms in a collective agreement would be permissible—considering existing norms on health and safety in the TVÖD and the resulting peace obligation. However, this view has not prevailed so far.[149]

6.3 Implications of the COVID-19 Pandemic

Like in most places around the world, the COVID 19 pandemic has highlighted the structural importance nurses play in German society, but at the same time has further worsened their already difficult working conditions.[150] Above all, the pandemic increased the burden on nursing staff, who were already suffering from personnel shortages.[151] According to the studies cited in the Nursing Report 2021 published by the Scientific Institute of the General Local Health Insurance Company (Allgemeine Ortskrankenkasse, AOK),[152]

[147] Eva Kocher, "Die Erstreikbarkeit eines tariflichen Belastungsausgleichs im Kontext von Mindestpersonalausstattungsregelungen," *NZA* 39, 12 (2022): 815.

[148] ver.di, "Charité: Durchbruch bei Verhandlungen zur Entlastung" (7 October 2021), <https://www.verdi.de/themen/geld-tarif/++co++bc423ef4-2768-11ec-83ea-001a4a16012a> (Accessed October 10, 2023).

[149] On the 2022 strike, see LAG Köln 01.07.202210 SaGa 8/22; Eva Kocher, "Die Erstreikbarkeit eines tariflichen Belastungsausgleichs im Kontext von Mindestpersonalausstattungsregelungen," *NZA* 39, 12 (2022): 815.

[150] Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (baua), "Arbeit und Gesundheit in der stationären und ambulanten Pflege" (2021). Amtliche Mitteilungen der Bundesanstalt für Arbeitsschutz und Arbeitsmedizin." <https://www.baua.de/DE/Angebote/Publikationen/Aktuell/4-2021.html> (Accessed October 10, 2023).

[151] Anke Begerow und Uta Gaidys, "COVID-19 Pflege Studie. Erfahrungen von Pflegenden während der Pandemie -erste Teilergebnisse." *Pflegewissenschaft Sonderausgabe: Die Corona-Pandemie* 33 (2020).

[152] Michael Drupp, Markus Meyer und Werner Winder, "Betriebliches Gesundheitsmanagement (BGM) für Pflegeeinrichtungen und Krankenhäuser unter Pandemiebedingungen," in

the increased workload in the second wave of the pandemic in 2021 is likely to contribute to higher stress levels affecting the health of nursing staff in the medium and long term.

The German government made a total of one billion euros available to pay a one-time tax-free Corona care bonus (Corona-Pflegebonus) to nurses who were particularly burdened during the corona pandemic. Of this, 500 million euros each was earmarked for Corona bonus payments in the long-term care sector and in the hospital sector (at different individual amounts depending on the type of work).

In order to implement the Corona bonus, the German government adopted the Act on the Payment of a Bonus for Nursing Staff in Hospitals and Care Facilities or Nursing Bonus Act (Pflegebonusgesetz) in June 2022. For hospitals, the government regulated the bonus via the KHG, which stipulates in Sec. 26e (1) KHG that hospitals that had to provide full inpatient care with ventilation to more than ten patients between January 1, 2021, and December 31, 2021, are entitled to reimbursement from federal funds. According to the Ministry of Health, 837 hospitals nationwide have been eligible for this funding.[153] The bonus paid out to individual nurses was calculated by the Institute for the Hospital Remuneration System on the basis of the reports submitted by the hospitals. According to the Sec. 26e (2) KHG, this includes nursing professionals who have been employed in direct patient care on bed-managing wards in the hospital for at least 185 days in 2021 and nursing professionals who have been employed as intensive care specialists for at least three months in intensive care in 2021. The latter are entitled to a bonus increased by a factor of 1.5.

The Nursing Bonus Act also applies to long-term care (Sec. 150a SGB XI). It obliges licensed care facilities to pay a corona care bonus to all care employees who have worked in or for the facility in elderly or long-term care for at least three months within the assessment period (November 1, 2020 to June 30, 2022). The amounts are outlined in the Sec. 150a (2) SGB XI: 1) 550 euros for employees who provided long-term care or in the outpatient sick care; 2) 370 euros for other employees who spent at least 25% of their working hours structuring, activating, assisting, or caring for people in need of care. In addition, a bonus of 330 euros is to be paid to trainees (Sec. 150a (3) SGB XI).

In addition to legislative changes, the Statutory Health Insurance Association (Gesetzlichen Krankenkassen Verband, GKV) and the German Hospital Federation (Deutsche Krankenhausgesellschaft, DKG) agreed to stack a 100-million euros fund by Sept. 3, 2020, and to pay tax-free single bonuses of up to 1,000 euros by the end of the year for nurses working in inpatient (includ-

Pflege-Report 2021 Sicherstellung der Pflege: Bedarfslagen und Angebotsstrukturen, hrsg. von Klaus Jacobs et al. (Heidelberg: Springer, 2021).

[153] Bundesministerium für Gesundheit, "Fragen und Antworten zum Pflegebonus" (30 March 2020), <https://www.bundesgesundheitsministerium.de/coronavirus/faq-pflegebonus.html> (Accessed August 31, 2023).

ing hospitals) and outpatient care. In some federal states, an additional 500 euros was guaranteed.[154]

Next to one-time financial bonuses for nurses, the temporary visibility of nurses as "frontline workers" during the pandemic partly prompted the German government to address urgent problems in the nursing sector—the need to close the gap in staff shortages (see 3.2.2. and 5.4.). For example, this led to the adoption of the Health and Care Improvement Act (Gesundheitsversorgungs- und Pflegeverbesserungsgesetz, GPVG), which came into force in 2021 and which, among other things, guarantees funding for 20.000 additional jobs for nursing assistants in elderly care. Moreover, public institutions such as the Federal Institute for Occupational Safety and Health (Bundesanstalt für Arbeitsschutz und Arbeitsmedizin, BAuA) have initiated various research projects to study the effects of a pandemic on the nursing professions (especially in inpatient and outpatient care) and to develop better occupational safety for the future—for example, to prevent the social stigmatization of nursing staff working with infected patients.[155]

6.4 Training and Competence Development

The Vocational Training Act (Berufsbildungsgesetz, BBiG) regulates in-company vocational training (dual system), vocational training preparation, further training, and vocational retraining. In particular, it establishes the German system of "dual vocational training", i.e. a systematic cooperation of in-company training and vocational training in schools. In most industries, trainees are employed in 2- or 3-year courses by an employer, receive trainee remuneration, and attend school alternately to in-company training. The Act regulates, among other issues, the trainee employment relationship (Secs. 10–26 BBiG), the recognition of training professions (Sec. 4–9 BBiG), and the requirements for training workplaces (Sec. 27–33 BBiG).

Training for nursing assistants is not federally regulated, individual states regulate (duration, scope of duties, etc.) it through their laws and ordinances—for North Rhine-Westphalia, for example, this is the Training and Examination Ordinance for Nursing Assistants (Ausbildungs- und Prüfungsverordnung Pflegefachassistenz, PflfachassAPrV).[156] However, the federal states have agreed, in 2012/13, to implement common minimum standards (Eckpunktepapier für die in Länderzuständigkeit liegenden Ausbildungen zu Assistenz- und Helfer-

[154] Bundesministerium für Gesundheit, "Pflegebonus (Corona-Prämie)" (3 September 2020), <https://www.bundesgesundheitsministerium.de/service/begriffe-von-a-z/p/corona-praemie.html> (Accessed August 31, 2023).

[155] Gudrun Faller et al., "Stigmatisierungserfahrungen bei beruflich Pflegenden im Kontext von COVID-19 – eine Qualitative Studie," *Gesundheitswesen* 84, 4 (2022): 310.

[156] Anke Jürgensen, "Pflegehilfe und Pflegeassistenz: Ein Überblick über die landesrechtlichen Regelungen für die Ausbildung und den Beruf" (2019), <https://www.bibb.de/dienst/publikationen/de/10155> (Accessed October 10, 2023).

berufen in der Pflege) into their regulations for vocational training of nursing assistants by 2020—these include, among other things, at least one year of training at vocational schools and practical training in inpatient (including hospitals) and outpatient care.[157]

These regulations do not apply where specific federal regulations exist.[158] Since 2020, vocational training for nursing professionals is regulated in the PflBG. The PflBG introduced generalist vocational training primarily for nursing professionals, but also for health care professionals in nursing occupations, by gradually merging the three previously separate training programs in nursing, elderly care, and child care. The training consists of theoretical and practical training and lasts three years (or a maximum of five years in part-time form) at state, state-approved, or state-recognized nursing schools (Sec. 6 PflBG). The practical training must be completed in the facilities specified in Sec. 7 PflBG—inpatient (including hospitals) and outpatient care facilities. Two years are dedicated to general training; in the final year the trainee decides whether to continue with general training or specialize in elderly or child care. The Nursing Professions Training and Examination Ordinance (Ausbildungs- und Prüfungsverordnung für die Pflegeberufe, PflAPrV) regulates details of the training structure, training content, examinations, and the recognition of foreign professional qualifications. After completing the three years of training, the trainee must pass the state examination.

To monitor the effects of the generalist training implemented though the PflBG, the responsible federal ministries will carry out an evaluation by the end of 2025 to determine whether there is still a need for separate professional qualifications in elderly care, health care or childcare (Sec. 62 PflBG).

The PflBG also introduces the possibility to become a health professional in nursing (higher education degree) (Sec. 37 (3) PflBG). The higher education study lasts three years and comprises theoretical and practical courses at state or state-recognized higher education institutions based on a modular curriculum as well as practical assignments in facilities in accordance with Sec. 7 PflBG (Sec. 38 (1) PflBG). In May 2023, the draft for a Nursing Studies Strengthening Act (PflStudStG) has been passed for the first readings, in accordance with the government's coalition agreement.[159] The bill outlines that higher education studies for the nursing profession should be designed as dual vocational training (leading to a higher education degree). So far, Sec. 37 (1) PflBG only states that the

[157] Bundesministerium für Familie, Senioren, Frauen und Jugend and Bundesministerium für Gesundheit (Deutschland), "Eckpunkte für die in Länderzuständigkeit liegenden Ausbildungen zu Assistenz- und Helferberufen in der Pflege. Beschlüsse der 89. Arbeits- und Sozialministerkonferenz 2012 und der 86. Gesundheitsministerkonferenz 2013" (29 January 2016), <https://www.bpa-arbeitgeberverband.de/fileadmin/user_upload/kleine-dokumente/BAnz_AT_17.02.2016_B3.pdf> (Accessed October 9, 2023).

[158] Wohlgemuth Hermann und Georg Pepping, hrsg. von, *Berufsbildungsgesetz. Handkommentar* (2nd edn, Baden-Baden: Nomos Verlagsgesellschaft, 2020).

[159] SPD, Bündnis 90/Die Grünen und FDP, "Koalitionsvertrag 2021-2025".

study program shall have a practical part, but does not outline any regulations for it. The intention of the new bill is to integrate the financing of the practical part of higher education nursing training into the existing financing system for vocational nursing training. The current bill amends the PflBG and adds new sections to regulate the practical part (Sec. 38a PflGB) and the employment relationship between student and provider (Sec. 38b PflBG), including the obligatory monthly allowance for students (Sec. 38b (2) PflBG). It also adds a new section about financing higher education studies (Sec. 39a PflBG), also to guarantee a sufficient number of health professionals in nursing with a higher education degree (Sec. 39a (1) 2 PflBG). It also intends to standardize and simplify the recognition procedures for foreign nursing professionals (Sec. 43a PflBG).[160]

The Nursing Professions Training Financing Ordinance (Verordnung über die Finanzierung der beruflichen Ausbildung nach dem Pflegeberufegesetz, PflAFinV) regulates details, in particular of the financing (Sec. 1–20 PflAFnV) as well as the implementation of statistical surveys (Sec. 21–26 PflAFinV). The act also abolishes any tuition fees for professional training of nurses and entitles trainees to an appropriate training allowance.

Admission for midwifes is regulated by the Midwifery Act (Hebammengesetz, HebG) and their training and final examination by the Study and Examination Ordinance for Midwives (Studien- und Prüfungsverordnung für Hebammen, HebStPrV). With the Midwifery Reform Act (Hebammenreformgesetz, HebRefG), which came into force in 2020, the midwifery profession was transformed into a dual vocational training program (Sec. 11 (2) HebG) and the trainee receives a higher education bachelor's degree after the final examination (Sec. 1 (7) HebG). Full-time midwifery studies last a minimum of six semesters and a maximum of eight semesters (Sec. 11 (1) HebG).

7. Social Security Coverage and Benefits

7.1 General

Germany is designated in its constitution not only as a democratic state, but also as a social welfare state (Art. 20 (1) GG), and social insurance plays an important part for the protection of the individual against the risks of everyday life. Sec. 1 SGB I is the legal concretization of this constitutional requirement.[161] On the history and general institutional structure of social insurance in Germany, see 1.1.3.

[160] Bundesregierung, "Entwurf eines Gesetzes zur Stärkung der hochschulischen Pflegeausbildung, zu Erleichterungen bei der Anerkennung ausländischer Abschlüsse in der Pflege und zur Änderung weiterer Vorschriften" (Pflegestudiumstärkungsgesetz - PflStudStG)' (BT-Drs. 20/8105).

[161] Steinmeyer und Heinz-Dietrich, "Die deutsche Sozialversicherung im Überblick," *Handbuch Sozialversicherungswissenschaft*, hrsg. von in Laurenz Mülheims et al. (Heidelberg: Springer VS, 2015).

There are five social insurance schemes, regulated by the Social Code (SGB) in several books: health (SGB V), long-term care (SGB XI), pension (SGB VI), unemployment (SGB III), and accident insurance (SGB VII, covering employers' liability for injuries at work). They are carried out by different social insurance institutions: health insurance funds (Krankenkassen) for health (Sec. 4 SGB V) and long-term care insurance (Sec. 1 SGB XI), pension insurance funds (like Deutsche Rentenversicherung Bund) (Sec. 125 SGB VI), BA for unemployment insurance (Secs. 367 and 368 SGB III), and employers' liability insurance associations (Berufsgenossenschaften) and accident insurance funds (Unfallkassen) (Sec. 114 SGB VII) for accident insurance.

Social insurance is characterized by the idea of a community of solidarity, which is characterized in particular by the (obligatory) insurance principle and the principle of self-governance. Benefits are provided by the social insurance institutions, which are corporations under public law (Sec. 29 SGB IV), and the providers of pension, health (and long-term care), and accident insurance are governed by self-governing bodies (Selbstverwaltungsorgane) (Sec. 44 SGB IV), which are composed of employer representatives and democratically elected representatives of the insured through so-called "social elections" (Sozialwahl) every six years (Sec. 45 SGB IV). The assembly of representatives (Vertreterversammlung) (Sec. 46 SGB IV) (in the case of health insurance funds, the administrative board) forms the "parliament" of a social insurance institutions. The representatives' meeting elects the board of directors and, on the proposal of the board of directors, the managing director of the insurance institution, except in the case of health insurance funds. Here, the board of directors elects the insurance fund's full-time executive board. The BA is excluded from the social elections since it is a state-affiliated social insurance provider. Its administrative board (Verwaltungsrat) is made up of appointed representatives of employees and employers, as well as, in contrast to other four social insurance institutions, representatives of the state on the "third bench".

Social benefits are mostly connected to the employment status—self-employed, non-workers, and career civil servants are largely excluded from this system. Social insurance is financed through contributions from the insured, employers and third parties, by government subsidies, and other revenues (Sec. 20 (1) SGB IV). Exceptions are accident insurance, where only employers pay the contributions (Sec. 150 SGB VII), Social insurance is financed on a pay-as-you-go basis (Umlagesystem, so-called Generationenvertrag, intergenerational social contract): the contributions paid in are paid out again directly as benefits to others. In return for their contributions, contributors acquire an entitlement to benefits. Contributions that insured persons have to pay for their insurance coverage are calculated on the amount of their salary (Secs. 157 & 161 SGB VI for pension insurance)—up to the contribution assessment ceiling (Beitragsbemessungsgrenze).

In contrast to the contribution-based social insurance, social welfare programs, such as basic security for jobseekers (Grundsicherung für Arbeitssuchende, ALG II) under SGB II, as well as income support (Sozialhilfe) under

book SGB XII, mainly for persons who are unable to work due to their age or physical condition, are tax-financed. Since January 1, 2023, basic security for jobseekers and basic security for their dependants (Sozialgeld) are merged under the name Citizens Income (Bürgergeld), which is regulated in SGB II. Civil servants do not have to pay contributions. Parental allowance (Elterngeld) is also tax-funded (see 7.3.).

Social insurance or social benefits are not an object of collective bargaining. In Germany, however, the DGB trade unions in particular are campaigning for improvements in this area. In addition, occupational pensions supplementing social pension insurance can be the subject of collective bargaining.[162] The most important example is in the construction sector, where the parties to the collective agreement have established on social funds by way of collective agreements (Sozialkassentarifverträge), in order to fund different benefits (supplementary pension to the statutory pension, additional vacation pay, occupatioal and vocational training).. These collective agreements establish the jointly managed agencies "Urlaubs- und Lohnausgleichskasse der Bauwirtschaft" and the "Zusatzversorgungskasse des Baugewerbes AG", jointly managed as the Joint Institution of the Collective Bargaining Partners in the Construction Industry (SOKA-BAU). In 2017, the Social Fund Procedures Security Act (Sozialkassenverfahrensicherungsgesetz, SokaSiG) and the Second Social Fund Procedures Security Act (SokaSiG 2) made collective agreements on which the social fund procedures (Sozialkassenverfahren im Baugewerbe) in the construction industry are based binding on all employers.

7.2 Care Sector

With the exception of accident insurance, the German social insurance system is not sector-specific. The only exception is midwives, who must have professional liability insurance (Berufshaftpflichtversicherung) (134a SGB V) to protect themselves against claims for damages caused in the course of their work—freelance midwives must take out professional liability insurance themselves, while the employer must take it out for employed midwives.[163] One policy problem with those liability insurances is the extremely high premiums that midwives who provide obstetric care have to pay in advance. Although they are reimbursed a large amount by the statutory health insurance through the so-called liability compensation, midwives can only apply for the compensation after having provided services.[164]

[162] Rudi Müller-Glöge, Ulrich Preis und Ingrid Schmidt, hrsg. von, *Erfurter Kommentar zum Arbeitsrecht*. 23rd edn (München: C.H. Beck, 2023), BetrAVG par. 19 ff.

[163] Bundesministerium für Gesundheit, "Maßnahmen für Hebammen" <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/5_Publikationen/Gesundheit/Flyer_Poster_etc/BMG_A4_Flyer_Hebammen.pdf> (Accessed September 7, 2023).

[164] Personal correspondence of the authors with the German Midwives Association (Deutscher Hebammenverband).

7.3 Maternity Protection and Paternity Leave

With regard to maternity leave, the pregnant employee is protected by the Maternity Protection Act (Mutterschutzgesetz, MuSchG), as the employer is prohibited from sending the pregnant employee to work during late pregnancy (six weeks before the birth) and after childbirth (eight weeks)—unless the pregnant woman expressly declares her willingness to perform work (Sec. 3 (1) MuSchG).[165] The employee cannot be fired during pregnancy and four months after giving childbirth (Sec. 3 MuSchG). The employer is not allowed to have the pregnant or breastfeeding employee work overtime (Sec. 4 MuSchG), nightshifts (Sec. 5 MuSchG), or on Sundays and holidays (Sec. 6 MuSchG).

During maternity leave, the employee is entitled to continued payment of wages. The employer, in turn, is reimbursed for the wage costs by the social insurance. For this purpose, the employer pays a levy to the social insurance. The amount depends on the contributions paid to the pension insurance (Sec. 7 Aufwendungsausgleichsgesetz, AAG). The reimbursement is financed from this. This system is intended to counteract discrimination against women of childbearing age when looking for a job.[166] Altogether, a pregnant woman receives a maternity allowance (Mutterschaftsgeld) (max 13 euros per day) during maternity leave (Sec. 19 MuSchG), and a maternity allowance supplement from her employer during her employment relationship for the periods of protection before and after childbirth and for the day of childbirth. The maternity allowance supplement equals the difference between 13 euros and the average daily pay (Sec. 20 (1) MuSchG). Women are also entitled to maternity protection pay (Mutterschutzlohn) from their employer if they cannot be employed or can only be partially employed outside the maternity protection period (Sec. 18 MuSchG).

Parental leave (Elternzeit) and parental allowance (Elterngeld) are regulated by the Federal Parental Allowance and Parental Leave Act (BEEG). Parental allowance is intended to compensate for the loss of earnings; it is covered by the state and is generally calculated on the basis of 67% of the employee's income before the birth of the child (Sec. 2 BEEG). With the basic parental allowance (Secs. 2, 3 BEEG), the parents altogether can receive a parental allowance for 12 months per child. Parents are free to divide the months between themselves. Partners who share the rights to basic parental allowance with each other, win two more months of entitlement between them (single parents are entitled to 14 months of basic parental allowance) (Sec. 4 (3) BEEG). Unpaid parental leave starts after 12–14 allowance months, and can last up to 3 years, during which parents are protected from dismissal (Sec. 18 BEEG). In the case of "ElterngeldPlus" (Sec. 4a (2) BEEG), parents can receive a parental allowance for 24 months, however at an amount half the ba-

[165] As well as in the case of miscarriage, and until the end of their period of protection after childbirth, at least until the expiry of four months after childbirth (Sec. 17 MuSchG).

[166] (2003) BvR 302/96 (BVerfG).

sic parental allowance. "EltergeldPlus" is granted for four additional months if a parent works between 25 and 32 hours per week during this time (Sec. 4b (1) and (2) BEEG) ("Partnerschaftsbonus").

According to the coalition agreement of the governing parties, Germany plans to implement a partner leave of two weeks after birth with the intention of increasing both the duration of parental leave and the participation of fathers in parental leave and parental allowance.[167] This follows the Directive (EU) 2019/1158, which Germany implemented in 2023, but without including partner leave—this is currently debated for 2024.

8. Concluding Discussion

The German care sector has developed in many contradictions; it is an example of a dramatic "care crisis".[168]

On the one hand, it is clear to everyone involved that the sector will much gain in importance, not least due to demographic factors. Already between 1995 and 2021, the number of people in need of care rose from around 1 million to about 4.6 million, and for 2050, a number of 6.5 million is expected.[169] As a consequence, there is already a need for qualified staff that the labour market has not been able to meet.[170]

On the other hand, there are structural problems that will not be easy to overcome in the future. The most important one has to do with the gendered character of care, which assigns care work as feminine work, to women.[171] This fact brings with it a decades-long, even centuries-old history of low pay or no pay, low social recognition, low levels of collective organisation, and a heavy reliance on workers' professional and personal sense of responsibility. With societal backing for the familialistic system declining, gender equality questioning the legitimacy even further, workers are less and less ready to accept the burdens put on them.

[167] SPD, Bündnis 90/Die Grünen und FDP, "Koalitionsvertrag 2021-2025: Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit" (2021).

[168] Margrit Brückner et al., "Care.Macht.Mehr: Von der Care-Krise zur Care-Gerechtigkeit" (Manifest 2013), <https://care-macht-mehr.com/wp-content/uploads/2021/11/Care_Manifest_2013.pdf>; Emma Dowling, *The Care Crisis: What caused it and how can we end it?* (London: Verso, 2021).

[169] Rainer Schlegel, "Zeitenwende auch im Sozialstaat?" *NJW* (2023): 2093, 2099. See 2.4. on the staff needed now and in the future.

[170] Herausgeberinnenkollektiv von Rosa Luxemburg Stiftung, "Schwarzbuch Krankenhaus: Das Schweigen brechen" (2023), <https://www.rosalux.de/publikation/id/50301/schwarzbuch-krankenhaus?fbclid=IwAR21bkz4-IBG8dkEmzDY5lEGDBUogZDY1oB73lqmWHcI3Z9V1s64rXu_RSs> (Accessed October 9, 2023).

[171] Brückner et al. "Care.Macht.Mehr"; Nancy Fraser, "Contradictions of Capital and Care," *New Left Review* (2016): 99; Kirsten Scheiwe, Michelle Cottier und Caroline Voithofer, hrsg. von, *Handbuch Sorgearbeit: Sorgebeziehungen und das Recht - Caring and the Law* (Heidelberg: Springer, forthcoming).

An end to the vicious circle of staff shortages, pressure on workers, accumulation of overtime, low attractiveness of care professions, is not at the horizon. While the pay in all care sectors has been significantly improved in recent years, approximating it to comparable professions in other sectors, this has not been able to bring about the changes needed, attract more workers, and make workers stay in the sector.

These contradictions are most visible in elderly care, where the German familialistic care system holds families (and in those families, women) as primarily responsible. Families often end up choosing to hire live-in workers, i.e. migrant women from Central and Eastern Europe working under precarious and mostly informal conditions. Effective political solutions would have to start from putting money into the system; at the same time, the former president of the German Federal Social Court, suggests, in view of the impending financial collapse, to go further back to the general idea of partial financing, to diminish benefits, and to incentivize networks of families and friends even more.[172]

As for the hospital system, strategies of economization, most clearly represented in the system of case-based flat rate funding, has also lead into a dead end. Federal government is at the moment making an important move towards changing the funding basis.[173]

Considering the fact that personal services, in contrast to industrial products, tend to become more expensive with time,[174] the funding problems will probably continue to accompany discussions and developments. Workers and their representatives have been learning that moral recognition of care work may both be a resource and a trap.[175] Nevertheless, due to the comparably weak representation of workers in care sectors,[176] it is not easy for workers to make their voices be heard—an important factor for any reform that could be effective and sustainable.

[172] Schlegel, "Zeitenwende auch im Sozialstaat?" 2099.

[173] See above; for the discussion Michael Simon, 'Von der Unterbesetzung in der Krankenhauspflege zur bedarfsgerechten Personalausstattung: Eine kritische Analyse der aktuellen Reformpläne für die Personalbesetzung im Pflegedienst der Krankenhäuser und Vorstellung zweier Alternativmodelle' (October 2018). Working Paper Forschungsförderung 96; Michael Simon, 'Das DRG-Fallpauschalensystem für Krankenhäuser, Düsseldorf, 305 Seiten' (Düsseldorf 2020). Forschungsförderung Working Paper

[174] Hagen Krämer, "Die Kostenkrankheit von Dienstleistungen als soziale Frage," in Emunds et al., *Freiheit - Gleichheit - Selbstausbeutung.*

[175] Stephan Voswinckel, "Die Anerkennungsfalle. Soziale Dienstleistungsarbeit zwischen moralischer Anerkennung und Statusdefizit: Das Beispiel der Pflege," in et al., *Freiheit - Gleichheit- Selbstausbeutung.*

[176] Schroeder, Kiepe und Inkinen, "Die Grenzen selbstorganisierten Handelns"; Wolfgang Schroeder, "Interessenvertretung und Demokratie in der Dienstleistungsgesellschaft: Das Feld der Altenpflege," in Emunds et al., *Freiheit - Gleichheit - Selbstausbeutung.* (he partly explains this with a view to the gendered character of the sector).

Abbreviations

6. PflegeArbbV	6. Pflegearbeitsbedingungenverordnung (Fifth Nursing Working Conditions Ordinance)
AAG	Aufwendungsausgleichsgesetz (Expenditure Compensation Act)
AEntG	Arbeitnehmerentsendegesetz (Posted Workers Act)
AGVP	Arbeitgeberverband Pflege (Employers' Association for Care e.V.)
ALG II	Grundsicherung für Arbeitssuchende (Basic Benefit/ Support for Jobseekers)
AnFöVO	Anerkennungs- und Förderungsverordnung in Nordrhein-Westfalen (Recognition and Promotion Ordinance in North Rhine-Westphalia)
AOK	Allgemeine Ortskrankenkasse (General Local Health Insurance Company)
ArbGG	Arbeitsgerichtsgesetz (Labour Courts Act)
ArbSchG	Arbeitsschutzgesetz (Occupational Safety and Health Act)
ArbZG	Arbeitszeitgesetz (Working Time Act)
ASiG	Arbeitssicherheitsgesetz (Occupational Safety Act)
AÜG	Arbeitnehmerüberlassungsgesetz (Temporary Employment Act)
AVB	Arbeitsvertragsbedingungen (General Conditions for Employment Contracts)
AVR	Arbeitsvertrags-Richtlinien (Guidelines for Employment Contract, church organizations)
AWO	Arbeiterwohlfahrt (Workers' Welfare organization)
BA	Bundesagentur für Arbeit (Federal Employment Agency)
BAG	Bundesarbeitsgericht (Federal Labour Court)
BAuA	Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (Federal Institute for Occupational Safety and Health)
BbiG	Berufsbildungsgesetz (Vocational Training Act)
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände (Confederation of German Employers)
BDSG	Bundesdatenschutzgesetz (Federal Data Protection Act)
BEEG	Bundeselterngeld- und Elternzeitgesetz (Federal Parental Allowance and Parental Leave Act)
BEM	Betriebliches Eingliederungsmanagement (Occupational Integration Management)
BetrVG	Betriebsverfassungsgesetz (Works Constitution Act)
BFH	Bundesfinanzhof (The Federal Fiscal Court)
BGB	Bürgerliches Gesetzbuch (Civil Code)
BIBB	Bundesinstitut für Berufsbildung (Federal Institute for Vocational Education and Training)

BMAS	Bundesministerium für Arbeit und Soziales (Federal Ministry of Labour and Social Affairs)
BpersVG	Bundespersonalvertretungsgesetz (Federal Staff Representation Act)
BPflV	Bundespflegesatzverordnung (Hospital Care Rate Ordinance)
BRG	Betriebsrätegesetz (Works Councils Act)
BSG	Bundessozialgericht (Federal Labour Court)
BUrlG	Bundesurlaubsgesetz (Federal Paid Leave Act)
BVAP	Bundesvereinigung Arbeitgeber in der Pflegebranche (Association of Employers in the sector of elderly care)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)
CEEP	European Centre of Employers and Enterprises providing Public Services
DEÜV Meldungen	Datenerfassungs- und übermittlungsverordnung (Data Collection and Transmission Ordinance Reports)
DKG	Deutsche Krankenhausgesellschaft (German Hospital Federation)
DQR	Deutscher Qualifikationsrahmen (German Qualifications Framework)
DrittelbG	Drittelbeteiligungsgesetz (One-Third Participation (Co-determination) Act)
DRK	Deutsches Rotes Kreuz (German Red Cross)
ECJ	European Court of Justice
EQF	European Qualifications Framework
ETUC	European Trade Union Confederation
EZulV	Erschwerniszulagenverordnung (Hardship Allowance Ordinance)
GG	Grundgesetz für die Bundesrepublik Deutschland (Basic Law, *German Constitution)*
GKV	Gesetzliche Krankenkasse (Statutory Health Insurance)
GÖD	Gewerkschaft Öffentlicher Dienst und Dienstleistungen (Public Service and Services Union)
GPVG	Gesundheitsversorgungs- und Pflegeverbesserungsgesetz (Health and Care Improvement Act)
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition)
HBS	Hans Böckler Stiftung (Hans Böckler Foundation)
HebG	Hebammengesetz (Midwifery Act)
HebRefG	Hebammenreformgesetz (Midwifery Reform Act)
HebStPrV	Studien- und Prüfungsverordnung für Hebammen (Study and Examination Ordinance for Midwives)
HinSchG	Hinweisgeberschutzgesetz (Whistleblower Protection Act)

IAB	Institut für Arbeitsmarkt- und Berufsforschung (Institute for Employment Research)
ILO	International Labour Organisation
IMK	Institut für Makroökonomie und Konjunkturforschung (Macroeconomic Policy Institute)
KHEntgG	Krankenhausentgeltgesetz (Hospital Reimbursement Act)
KHG	Krankenhausfinanzierungsgesetz (Hospital Financing Act)
KldB 2010	Klassifikation der Berufe 2010 (Classification of Occupations 2010)
KSchG	Kündigungsschutzgesetz (Unfair Dismissal Act)
LPartG	Lebenspartnerschaftsgesetz (Civil Partnership Act)
MAVO	Mitarbeitervertretungsordnung (Catholic Churches, the Church Employee Representation Act)
MiLoG	Mindestlohngesetz (Act Regulating a General Minimum Wage)
MitbestG	Mitbestimmungsgesetz (Co-Determination Act)
MontanMitbestG	Montanmitbestimmungsgesetz (Coal, Iron and Steel Co-determination Act)
MuSchG	Mutterschutzgesetz (Maternity Protection Act)
MVG-EKD	Mitarbeitervertretungsgesetze (Church Employee Representation Act)
PersVG Bbg	Personalvertretungsgesetz für das Land Brandenburg (Staff Representation Act for Brandenburg)
PflAFinV	Verordnung über die Finanzierung der beruflichen Ausbildung nach dem Pflegeberufegesetz (The Nursing Professions Training Financing Ordinance)
PflAPrV	Ausbildungs- und Prüfungsverordnung für die Pflegeberufe (The Nursing Professions Training and Examination Ordinance)
PflBG	Pflegeberufegesetz (Nursing Professions Act)
PflfachassAPrV	Ausbildungs– und Prüfungsverordnung Pflegefachassistenz (Training and Examination Ordinance for Nursing Assistants)
PflStudStG	Pflegestudiumstärkungsgesetz (Nursing Studies Strengthening Act)
PpSG	Pflegepersonal-Stärkungsgesetz (Nursing Workforce Strengthening Act)
PpUGV	Pflegepersonaluntergrenzen-Verordnung (Nursing Staff Lower Limits Ordinance)
PSG II	Pflegestärkungsgesetz II (Nursing Care Strengthening Act II)
SGB III	Sozialgesetzbuch III (Social Security Code, Book III)
SGB V	Sozialgesetzbuch V(Social Security Code, Book V)

SGB VI	Sozialgesetzbuch VI (Social Security Code, Book VI)
SGB VII	Sozialgesetzbuch VII (Social Security Code, Book VII)
SGB XI	Sozialgesetzbuch XI (Social Security Code, Book XI)
SGB XII	Sozialgesetzbuch XII (Social Security Code, Book XII)
TV	Tarifvertrag (Collective Agreement)
TVG	Tarifvertragsgesetz (Collective Agreements Act)
TVöD	Tarifvertrag für den öffentlichen Dienst (Collective Agreement for the Public Sector)
TVöD-B	Tarifvertrag für Pflege- und Betreuungseinrichtungen (Collective Agreement for the Public Sector, Nursing and Care Facilities)
TVöD-K	Tarifvertrag für Krankenhäuser (Collective Agreement for the Public Sector, Hospitals)
TzBfG	Teilzeit- und Befristungsgesetz (Part-Time and Fixed-term Employment Act)
ver.di	Vereinte Dienstleistungsgewerkschaft (United Services Union)
VermBG	Vermögensbildungsgesetz (German Capital Formation Act)
VKA	Vereinigung der kommunalen Arbeitgeberverbände (Federation of Municipal Employers' Associations)

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CHAPTER 4

Italian Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Maria Luisa Vallauri, William Chiaromonte, Giulia Frosecchi, Samuele Renzi, Michele Mazzetti

1. Introduction

This report aims to analyse the job quality and working conditions of care workers in Italy. The report evaluates law and policy, labour market characteristics and industrial relations, and analyses the interaction between national law and EU/European and International law.

In Italy, labour law encompasses a comprehensive framework governing occupational activities. Historically, the focal point of labour law has been subordinate employment, rooted in the belief that employees merit protection as the more vulnerable party in contractual relationships.[2] Conversely, self-employed individuals have traditionally been perceived as capable of safeguarding themselves due to their professionalism, leading to their exemption from protective regulations. However, recent years have witnessed a paradigm shift, prompting the introduction of protections for self-employed individuals as well (Section 4.1).

[1] The contents of this report were finalized on December 31, 2023.

[2] Riccardo Del Punta, *Diritto del lavoro*, a cura di Roberto Romei, Maria Luisa Vallauri, e William Chiaromonte (Milano: Giuffrè, 2023), 379 ff.

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The primary focus of this study lies within the care sector and care work. The Italian legal landscape lacks a unified definition of the care sector and care workers. Instead, regulation stems from various sources, including health and social security legislation, labour law, collective agreements, and case law. Despite this diversity, professions within the care sector share a common functional trait of providing care or assistance to the disabled, elderly, sick, and children. Considering the purpose of this research, the report narrows its scope to care workers with low to medium qualifications, excluding childcare workers and doctors (Section 2).

This comprehensive report undertakes an examination of the quality of work and working conditions of care workers in Italy. It delves into multiple aspects, embracing the multifaceted realm of care and home care work, encompassing occupations, labour market characteristics, regulatory frameworks, and ongoing debates (Section 2), addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations (Section 3), and engages in a discourse on employment status, flexible forms of employment and employment protection (Section 4). Section 5 focuses on wages and benefits, followed by Section 6 which examines working time, health and safety, the implications of the COVID-19 pandemic and training and skills development. Section 7 delves into social security coverage and benefits, while section 8 offers a concluding discussion encapsulating the main findings and implications arising from the report.

This introductory section is divided into two parts: a reflection on the methodology employed and the sources used in drafting the report (Subsection 1.1), and a preliminary explanation of the discipline of constitutional competencies in the socio-healthcare field, essential for understanding the healthcare sector in Italy (Subsection 1.2).

1.1 Methodological Remarks

The methodology employed in crafting this national report is rooted in socio-legal analysis. It encompasses an examination of legal sources, collective agreements, case law, and pertinent literature within the domain of labour law to delineate the Italian legal and contractual landscape. In addition to this foundational research, insights crucial to understanding the pivotal role of discrimination, particularly concerning women and migrants in the care sector, were gleaned from questionnaires administered to Equality Counsellors. The responses to these questionnaires have been predominantly employed in drafting the report on the discrimination map (work package No. 3 of the CARE4CARE project), although they also played a role in this report's section on discrimination. Furthermore, the completion of this report was made possible by the wealth of information gathered in preparation for and during the national meeting of Italian stakeholders held in Rome on 10 April 2024 and the European stakeholders meeting held in Brussels on 17 April 2024.[3]

[3] Consigliera Nazionale di Parità, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CISL, "Responses to the questionnaire in

Primarily focusing on collective agreements within the public and private care and health sectors, the report scrutinises the unique National Collective Labour Agreements (CCNLs) established by the most representative trade unions in the public sector. Meanwhile, in the private sector, a meticulous analysis was conducted, sifting through the archives of the National Economic and Labour Council (CNEL) to identify a selection of fifty contracts. These contracts were chosen based on specific criteria encompassing the rate of application, representativeness of the stipulating social partners, and the scope of facilities covered.

For home caregivers, sixteen collective agreements were identified and analysed. While numerous social partners have been involved in negotiating these agreements, some unions may lack representativeness, potentially indicating the presence of employers' friendly or "yellow" union.[4] Unfortunately, data regarding coverage is not readily available, highlighting an area for further investigation.

The elaboration of data pertaining to the labour market of various healthcare professionals, social and care workers, basic care workers, and home caregivers was meticulously undertaken, drawing from a range of reputable sources including the National Institute for Statistics (ISTAT), the Statistical Office of the European Union (EUROSTAT), and trade union organisations within the sector, among others.

1.2 Brief Introduction to the Constitutional Allocation of Competences in the Healthcare Sector

In the domain of healthcare and social services organisation, the Constitutional reform of Title V, Part II, of the Constitution — Constitutional Law No. 3 of 18 October 2001 — affirmed and constitutionally endorsed the decision made in the 1990s to transition towards regionalising the national healthcare system (NHS). Central to this reform is the principle of subsidiarity and proximity, aiming to establish a decentralised system closely attuned to citizens' needs (see Section 7.4).[5]

preparation for the Italian National Stakeholders Meeting", 2024; CGIL, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CUB Sanità, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CISL FISASCAT, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; NOSOTRAS, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; UNEBA, "Responses to the questionnaire in preparation for the Italian National Stakeholders Meeting", 2024; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting held in Rome on 10 April 2024", 2024.

4 The company or "yellow" union is regulated in Article 17 of the Statute of Workers, which prohibits employers or employers' associations from establishing or supporting trade union associations of workers.

5 Renato Balduzzi e Davide Servetti, "La garanzia costituzionale del diritto alla salute e la sua attuazione nel Servizio sanitario nazionale". In *Manuale di diritto sanitario*, a cura di Renato Balduzzi (Bologna: il Mulino 2013), 49 ff.; Alessandro Candido e Lorenzo Cuocolo,

The amendments introduced by Constitutional Law No. 3 of 18 October 2001, address both the horizontal and vertical coordination of legislative functions in the healthcare sector.[6]

Regarding horizontal legislative coordination, the reform broadened the scope of regional legislative competences, replacing the original reference to "health and hospital care" with the "protection of health", now classified among the subjects of concurrent legislation in Article 117(3) of the Constitution. The Constitutional Court emphasised that this is a significantly broader range of matters than the previous framework of competences. It includes organisational and management aspects of regional healthcare, allowing for potential differentiation while respecting the fundamental principles established by national legislation. In particular, it does not provide for a separate jurisdictional area devoted exclusively to the "health organisation" of residual regional competence. On the contrary, it encompasses various aspects such as the organisation of pharmaceutical services, the assessment of the appropriateness of therapeutic practices and the regulation of qualifications for health professionals, extending also to veterinary health.[7]

Concerning vertical legislative coordination, the constitutional reform has not reduced the role of the state legislature. Health protection remains a concurrent legislative matter, with the state responsible for defining the fundamental principles and the regions in charge of detailed regulation. Moreover, the State retains the exclusive competence to ensure "uniformity" in the determination of the essential levels of services pursuant to Article 117(2)(m). It retains the power to enforce effectiveness, using the power of substitution under Article 120(2). However, the state also retains a co-legislative role in various areas that intersect with health protection, complicating efforts to delineate state and regional competences.[8]

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

This section of the report aims to describe the main characteristics of the care sector in Italy. The first subsection deals with care workers and care occupations, the second with health professionals, the third with social and care workers, the fourth with primary care workers, the fifth with home caregivers, and the sixth analyses care sector labour market data.

"L'incerta evoluzione del regionalismo sanitario in Italia," *Forum di Quaderni Costituzionali – Rassegna* 9 (2013): 1–39, <https://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0425_cuocolo_candido.pdf>.

6 Donatella Morana, "La tutela della salute fra competenze statali e regionali: indirizzi della giurisprudenza costituzionale e nuovi sviluppi normativi," *Osservatorio Costituzionale* 1 (2018).

7 Raffaele Bifulco e Alfonso Celotto, a cura di, *Le materie dell'art. 117 nella giurisprudenza costituzionale dopo il 2001: analisi sistematica della giurisprudenza costituzionale sul riparto di competenze fra stato e regioni 2001-2014* (Napoli: Editoriale scientifica, 2015), 283 ff.

8 Morana, "La tutela della salute fra competenze statali e regionali".

Methodologically, the sources on which the section is based are legal, doctrinal and statistical. Statistical data are analysed in subsection 2.6. These data are compiled on the basis of data from the National Institute of Statistics (ISTAT), statistical office of the European Union (EUROSTAT), Organisation for Economic Co-operation and Development (OECD) and National Federation of Orders of Nursing Professions (FNOPI) databases, as well as trade union publications and previous doctrinal studies. Given the complexity of retrieving the data on Social and health workers, recourse was mainly made to the data presented by the trade unions in the hearing at the Senate of the Republic on the bill no. 934 and no. 2347 of 2022.[9]

2.1 Care Worker and Care Occupations

In the Italian legal system, there is no unitary legal notion of care sector and care worker, but there are different forms of care work with autonomous disciplines. These forms of care work share the functional characteristic of providing personal and/or healthcare to people with disabilities, elderly, sick and children. Following the Consortium's choice on the target of the study, the report excludes consideration of the remaining childcare providers and medical practitioners, concentrating exclusively on care workers possessing qualifications spanning from low to medium levels.

This report considers four types of care workers:

1) Health professionals with at most a Bachelor's degree.
2) Social and care workers.
3) Basic care workers.
4) Home caregivers.

[9] Federazione Nazionale Migep, "Modifiche al decreto legislativo 21 aprile 2011 n. 67, ai fini dell'introduzione del personale infermieristico e degli operatori socio sanitari tra le categorie usuranti," *Audizione sui disegni di legge nn. 934 e 2347* (2022); Senato della Repubblica, "Audizioni informali di rappresentanti di CGIL, CISL, UIL e FNOPI, intervenuti in videoconferenza, sui disegni di legge nn. 934 e 2347 (inserimento infermieri e OSS in categorie usuranti)," *Legislatura 18a – 11a Commissione permanente 'Lavoro pubblico e privato, previdenza sociale' – Resoconto sommario n. 76 del 08/02/2022*, 2022, <https://www.senato.it/japp/bgt/showdoc/18/SommComm/0/1331859/index.html?part=doc_dc> (Accessed October 2, 2023); FNOPI, *Stato della carenza infermieristica al 2021*, Schede di Analisi FNOPI, 2022, <https://www.fnopi.it/aree-tematiche/carenza-infermieristica-al-23-agosto-2022/> (Accessed December 13, 2023); FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed October 18, 2023); FNOPI, *Scheda sulla professione infermieristica*, Schede di analisi FNOPI, 2020. FNOPI, *Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015; ISTAT, *Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato*, Personale sanitario, 2022, <http://dati.istat.it/Index.aspx?QueryId=31546>; EUROSTAT, *Healthcare Personnel Statistics - Nursing and Caring Professionals*, Health in the European Union – facts and figures, 2023, <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Healthcare_personnel_statistics_-_nursing_and_caring_professionals> (Accessed October 19, 2023).

Each of these four categories corresponds to professions that are autonomously regulated in the Italian legal system.

1) Health professionals with at most a Bachelor's degree encompass nurses, midwives, healthcare and rehabilitation technicians who obtained their professional qualification after a bachelor's degree.
2) Social and care workers are a category that corresponds to social and health workers (*operatore socio-sanitario* or OSS) who have obtained the qualification through a course accredited by public bodies, which requires a secondary school diploma.
3) Basic care workers correspond in Italian law to social assistance workers (*operatore socio-assistenziale* or OSA) who perform low-complexity and varied care tasks and are involved in personal care, domestic help and hygiene/health services.

Italian legislation is highly fragmented, particularly concerning the professional roles of Social and Care Workers and Basic Care Workers.[10] The decentralisation of responsibility to the regions within the healthcare sector has resulted in a proliferation of models and methodologies for recognising these professional roles, which often have varying designations across regions.[11] The required training is not standardised nationally but instead determined at the regional level, leading to a wide disparity in the number of training hours. Additionally, national regulations in the healthcare sector suggest that the role of Basic Care Workers (OSA) should no longer be employed in the public sector, yet it continues to be prevalent in the private sector.[12]

4) Finally, home caregivers (*assistenti domiciliari,* or *badanti*) are a category that the law and collective agreements assimilate to domestic workers, albeit they specifically take care of elderly, sick or dependent persons without a specific qualification.

2.2 Health Professionals With at Most a Bachelor's Degree

Health professionals with at most a Bachelor's degree is a broad category encompassing nurses, midwives, healthcare, and rehabilitation technicians who obtained their professional qualification after a three-year degree.[13] The nurse and midwife profession has been fully reformed since the 1990s.[14] The profes-

[10] Edoardo Caruso, "Il rapporto pubblico e privato nel servizio sanitario: tra oscillazioni e fibrillazioni," in *Organizzazione e lavoro in sanità. Una ricerca interdisciplinare*, a cura di Stefania Buoso, e Angelina Passaro (Torino: Giappichelli, 2023), 9–54.

[11] Franca Borgogelli, "Il reclutamento nel lavoro pubblico e le specificità del settore sanitario: profili critici," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 161–96.

[12] CARE4CARE, "Minutes".

[13] Stefania Buoso, "Il nuovo ordinamento professionale del comparto sanità: propositi riformatori e tensioni di sistema," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 197–225.

[14] Legislation on nurses and midwives includes: Ministerial Decree No. 739 of 14/09/1994 on the professional profile of nurses; Law No. 42 of 26 February 1999 on healthcare pro-

sion of nurse and midwife requires a Bachelor's degree that qualifies the holder to exercise the profession after registration in the professional register.[15]

The activities carried out by nurses vary in nature: taking charge of patients, planning care services, providing care and health services, evaluating, and monitoring the impact of care activities, promoting and educating patients and the community on health and prevention, participating in patient management training and courses, and supporting medical staff.[16]

Nurses and midwives can work both in public sector institutions such as local health authorities, hospitals, elderly care facilities and public care facilities; and in private sector institutions such as private clinics, large companies, and private elderly care facilities. Furthermore, health professionals may be employed under a subordinate contract or be self-employed (see subsection 2.6).

In their work, health professionals are constantly in contact with illness and suffering and must offer emotional support while managing their own personal involvement. The health professional working in health care facilities has a fixed work schedule or works in shifts. Generally, the health professional works as part of a team coordinated by a qualified nursing coordinator. A health professional working in a public facility is hired after passing a public competition based on qualifications and examinations. The most common employment contract in public facilities is a permanent subordinate contract. Conversely, a health professional working in a private facility may be employed with a fixed-term or permanent employment contract with the only requirement of professional qualification (cf. subsection 2.6). In home care, the health professional is normally self-employed following the instructions of the general practitioner and working predominantly alone.[17]

In the exercise of their profession, health professionals are bound by the code of ethics drawn up by the FNOPI, which maintains the professional register.[18]

fessions; Law No. 251 of 10 August 2000 on nursing healthcare professions; Law No. 1 of 8 January 2002 on healthcare personnel; Law No. 43 of 1 February 2006 on nursing, midwifery, rehabilitation, technical healthcare and prevention healthcare professions and delegation to the government to establish the relevant professional orders.

15 Article 6.3, Legislative Decree No. 502 of 30 December 1992.

16 Antonio Boccia et al., *Elementi di diritto per le professioni sanitarie* (Milano: Società Editrice Esculapio, 2012).

17 Regarding working conditions in care sector, see among others: Luisa D'Agostino and Alessia Romito, "Invecchiare in sanità. Condizioni di lavoro e transizione digitale in una prospettiva di longevità (lavorativa) sostenibile" (Roma: INAPP, 2023); European Foundation for the Improvement of Living and Working Conditions, *Long-Term Care Workforce: Employment and Working Conditions* (Luxembourg: Publications Office of the European Union, 2020), <https://data.europa.eu/doi/10.2806/531180> (Accessed May 9, 2024).

18 FNOPI, *Codice deontologico delle professioni infermieristiche* (Roma: Federazione Nazionale Ordini Professioni Infermieristiche, 2019), <https://www.fnopi.it/wp-content/uploads/2019/10/Codice-Deontologico-CN-12-13-aprile-2019.pdf> (Accessed March 2, 2024).

2.3 Social and Care Workers

Social and care workers are workers who have qualified through a publicly accredited course, which requires a high school diploma. In the Italian system this category corresponds to that of social and health workers (*operatore socio-sanitario* or OSS), to specialised social and health workers (*operatore socio sanitario specializzato* or OSSS) technical care operator (*operatore tecnico addetto all'assistenza* or OTA). These figures do not exist in all regional health regulations, some only regulate social and health workers.

An agreement between the Minister of Health, the Minister of Social Solidarity and the Regions and Autonomous Provinces of Trento and Bolzano, as well as Article 5 of Law No. 3 of 11 January 2018, constitute the fundamental regulations for these professions. The figure of the (specialised) social and health worker has progressively absorbed some previous figures that dealt with health care – such as basic and specialised assistants –[19] and social assistance – such as socio-sanitary assistants –[20] integrating the functions, tasks, and skills of the two areas into a single role.[21] The same process occurred for technical assistance workers who reabsorbed the former technical assistance figures.

Social and care workers can be hired as an employee or as a self-employed person both in public and private facilities. If working directly for a public body, he/she needs to pass a competition based on qualifications and examinations in order to be recruited. Law No. 3 of 11 January 2018 officially established the social and health professions under which social and care workers are covered. The legislation of the Regions and Autonomous Provinces may, in a supplementary manner, establish further provisions on the training paths and tasks of these workers.

The social and care workers carry out basic care activities, collaborating and assisting healthcare professionals. These workers carry out activities that help people meet their basic needs: feeding, personal hygiene, activities aimed at recovery and mobilisation, and stretcher transport. They monitor vital signs, carry out minor medication, assist in the administration of oral therapy, transport biological materials, and prepare materials for sterilisation.[22]

The Regions and Autonomous Provinces are responsible for training; the certificate of professional qualification is awarded at the end of a training course

[19] In italian, *operatore tecnico* and *assistente di base*.

[20] In italian, *ausiliario socio-sanitario*.

[21] "Accordo tra il Ministro della sanità, il Ministro per la solidarietà sociale e le Regioni e Province autonome di Trento e Bolzano, per la individuazione della figura e del relativo profilo professionale dell'operatore socio-sanitario e per la definizione dell'ordinamento didattico dei corsi di formazione," *Gazzetta Ufficiale* Serie Generale 91 (19 aprile 2001), <https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2001-04-19&atto.codiceRedazionale=001A4046> (Accessed February 12, 2024).

[22] Margherita Di Virgilio e Irven Mussi, *Manuale per OSS e ASA (Operatori Socio-Sanitari e Ausiliari Socio-Assistenziali)*(Milano: Franco Angeli, 2019).

lasting approximately 1,000 hours: 450 hours of theory, 100 hours of exercises and 450 hours of apprenticeship, including a final exam.[23]

2.4 Basic Care Workers

Basic care workers are professionals who perform varied and low-complexity care tasks and are responsible for personal care, domestic assistance, and hygiene services. This category includes social assistance worker (*operatore socio-assistenziale* or OSA), social assistance auxiliaries (*ausiliario socio assistenziale* or ASA). These figures do not exist in all regional health regulations, some only regulate social assistance workers.

Basic care workers are established by the same agreement between the Minister for Health, the Minister for Social Solidarity and the Regions and Autonomous Provinces of Trento and Bolzano that introduced social and care workers, and by Law No. 3 of 11 January 2018. This professional figure was created in the reorganisation of previous professional figures related to social and care work (e.g., technical assistants or social assistants)[24] and aims to promote the social and relational well-being of patients in their environment.[25] Therefore, support is aimed at the social sphere to maintain or recover a person's autonomy.[26]

Basic care workers can be hired as an employee or as a self-employed person in public and private facilities. In the case that he/she works for a public facility, he/she needs to pass a competition based on qualifications and examinations in order to be recruited. In most cases, basic care workers operate in the field of care of dependent persons, persons with disabilities and patients (e.g. in retirement homes, residential communities for children with disabilities and for drug addicts, daycare centres for the elderly, kindergartens, and nursery schools).[27]

[23] Among others: Regione Lombardia, "Operatore socio sanitario – OSS" (Formazione per il lavoro, 2023) <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioServizio/servizi-e-informazioni/Cittadini/Lavoro-e-formazione-professionale/Formazione-per-il-lavoro/oss-operatore-socio-sanitario/oss-operatore-socio-sanitario\> (Accessed March 25, 2024); Regione Emilia-Romagna, "Formazione per OSS" (Sistema regionale delle qualifiche (SRQ), 2023) <https://formazionelavoro.regione.emilia-romagna.it/qualifiche/approfondimenti/srq/oss/formazione\> (Accessed March 25, 2024); Regione Toscana, "Corsi per operatore socio sanitario" (Servizio sanitario Toscana, 2023) <https://www.regione.toscana.it/-/corsi-per-operatore-socio-sanitario\> (Accessed March 25, 2024); Regione Lazio, "Operatore socio sanitario" (Formazione (Cittadini), 2023) <https://www.regione.lazio.it/cittadini/formazione/offerta-formativa/9343\> (Accessed March 25, 2024).

[24] In italian, *assistente tecnico* and *ausiliario socio-assistenziale*.

[25] Commissione nazionale di studio per la definizione dei profili professionali e dei requisiti di formazione degli operatori sociali, "Gli operatori sociali: urgenza di una normativa. Rapporto della commissione nazionale di studio per la definizione dei profili professionali e dei requisiti di formazione degli operatori sociali" (Roma: Ministero degli affari interni, 1982).

[26] "Accordo tra il Ministro della sanità, il Ministro per la solidarietà sociale e le regioni e province autonome di Trento e Bolzano".

[27] Francesca Sassano e Claudio Giuseppe Quaglia, *L'operatore socio-assistenziale O.S.A.* (Napoli: Simone, 2014).

The figure has specific training and implements a direct intervention with the patient in order to promote the recovery of autonomy. Furthermore, the professional performs home care services for the elderly or people with disabilities. The training is regulated at the regional level and the professional qualification certificate is obtained at the end of a training course lasting between 700 and 900 hours with compulsory practical training and a final examination.[28]

2.5 Home Caregivers

The last category of care workers is that of home caregivers (*assistenti domiciliari,* or *badanti*),[29] consisting of workers, without any qualifications, who take care of elderly, sick, dependent persons and persons with disabilities.[30] The category of home caregivers under Italian law and collective agreements is that of domestic workers. However, the latter include not only home caregivers, but also housepersons, family assistants, baby-sitters, and housekeepers.[31] For the purposes of this analysis only home caregivers are studied. Home caregivers are regulated by collective agreements and by Law No. 339 of 2 April 1958, which applies on a residual basis and only in cases where there is no collective agreement (see subsections 2.6, 6.2.1, 6.3.1, and 7.2.1).[32]

[28] Regione Lombardia, "Ausiliario socio assistenziale – Asa" (*Formazione per il lavoro*, 2023) <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioServizio/servizi-e-informazioni/Cittadini/Lavoro-e-formazione-professionale/Formazione-per-il-lavoro/ausiliario-socio-assistenziale-asa/ausiliario-socio-assistenziale-asa> (Accessed March 25, 2024).

[29] The term "badante" is commonly used to refer to home caregivers. This colloquial expression lacks direct correspondence in national law. Nonetheless, its adoption has been observed in certain collective agreements. Legislative references typically designate these individuals as "domestic workers," "family aides," or "home assistants/helpers" (i.e., *lavoratori domestici, assistenti domiciliari, assistenti familiari o assistenti domiciliari*). This analysis, encompassing both legislative and collective agreement perspectives, incorporates both terminologies. However, it is noted that during the national stakeholder meeting, home caregivers emphasised the necessity of employing a less pejorative term, expressing a preference for "*assistenti familiari*" or "*assistenti domiciliari*" ("home assistants" or "home caregivers").

[30] For a detailed discussion on the notion of home caregiver see: Claudio de Martino, "Chi bada alle badanti? la specialità del lavoro domestico alla prova del COVID-19" *Giornale di diritto del lavoro e di relazioni industriali* 169 (2021): 53–5.

[31] Among others, see Darcy du Toit, "La tutela dei diritti dei lavoratori domestici e di cura: verso un nuovo paradigma," in *Verso un mercato del lavoro di cura: questioni giuridiche e nodi istituzionali*, a cura di Lilli Casano, (Valenza: ADAPT University Press, 2022); Orlando De Gregorio, "Il pane e le rose: come favorire il lavoro dignitoso nel settore domestico" *Secondo Welfare* (14 October 2022): <https://www.secondowelfare.it/immigrazione-e-accoglienza/il-pane-e-le-rose-come-favorire-il-lavoro-dignitoso-nel-settore-domestico/> (Accessed May 9, 2024); Luciano Angelini e Paolo Pascucci, "La tutela della salute e sicurezza dei lavoratori domestici. nuovi spunti di riflessione dopo il d.lgs n. 81/2008," in *Lavoro domestico e di cura: quali diritti?*, a cura di Raffaella Sarti (Roma: Ediesse, 2010); Silvia Borelli, "Lavoro domestico e di cura," in *Il contratto di lavoro*, a cura di Roberto Romei, e Franco Scarpelli (Roma: Treccani, 2024).

[32] Among others, see Sabrina Marchetti, Daniela Cherubini, and Giulia Garofalo Geymonat, *Global domestic workers: intersectional inequalities and struggles for rights* (Bristol, UK: Bristol

The domestic and home-care sector is shaped by three interrelated features:
1) Strong and uneven territorial differentiation.
2) The role of households.
3) The prevalence of monetary treatments.

These three elements have a significant impact on the services and working conditions of care workers.

The strong and uneven territorial differentiation has its roots in Italian regionalism.[33] Indeed, according to Title V of the Constitution, regions and municipalities have the main responsibility in the administration of the welfare state.[34] The disjointed development is the result of the proliferation of regional regulations and the delay in the definition of the essential levels of services (i.e. the framework regulation) by the government. From 2008 onwards, territorial disparities have been steadily increasing due to the curtailment of national funds for social policies, which then fell on local authorities.[35] The latter has been subject to severe budgetary constraints that have had a negative impact on social benefits and working conditions. To overcome the territorial disparities, the Ministry of Labour and Social Policies has created several coordination instruments (e.g. Social Inclusion Protection Network, National Social Plan, Plan for Social Interventions and Services to Combat Poverty, Plan for Non-Self-sufficiency).[36]

A second characteristic that has a strong impact on care work is the role of households. The Italian welfare model is characterised by the heavy burden of care left to households that is first measure to cushion the effects of unemployment.[37] In spite of the centrality of households in care work, Italy lacks a policy to support and promote this work. State intervention is essentially reparative and focuses on emergency conditions, while the family is left with the burden of maintaining care services through forms of paid care work, i.e., domestic work and paid homecare work.[38] The economic burden on families is bound to increase as the number of elderly people rises. Italy is in fact the country with the high-

University Press, 2021); Vera Pavlou, *Migrant Domestic Workers in Europe. Law and the Construction of Vulnerability* (Oxford: Hart, 2021), https://doi.org/10.5040/9781509942404.

33 Maurizio Ambrosini, "Dentro il welfare invisibile : aiutanti domiciliari immigrate e assistenza agli anziani," *Studi Emigrazione* 42, 159 (2005): 561–95.

34 Ugo Ascoli, *Il welfare in Italia* (Bologna: il Mulino, 2011).

35 Silvia Borelli, *Who care? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020), 13–4.

36 Borelli, *Who care?*, 13–4.

37 Madia D'Onghia, "Da l'assistenza sociale a un nuovo modello di politiche sociali, mutamenti e sfide del sistema italiano," *Variazioni su temi di diritto del lavoro* 349 (2019): 367; Commissione affari sociali, "Indagine conoscitiva sulle condizioni sociali delle famiglie in Italia" (Roma: Camera dei deputati, 2007).

38 Presidenza del Consiglio dei Ministri, "Piano nazionale per la famiglia" (Osservatorio nazionale sulla famiglia, 2022); Commissione affari sociali, "Indagine conoscitiva".

est number of elderly people in Europe.[39] Until now, pension benefits have been largely used to pay for private care. However, the limited amounts of pensions are one of the factors pushing families to turn to cheaper undeclared work, often performed by undocumented migrants. Moreover, as Borelli points out, the increase in the number of poor elderly people suffering from senility-related[40] diseases and living alone will have a negative impact in the medium to long term.

The third characteristic of Italian welfare is the prevalence of monetary treatments (i.e. do it yourself welfare).[41] The Italian welfare system provides monetary transfers aimed at supporting, at least in part, care services; this circumstance has favoured the privatisation of care work without necessarily guaranteeing the regularity of labour relations.[42] Regarding expenditure on financing care services, almost half of the public expenditure on long-term care concerns the accompanying allowance for dependent persons. This allowance is very modest in amount (527.16 euros per month in 2023) and is not subject to any constraints or controls on its use. Thus, this benefit is normally used to purchase paid home care services from dependent persons.[43] Low public funding in the care sector acts as an incentive for the non-regular employment of migrant women. The most politically praised and widespread model of care services is the cash-for-care scheme.[44] This model is fuelled by the prevalence of public monetary treatments and is politically well-regarded because it allows freedom of choice and public cost containment. However, this scheme displaces private individuals or rather families the cost of the care service feeding a vicious circle.

Article 29 (15–18) of Law No. 56 of 29 April 2024, which converts, with modifications, Decree-Law No. 19 of 2 March 2024, have introduced additional provisions regarding care work, particularly for home caregivers. The legislature aims to progres-

[39] EUROSTAT, *Population by Age Group* (2023) <https://ec.europa.eu/eurostat/web/products-datasets/-/tps00010> (Accessed June 25, 2023); Claudio Falasca, *Domiciliarità e Residenzialità per l'invecchiamento attivo* (Roma: Auser 2017), 13.

[40] Borelli, *Who cares?*

[41] Borelli, *Who care?*

[42] Ragioneria Generale dello Stato, "Le Tendenze di medio-lungo lungo periodo del sistema pensionistico e socio sanitario" (Roma: Ministero dell'Economia e delle Finanze, 2022); Matteo Jessoula et al., *ESPN Thematic Report on Financing Social Protection - Italy, European Social Policy Network (ESPN)* (Brussels: European Commission, 2019); Ugo Ascoli e Alessandro Sicora, "Servizio sociale e welfare in italia: la necessità di una nuova «grammatica» per le politiche pubbliche. Nota introduttiva," *La rivista delle politiche sociali* 9 (2017): 9.

[43] Borelli, *Who care?*, 18; Barbara Da Roit and Blanche Le Bihan, "Cash for long-term care: Policy debates, visions, and designs on the move," *Social Policy and Administration* 53, 4 (2019): 533, https://doi.org/10.1111/spol.12506; Blanche Le Bihan, Barbara Da Roit, and Alis Sopadzhiyan, "The turn to optional familialism through the market: Long-term care, cash-for-care, and caregiving policies in Europe," *Social Policy and Administration* 53, 4 (2019): 591, https://doi.org/10.1111/spol.12505.

[44] Valentina Zigante, *Informal care in Europe: Exploring Formalisation, Availability and Quality* (Brussels: European Commission, 2018), 24, <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8106&type=2&furtherPubs=no> (Accessed March 25, 2024).

sively enhance the quality and quantity of care and assistance services for elderly individuals who are not self-sufficient, and to regularise care work provided in their homes.

Starting from the date communicated by INPS upon the conclusion of admission procedures for funding under the National Program for Youth, Women, and Employment 2021–2027, and until 31 December 2025, employers hiring or converting domestic workers to indefinite contracts for assisting elderly individuals aged at least eighty years, already receiving the accompanying allowance, are granted a 100% exemption from total social security contributions and insurance premiums for up to 24 months. This exemption is capped at 3,000 euros annually, recalibrated and applied quarterly, while maintaining pension contribution rates.

Employers availing of this benefit must have a current Equivalent Economic Situation Indicator (ISEE)[45] not exceeding 6,000.00 euros for facilitated socio-healthcare benefits.

Exceptions to this benefit include situations where less than 6 months have elapsed since the termination of a domestic work relationship with duties as an assistant to elderly individuals between the same worker and employer, or within the same household. Additionally, the benefit does not apply to the hiring of relatives or relatives by marriage, unless the employment concerns specific duties outlined in relevant legislation.

The contribution exemption is subject to maximum expenditure limits: 10 million euros for 2024, 39.9 million euros for 2025, 58.8 million euros for 2026, 27.9 million euros for 2027, and 0.6 million euros for 2028. These funds are allocated within the framework of the National Program for Youth, Women, and Employment 2021–2027, pending Program modifications and admission of the measure to funding, complying with applicable procedures, territorial constraints, and eligibility criteria.

INPS monitors the reduced contribution revenue pursuant to Article 29 (15–17) of Law No. 56 of 29 April 2024. If prospective data indicates the spending limit has been reached, INPS discontinues further applications for contribution relief.

Concerning the annual ISEE threshold of 6,000.00 euros established for eligibility for this contribution relief measure, it is noteworthy that this figure is exceptionally low. For instance, it falls below the threshold required to qualify for the inclusion allowance (set at 9,360.00 euros),[46] which serves as a poverty alleviation measure. Moreover, according to ISTAT data, an ISEE of 6,000.00 euros per annum falls beneath the absolute poverty threshold, the benchmark employed in Italy for shaping public policy.[47] Consequently, it can be inferred that the contribution relief measure will only benefit a small number of individuals who, in general, are unable to afford to hire a home caregiver.

[45] The ISEE (Equivalent Economic Situation Indicator) is the indicator used to assess and compare the economic situation of households applying for facilitated social benefits.

[46] Ministero del Lavoro e delle Politiche Sociali, "Assegno di inclusione Nuove misure inclusione e accesso lavoro," s.d., <https://www.lavoro.gov.it/temi-e-priorita/decreto-lavoro/Pagine/assegno-di-inclusione> (Accessed April 21, 2024).

[47] ISTAT, *Le statistiche dell'ISTAT sulla povertà, anno 2022* (Roma: ISTAT, 2023); Donatella Grassi e ISTAT, a cura di, *La misura della povertà assoluta.* (Roma: ISTAT, 2009; Metodi e norme 39).

2.6 Labour Market Characteristics of Care Workers and Key Current Debates

In a 2019 report, the OECD and the European Commission's European Observatory of Health Policies and Systems highlighted that Italy employs fewer healthcare professionals than most Western European countries. In 2019, there were 5.8 healthcare professionals per 1,000 inhabitants in Italy, in contrast to 8.5 in the EU. Furthermore, the number of healthcare professionals has been consistently declining; Italy had approximately 557,000 healthcare professionals in 2016, which decreased to about 456,000 by 2022. FNOPI estimates that Italy would need between 50,000 and 60,000 additional healthcare professionals to reach the EU average.[48]

During the Italian National Stakeholders Meeting, FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour shortages.[49] Within this context, several discussions emerged regarding the potential of technology to support healthcare and assistance personnel. The role of platforms as facilitators in matching users' needs with nursing personnel was underlined. In this context, FNOPI stressed the ongoing debate surrounding the possible introduction and dissemination of the community nurse role, as outlined in the Health Pact (*Patto per la salute*), and legislated in Decree-Law No. 34 of May 19, 2020, subsequently converted into Law No. 77 of July 17, 2020 (*Decreto Rilancio*) [50]

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation in order to contain public spending on healthcare.[51] Alongside this phenomenon, a trend has emerged in the public health sector to outsource care services using forms of contracting and subcontracting to cooperatives and private companies. This trend is homogeneous throughout the country and concerns both health professionals, social and care workers, and basic care workers. There are two main reasons for this choice:

a) the decision to circumvent public recruitment competition procedures, and
b) the containment of personnel costs and NHS expenditure.

The pandemic crisis has forced a temporary change of course. The *Decreto Rilancio*, provided for the integration of the nursing workforce, initially with temporary contracts, then, from 2021, with permanent contracts.[52] There is no evidence that this is a permanent change of policy.

Remuneration is a problematic area, because it is perceived by the workers as inadequate in relation to the growth and increased responsibilities and spe-

[48] FNOPI, *Scheda sulla professione infermieristica*.

[49] Donald e Charles Sull, "The Real Issues Driving the Nursing Crisis," *MIT Sloan Management Review* 65, 2 (2023): <https://sloanreview.mit.edu/article/how-solve-nursing-crisis/> (Accessed April 29, 2024).

[50] CARE4CARE, "Minutes".

[51] FNOPI, *Scheda sulla professione infermieristica*.

[52] ISTAT, *Le statistiche dell'ISTAT*; FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed October 18, 2023).

cialisations of the nursing profession.[53] The collective agreements do not provide for management roles for health professionals.[54] However, as evidenced by FNOPI, nursing staff are often entrusted with co-ordination roles. The OECD data show that in Italy the average salary of nursing staff is lower than that of the main European partners.[55]

Concerning distribution in the labour market, FNOPI reports that the vast majority of health professionals (more than 75%) work in hospital facilities. Approximately 14% of health professionals have a part-time contract, 98% of them are women. In 2021, there were approximately 37,000 freelance health professionals, while there were approximately 78,000 health professionals employed by private facilities.[56]

Regarding age, most health professionals are between 36 and 55 years old. Health professionals over 65 years of age with professional seniority of more than 30 years account for approximately 13,000, while those with no professional seniority of more than 30 years account for approximately 25,000. Health professionals up to 28 years of age number about 39,000. The average age of all health professionals in Italy is about 46 years, while that of civil servants alone is about 51 years with marked differences. In the Regions where the turnover block has been completed the age is markedly higher than in the others.[57]

Concerning geographical distribution, the largest number of health professionals is concentrated in the North-West regions. This is followed by the South, the Centre, the North-East and the Islands. This uneven distribution is partially explained on the basis of population, which is larger in the North than in the other areas of the country, and on the basis of remuneration, which is slightly higher in the Northern regions.[58]

According to FNOPI, female health professionals in Italy are about 76% distributed unevenly across the country. In the North-West female health professionals make up 83.83% of the total, while in the North-East they make up 83.28%. The peak of female health professionals is recorded in Trentino-Alto Adige/Süd Tirol with 86.39%. In the Centre, female health care professionals make up 77.64%, in the South 67.37% and in the Islands 64.38%, with Sardinia at 79.23% and Sicily with the lowest figure in Italy at 59.05%.[59] Concerning the pay gap, female health professionals earn about 12.8% less than men considering all con-

[53] FNOPI, *Scheda sulla professione infermieristica*.

[54] FNOPI, *Scheda sulla professione infermieristica*.

[55] OECD, *Healthcare Resources: Remuneration of health professionals* (OECD.Stat, 2023), <https://stats.oecd.org/index.aspx?queryid=30025> (Accessed January 26, 2024).

[56] FNOPI, *Scheda sulla professione infermieristica*; *Tutti i numeri degli infermieri*.

[57] FNOPI, *Scheda sulla professione infermieristica*; *Tutti i numeri degli infermieri*.

[58] ISTAT, *Le statistiche dell'ISTAT*; FNOPI, *Scheda sulla professione infermieristica*.

[59] FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed October 18, 2023).

tracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.[60]

The pandemic has caused numerous victims especially among female health professionals. In fact, female health professionals account for 34% of the deaths recorded among Italian health professionals. A further issue concerns gender-based violence. According to FNOPI, about 180,000 health professionals have suffered violence in the workplace during their careers, 100,000 of these violences were physical assaults.[61]

Regarding social and care workers, data are fragmentary because there is no professional register. Trade unions estimate between 200 and 300,000 workers, 90% of whom are women.[62] Trade unions indicate an average age of around 45 years.[63] The age of the operators ranges from 30 to 60. There are no data available on Social and health workers employed in the private sector (scientific hospitalisation and care institutions or IRCCS, foundations, research institutions, private nursing homes) and in the public sector (prisons, schools, public health facilities), nor on self-employed workers. Furthermore, there is a lack of data on workers employed on a temporary or permanent basis during the COVID-19 pandemic.[64] According to trade unions, social and care workers work a wide range of care duties with very heavy shifts, having to make up for shortages of nursing staff and being burdened with a plethora of tasks that are not provided for in contracts and for which they have no specific training.[65] During the pandemic, social and care workers and basic care workers experienced a great deal of work-related stress, which led to a significant increase in burnout and occupational accidents and illnesses.

A cross-cutting issue for all healthcare professions (health professionals, social and care workers, primary care workers) working in residential facilities for the elderly, hospices, and long-stay wards, is that of standard costs imposed on the public budget.[66] These standard costs refer to a predetermined number of working minutes per patient within which each operator is required to remain. There is a high variability of this minute allocation as it is established in an essentially uncoordinated manner by

60 FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed October 18, 2023).

61 FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed October 18, 2023); an issue that has been raised also by the media, see Mariavittoria Savini, "Aggressioni personale sanitario, Schillaci: "Numeri allarmanti, le infermiere le più colpite"," *RaiNews* (12 March 2023): <https://www.rainews.it/articoli/2023/03/aggressioni-personale-sanitario-schillaci-numeri-allarmanti-le-infermiere-le-piu-colpite--480d5b-be-a810-463e-b64b-fe6074b6ca69.html> (Accessed April 29, 2024).

62 CARE4CARE, "Minutes".

63 CARE4CARE, "Minutes".

64 Federazione Nazionale Migep, "Modifiche al decreto legislativo 21 aprile 2011 n. 67".

65 Federazione Nazionale Migep, "Modifiche al decreto legislativo 21 aprile 2011 n. 67".

66 Camera dei deputati, "Patto per la salute 2019-2021" (2019), <https://www.camera.it/temiap/2020/01/09/OCD177-4262.pdf> (Accessed April 29, 2024).

each Italian region. The allocation of a very low minute allocation for each operation results in a very high workload for healthcare workers and a negative impact on users' health.[67] NURSIND points out that the excessive emphasis on the standardisation and compression of working time has a negative impact on the quality of healthcare.[68]

According to data from the INPS Observatory on domestic workers, in 2022, the total number of domestic workers contributing to the INPS was 894,299, reflecting a decrease of 7.9% compared to 2021 (-76,548 workers).[69] This decline follows increases in the previous years, driven by the regularisation of employment relationships to allow domestic workers to travel to work during lockdown periods and the entry into force of regulations governing the regularization of irregular employment relationships (Decree Law No. 34 of 19 May 2020). Similar phenomena were observed in the years following 2009 (Law, No. 102 of 03 august 2009) and up to 2012 (Legislative Decree No. 109 of 16 July 2012), during which regularization of workers, both EU and non-EU citizens, occurred.[70]

The data indicates the dual impact of the COVID-19 pandemic on the increase of domestic workers. The first effect is attributed to the containment measures, which restricted movement to those who could demonstrate a legitimate reason, such as having a regular employment relationship. The second effect, also related to the pandemic, is linked to the regularisation procedure for irregular immigrant workers initiated in 2020. This procedure focused on two sectors (agriculture and domestic work), attracting workers from other sectors as well and resulting in an overrepresentation of domestic work in the years immediately following regularization. With the easing of containment measures, many regularised workers shifted sectors, returning to their original fields.

Regarding gender and nationality, there are significant differences. The most pronounced decrease in 2022 was observed among foreign male workers (-21.1%), a group that had seen the most significant increase between 2019 and 2021 (+66.6%). Foreign women, despite a slight decrease in 2022 (-5.6%), remain dominant in the domestic sector, constituting 58.7% of the total. The second-largest group comprises Italian women, representing 27.8% of the total.

The category of home caregivers (*assistenti domiciliari*, or *badanti*) among domestic workers is more prevalent among nationals from Eastern European countries, such as Georgia (82.4%), Bulgaria (73.8%), Ukraine (65.7%), and Romania (63.0%). Among workers of Asian origin, the presence of caregivers is less significant, dropping below 20% for Bangladesh, the Philippines, and Pakistan.[71]

[67] CGIL FP, "'La cura dei diritti" / Gli standard assistenziali infermieristici a tutela del personale e dei pazienti," (FP-CGIL Lombardia, 2021): <https://fpcgil.lombardia.it/2021/06/16/la-cura-dei-diritti-gli-standard-assistenziali-infermieristici-a-tutela-del-personale-e-dei-pazienti/> (Accessed February 25, 2024).

[68] CARE4CARE, "Minutes".

[69] INPS, *Statistiche in breve: lavoratori domestici* (INPS, 2023), <https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013> (Accessed February 25, 2024).

[70] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023), 94 ff.

[71] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 97–102.

Specifically focusing on home caregivers, their average age is slightly higher (51.3 years) compared to other domestic workers (47 years). Moreover, the majority of caregivers are over 50 years old (62.2%), while only a small percentage are under 30 (4.9%). This demographic profile reflects the demanding nature of caregiving roles, often attracting older individuals with more experience.[72]

In terms of hours worked, home caregivers tend to work longer hours on average compared to other domestic workers. Only a small percentage of caregivers (6.1%) work less than 10 hours per week, with a significant portion (42.2%) working over 40 hours per week. This contrasts with the majority of other domestic workers who work fewer hours, with 84% of them working less than 30 hours per week.[73]

Italian home caregivers, a vital component of the caregiving sector in Italy, represent a noteworthy portion of the domestic workforce. While constituting a minority, their numbers are significant given Italy's ageing population. Unlike foreign caregivers, Italian home caregivers display a diverse range of ages and backgrounds, reflecting various entry points into the profession. With approximately 48% of caregivers being Italian, they contribute substantially to meeting the care needs of families. Despite their local familiarity, Italian home caregivers face challenges such as long hours and low wages, with 42.9% working over 40 hours per week and 60% earning less than 6,000 euros annually.[74]

The level of undeclared work in the domestic sector remains a significant concern.[75] The historical trend shows that the majority of domestic workers have been engaged in irregular employment relationships. While there have been efforts to reduce informality through regularisation measures, the sector still exhibits a high prevalence of undeclared work, with the current rate standing at 51.8% in 2021.[76]

The irregularities detected in the sector include, in addition to undeclared work, under-declared work (i.e. declared for fewer hours than those actually worked or according to a lower professional classification).[77] In both cases, the worker receives all or part of the wages irregularly. The effect of these forms paying of irregular work is twofold: the employer saves on the cost of care (by not paying taxes and social security contributions and by paying a lower wage than that stipulated by collective agreements), the worker receives a payment on which he/she does not pay taxes and contributions.[78]

[72] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 105.

[73] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 107.

[74] Osservatorio DOMINA, *5° Rapporto annuale sul lavoro domestico*, 110–17.

[75] Maurizio Ambrosini, *Immigrazione irregolare e welfare invisibile. Il lavoro di cura attraverso le frontiere* (Bologna: il Mulino, 2013), https://doi.org/10.978.8815/316585; Ambrosini, "Dentro il welfare invisibile".

[76] Osservatorio DOMINA, *5° Rapporto Annuale Sul Lavoro Domestico*, 118–23.

[77] Regarding migrant care workers exploitation see: Alessandra Sciurba, *La cura servile, la cura che serve* (Pisa: Pacini, 2015).

[78] Borelli, *Who care?*, 202.

The reasons behind the recourse to irregular work stem from the combination of do-it-yourself welfare with the calculation of convenience on the part of workers. Households cut down on welfare costs and workers opt for immediate payments.[79]

Another problem reported in the analyses on domestic work is the scarcity of irregularity complaints by workers; they only turn to the authorities in cases of serious exploitation, and at the end of their working relationship. Although labour inspectors could carry out inspections at any time, it is very rare that checks on domestic work are carried out ex officio. Generally, the labour inspector intervenes upon a direct complaint from the worker.[80]

To promote the regularisation of domestic work, it has been suggested to increase the tax and social security benefits associated with this activity.[81] Currently, anyone who regularly employs a domestic worker can, when making a tax declaration, deduct the amount of the sums paid quarterly to INPS as long as it does not exceed the threshold of 1,549.37 euros per year (Article 10(1)(e) and 10(2) Presidential Decree No. 917 of 22 December 1986). Moreover, the employer may also deduct from the gross tax the 19% of the expenses incurred for caregivers of dependent persons in the performance of daily life acts, up to a maximum amount of 2,100 euros per year, but only if the total income does not exceed 40,000 euros (Article 15(1)(i-*septies*) of Presidential Decree No. 917 of 22 December 1986).[82]

2.6.1 The Interplay Between Migration and Labour Law in the Care Sector

A particularly important profile in the context of the care sector, which transversally concerns all care workers, but especially the domestic sector, is that of the interplay between migration and labour law. As highlighted in section 2.6, female migrant workers hold a substantial presence in the Italian labour market, often assuming roles in caregiving.

Historically, Italy has been primarily a country of emigration;[83] this is reflected in the Italian Constitution of 1948 (Articles 16(2) of the Constitution). At the same time, only a few generic provisions have been devoted to the right of asylum and the non-nationals legal status and rights.[84] Conversely, the Constitu-

[79] Borelli, *Who care?*, 202.

[80] Borelli, *Who care?*, 203.

[81] CARE4CARE, "Minutes".

[82] Borelli, *Who care?*

[83] Bernard Ryan and Rebecca Zahn, edited by, *Migrant Labour and the Reshaping of Employment Law* (Oxford: Hart, 2023); Cathryn Costello e Mark Freedland, edited by, *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford: Oxford University Press, 2014), https://doi.org/10.1093/acprof:oso/9780198714101.001.0001.

[84] Article 10 states that "(2) legal regulation of the status of foreigners conforms to international rules and treaties; [and] (3) foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law." Other pivotal constitutional provi-

tion has a number of provisions concerning labour rights, which have strongly influenced labour law and its developments.[85] Social rights, recognised in the Constitution alongside civil and political rights, play a fundamental role in enforcing labour-related rights obliging the State to act in favour of workers. Most of these social provisions are limited to the citizens.

Article 4 provides the legal basis for restrictions on the entry of foreign workers to protect Italy's national workforce. While confirming the possibility of implementing restrictions on the access of migrant workers (Decisions Nos. 144/1970 and 54/1979), the Constitutional Court ruled that by virtue of the principle of equality, there can be no restrictions when it comes to protecting fundamental rights (decision No. 249/2010) and "essential social benefits" (e.g., health and healthcare services, cf. decision No. 269/2010).

Interpreting Article 35 of the Constitution, the Constitutional Court granted full equality of treatment between national and non-national workers (Decision No 454/1998). With this same reasoning, labour migrants are also granted proportionate and sufficient remuneration (Article 36, Consolidation Act on Immigration), the right to rest and decent working hours, maternity and protections for women and children, social security, trade union rights and enterprise rights.

As far as immigration legislation is concerned, Legislative Decree No. 286 of 25 July 1998 (Consolidation Act on Immigration) is the pivotal piece of legislation in the system that has been constantly and progressively tightened.[86] Since 2002, Law No. 189 of 30 July 2002 (*Bossi-Fini*), any new law and regulation in the

sions, nonetheless, contribute to enhancing the national standards of foreigners' rights. In particular, Article 117, through which the EU legislation and international treaties signed by Italy acquire "constitutional relevance"; the "personalist principle" of Article 2, according to which "the Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity", and the equality clause of Article 3 that forbids unfair discrimination and entrenches substantial equality. Indeed, international conventions and jurisprudence (especially the European Convention on Human Rights (ECHR) and the principle of non-discrimination proclaimed by Article 14 ECHR), equality and the personalist principle have been frequently invoked by the Italian Constitutional Court to secure and extend the fundamental rights of foreigners. In particular, in several decisions, the Constitutional Court affirmed that limiting access to social benefits aimed to satisfy human basic needs only to foreigners with an EC residence permit for long residents entail an "unreasonable discrimination" between Italian citizens and foreigners regularly residing in Italy. See the decision of the Constitutional Court No. 187/2010, in which the Court also makes explicit reference to the decisions of the European Court of Human Rights *Gaygusuz v. Austria* 16/09/1996 and Niedzwieck v. Germany 25/10/2005.

85 Marco Esposito, Lorenzo Gaeta, e Antonello Zoppoli, *Istituzioni di diritto del lavoro e sindacale* (Torino: Giappichelli, 2014).

86 William Chiaromonte, *Lavoro e diritti sociali degli stranieri. Il governo delle migrazioni economiche in Italia e in Europa* (Torino: Giappichelli, 2013); Michele Colucci, *Storia dell'immigrazione straniera in italia. Dal 1945 ai giorni nostri* (Roma: Carocci, 2018) 140 ff.; William Chiaromonte, Maria Dolores Ferrara, e Maura Ranieri, a cura di, *Migranti e lavoro* (Bologna: il Mulino, 2020).

field of immigration has contributed to the narrowing of access to the country, and making non-nationals legal status increasingly precarious and fragile (see: Law No. 94 of 15 July 2009, Law No. 217 of 17 December 2010; Law No. 46 of 13 April 2017; Law No. 132 of 1 December 2018 and Law No. 77 of 8 August 2019, Decree-Law No. 20 of 10 March 2023 converted into Law No. 50 of 5 May 2023).[87] This process badly impacted labour migration. Indeed, the entry of migrant workers is based on quotas determined annually by law.[88] However, in recent years there has been a drastic decline in the number of work permits issued. Since 2021, a minor inversion of this declining trend occurred. The reduction is complemented by a similarly dramatic increase in international protection applications, which indicates a distorted use of international protection regimes.[89]

Employers are obliged to submit an application, specifying the worker individually or generically, for the desired employment. However, individual workers cannot apply independently for a residence permit. The issuance of the residence permit, theoretically within 60 days, is conditional on compliance with the annual quota. Once the permit has been obtained, the consulate of the worker's country of residence or origin issues an entry visa. Subsequently, within 8 days of arriving in Italy, the worker must finalise the residence contract for employment reasons at the Sportello Unico. Only at the end of this procedure does the Police Headquarter (*Questura*) issue a "residence permit for employees" (*permesso di soggiorno per lavoro subordinato*). The duration of the residence permit depends on the nature of the employment: up to nine months for seasonal positions, one year for fixed-term contracts and two years for permanent positions.

If the worker loses the job for any reason, he/she is eligible to register as unemployed at the employment centre for a duration not exceeding that of their residence permit (Article 22(11) Consolidated Act). However, the law does not allow for obtaining a residence permit specifically for job-seeking purposes. Furthermore, the intricate and time-consuming procedures pose challenges for both job seekers and employers, hindering their ability to match job vacancies with a stable workforce effectively.

Individuals granted international protection enjoy unrestricted access to the national labour market. Conversely, asylum seekers are permitted to com-

[87] William Chiaromonte, "Una lettura giuslavoristica del d.l. 20/2023: le inadeguate politiche migratorie del Governo Meloni," *Giornale di diritto del lavoro e di relazioni industriali* (2023): 431.

[88] William Chiaromonte, "The Italian Regulation on Labour Migration and the Impact and Possible Impact of Three EU Directives on Labour Migration: Towards a Human Rights-Based Approach?" in *National Effects of the Implementation of EU Directives on Labour Migration from Third Countries*, edited by Roger Blanpain, Frank Hendrickx, and Petra Herzfeld Olsson (Alphen an den Rijn: Kluwer Law International, 2016); Silvana Sciarra and William Chiaromonte, "Migration Status in Labour Law and Social Security Law," in Costello and Freedland, *Migrants at Work*.

[89] William Chiaromonte, Maria Dolores Ferrara and Francesca Malzani, "The Migration Governance through Labour Law: The Italian Case," *Rivista del diritto della sicurezza sociale* 2 (2019): 367.

mence employment only after the sixtieth day following the submission of their international protection application, provided that any delays in processing are not attributable to the applicant. Importantly, residence permits issued under these circumstances cannot be converted into permits for employment purposes, as stipulated by Article 22 of Legislative Decree No. 142 of 18 August 2015.

No specific incentives are provided to access the labour market for: asylum seekers, international protection applicants, refugees, and legal economic migrants (without a long-term residence permit). Furthermore, so far in Italy, there has been a lack of specific investment into integration and inclusion programmes, while the relationship between the state and asylum seekers has mainly conformed to welfare assistance types of dynamics.[90]

The Italian National Stakeholder Meeting (held in Rome on 10 April 2024) highlighted that home care in Italy presents a complex landscape characterised by significant demographic and migration patterns. With nearly 1.5 million individuals employed in this sector, of which the majority are women, and a substantial proportion are foreigners, including those in irregular immigration status, the dynamics of care provision are closely intertwined with migration trends.[91] This phenomenon, often referred to as global care chains, sees women replacing others in domestic care roles, contributing to the sector's heavy reliance on foreign labour. There are many challenges including difficulties in the recognition of educational qualifications and language barriers, which are further exacerbated by the ageing workforce in the sector.[92] The strain on the National Health Service due to a shortage of professionals underscores the urgency of addressing these issues, prompting initiatives such as recruitment agreements with countries like Cuba and efforts to attract healthcare personnel from South America, reflecting the pressing need to mitigate workforce shortages in essential sectors.[93]

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

Section 3 of the report aims to present and discuss the regulation of fundamental trade union rights, the right to strike, and relations between the social partners in the care sector. Furthermore, it analyses the system of collective bargaining and industrial relations regarding the public and private sector. Finally, a subsection deals with the national discipline on whistleblowing.

[90] Federico Martelloni, "L'accesso al lavoro dei richiedenti e dei titolari di protezione internazionale, tra diritto e prassi," in *Migranti e lavoro*, a cura di William Chiaromonte, Maria Dolores Ferrara, e Maura Ranieri (Bologna: il Mulino, 2020).

[91] Fondazione Giuseppe di Vittorio, "Gli stranieri maturi e anziani. demografia, lavoro e bisogni sociali nel cambiamento delle migrazioni in Italia," *Working paper della Fondazione di Vittorio* 1 (2023).

[92] CARE4CARE, "Minutes".

[93] CGIL, "Responses"; CISL, "Responses"; FISASCAT, "Responses".

Before delving into the analysis, it should be noted that freedom of trade union organisation and the right to strike apply to all workers; however, trade union rights specifically concern trade unions operating more than 15 employees per production unit or 60 in total. Consequently, home caregivers do not enjoy certain trade union protections (see section 3.1).

3.1 Trade Unions Rights

Trade union freedom is sanctioned by the first part of Article 39 of the Constitution, which guarantees immunity against the sanctioning power of the state and the employer.[94] This article is a specification of the more general freedom of association guaranteed in Article 18 of the Constitution. The Constitution guarantees both freedom from interference in trade union activity and the freedom to act collectively. Trade union freedom is an individual right to collective exercise. The protection offered by the Constitution alone is not sufficient to guarantee the right to conduct a specific trade union activity that entails the immediate sacrifice of the employer's reasons and requires ad hoc legislation to be exercised. This legislation is contained in Title II and Title III of Law No. 300 of 20 May 1970 (Statute of Workers).[95]

Title II of the Statute of Workers (Articles 14–18) regulates freedom of association and unionisation.

- Article 14 (Right of association and trade union activity) contains a series of provisions aimed at strengthening the effectiveness of the principle of trade union freedom within the workplace, prohibiting the employer from hindering, even indirectly, the exercise of this freedom.
- Article 15 (Discriminatory acts) establishes the nullity of any pact or act aimed at making a worker's employment conditional on membership or non-membership of a trade union association, or on ceasing to belong to one. Furthermore, this article prohibits any pact or act aimed at dismissing a worker, discriminating against a worker in the assignment of tasks or responsibilities, in transfers, in disciplinary measures, or otherwise prejudicing the worker because of affiliation or trade union activity or participation in a strike.
- Article 16 (Discriminatory collective economic treatment) prohibits trade union discrimination, which may occur, on the part of the employer, not only by depriving the employee of particular benefits or otherwise causing prejudice to him/her, but, much more subtly, by attributing favourable treatment to employees who behave in a particular way, thus conditioning them in the exercise of trade union freedom.
- Article 17 (company union or yellow union) prohibits employers' associations from forming or supporting workers' trade union associations by any means.[96]

[94] Del Punta, *Diritto del lavoro*, chap. 215 ff.

[95] Del Punta, *Diritto del lavoro*, 195 ff.; Gino Giugni, *Diritto sindacale*, a cura di Lauralba Bellardi, Pietro Curzio e Mario Giovanni Garofalo (Bari: Cacucci Editore, 2014).

[96] Giugni, *Diritto sindacale*.

Title III (Articles 19 to 27) provides for support legislation that aims to promote trade union activity in the workplace and enable trade unions to effectively protect workers. Promotion and support are used by the legislator in a "selective" manner, and therefore this legislation is limited in two directions:

- In an objective sense, as it does not apply in all workplaces, but only in companies with more than 15 employees per production unit or 60 in total.
- In a subjective sense, as support is limited only to trade unions that have participated in negotiations or have concluded collective agreements applied in the production unit (Article 19 Statute of Workers).

The limitations are designed to avoid imposing excessive burdens on small companies and to favour trade unions with a strong tradition, in order to avoid excessive fragmentation of representation.[97]

The rights provided for in Title III are exercised by the Workplace Union Structure (*Rappresentanza Sindacale Aziendale* or RSA) in every production unit with more than 15 employees within the framework of trade union associations that have participated in negotiations or have concluded collective agreements applied in the production unit (Article 19 Statute of the Workers).[98]

According to the 1993 inter-union agreement Ciampi Protocol (*Protocollo Ciampi*), the parties added to the RSA a model of Unitary Workplace Union Structure (*Rappresentanza Sindacale Unitaria* or RSU) elected by the workers. This model was strengthened by the 2014 Inter-union agreement Single Text on Trade Union Representation (*Testo unico sulla rappresentanza sindacale*), which provided for thresholds and mechanisms for quantifying and certifying representation.[99]

Title III grants Workplace Union Structures' and Unitary Workplace Union Structures' right to call assemblies, the right to call referendums, the right to post notices on notice boards, the right to company premises for holding trade union meetings, and the right to paid and unpaid leave.[100] In order to repress anti-union behaviour, in addition to the ordinary civil process, the Statute of the Workers provides for a simplified and rapid procedure that can only be activated by the local bodies of the national associations concerned (Article 28).

3.1.1 The Right to Strike and the Right to Strike in Essential Public Services

The right to strike is provided by Article 40 of the Constitution. According to the prevailing doctrinal interpretation, the right to strike as an individual right to be exercised collectively. Over the years, the Constitutional Court has progressively abolished all criminal regulations of Fascist origin settled in the

[97] Del Punta, *Diritto del lavoro*, 317 ff.

[98] *Constitutional Court*, 3 July 2013, 231.

[99] Del Punta, *Diritto del lavoro*, 227–36.

[100] Statute of the Workers, Law No. 300, 20 May 1970.

Penal Code with the result that strikes for economic, solidarity and political reasons are permitted. Only political strikes aimed at subverting the constitutional order remain prohibited.[101]

Strikes in essential services to the public carried out by both private individuals and government agencies are regulated by Law No. 146, 12 June 1990 (Legislation on the exercise of the right to strike in essential public services and the protection of personal rights).[102] This law identifies a series of rights that have to be balanced with and limit the right to strike:

- Life and health, freedom, security, justice, environment and historical heritage.
- Freedom of movement.
- Social security and safety; payment of wages.
- Education.
- Communication.

In these areas, collective agreements determine the modalities and procedures for the provision of services and measures to ensure the functioning of essential services.[103] In particular, collective agreements must:

a) Provide for procedures for the cooling-off and conciliation of disputes, which must be carried out compulsorily before a strike is called. In any case, the law provides for an administrative conciliation procedure to be followed when the contractual procedure is not applicable.
b) Identify the minimum notice, which in any case may not be less than 10 days to the employer and 5 days to the users, the modalities of implementation and the reasons for collective abstention.
c) Identify the indispensable services that must, in any case, be guaranteed during a strike in essential public services, as well as the modalities and procedures for their provision.

Originally, the regulation of the right to strike in essential public services was supposed to apply only to employees working in essential public services. However, Law No. 83 of 11 April 2000 extended the scope of the regulation to self-employed workers, professionals, and small entrepreneurs. [104]

The Commission of Guarantee, an independent administrative authority with sanctioning powers, monitors the implementation of strike legislation and procedures. The public authority may prohibit a strike when there is a well-founded danger of serious and imminent harm to fundamental rights (Article 8 Law 146 of 1990).[105]

[101] Del Punta, *Diritto del lavoro*, 279–311; Giugni, *Diritto sindacale*; Luisa Galantino e Massimo Lanotte, *Diritto del lavoro pubblico* (Torino: Giappichelli, 2013), 45–59.

[102] Del Punta, *Diritto del lavoro*, 305 f.

[103] Del Punta, *Diritto del lavoro*, 307 f.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 45–59.

[104] Galantino e Lanotte, *Diritto del lavoro pubblico*, 45–59.

[105] Del Punta, *Diritto del lavoro*, 312 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 51–5.

3.1.4 The Italian Industrial Relation System: Public Sector

The first part of Article 39 of the Italian Constitution stipulates the freedom of association and the right to collective bargaining.

The second part of Article 39 regulates the procedures of collective bargaining by providing that collective agreements assume universal validity (erga omnes effects) when they are concluded by registered trade unions represented as a unit in proportion to the number of their members. This second part of Article 39 remained unimplemented for three main reasons:

a) trade unions feared that registration could result in state control,
b) trade unions with representative capacity, but uncertain of their numerical consistency, feared that by counting themselves they would fall into a condition of inferiority,
c) the implementation of Article 39 would also have entailed the implementation of Article 40, which enshrines the right to strike and allows for legislative limitations.[106]

The non-implementation of Article 39 of the Constitution negatively impacted the Italian industrial relations system by leading to its lack of institutionalisation.[107] The lack of institutionalisation did not prevent the development of collective bargaining but caused a serious problem of personal scope and enforcement of collective agreements.[108] To solve these problems scholarship and case law resorted to private law; particularly to the rules on representation set forth in Article 1387 of the Civil Code. According to the Civil Code, the power of representation is conferred either by a unilateral power of attorney or by a mandate contract and has as its object an individual interest of the principal. Two *fictio* operate to utilise this institution:

- Workers give the mandate to represent their interests when they join a trade union.
- By joining the union, the worker "mandates" the union to pursue not his/her own individual interest, but a collective interest, understood as a synthesis of the individual interests of all members.

The Italian collective agreements are governed by private law, and they are not applicable to all workers in the category but cover only employers and workers who are members of the signatory associations. However, private law could not solve the problem of separate or multiple collective agreements and trade union fragmentation. Indeed, in these two situations, the collective agreements produce effects only

[106] Gian Primo Cella e Tiziano Treu, *Relazioni industriali e contrattazione collettiva* (Bologna: il Mulino 2009), 34–5.

[107] Cella e Treu, *Relazioni industriali*, 34.

[108] Giovanni Orlandini and Guglielmo Meardi, "Round Table. Implementing the EU Directive on Adequate Minimum Wages in Southern Europe: The Odd Case of Italy," *Transfer: European Review of Labour and Research* 29 (2023): 255–57.

between the employers' associations and the trade unions that signed them, even if the case law has elaborated methods to extend the scope of application of collective agreements. Multiple agreements mean different levels of workers' protection.

The collective agreement has two levels: first or industry-wide level and second or company/local level.[109] The most important level is the industry-wide one and it is concluded by the leadership of the industry trade unions. The second level applies to matters delegated by the first level and generally cannot derogate from industry-wide agreements in a pejorative sense. However, Article 8 of Decree-Law No. 138 of 2011 stipulated that second-level agreements may derogate from the provisions of first-level agreements, even in a pejorative sense, when they are aimed at increasing employment, promoting worker participation, emersion of irregular work, increasing competitiveness and wages, managing company and employment crises, investments, and start-ups, within the limits of the European cost and normative.

Since Article 39 is not in force, trade unions are unregistered private associations. The principal Italian trade unions are the CGIL, CISL and UIL. The principal employers' organisations are Confindustria (employers in the industrial sector), Confartigianato (employers in the craft sector), and Confcommercio (employers in the service sector). Alongside these organisations, there are numerous others representing employers' interests in all sectors. Therefore, there is a high degree of fragmentation of representation, which is an expression of trade union pluralism that is at times quite extreme. This fragmentation has resulted in a proliferation of collective agreements at all levels, which results in a reduction in workers' rights and wages.

Form an organisation viewpoint, workers' and employers' unions are divided into four levels:[110]

- Company (consisting of Workplace Union Structure within companies made up of workers' delegates).
- Provincial (consisting of vertical structures—i.e. provincial trade unions—and confederal horizontal structures linking the various trade unions).
- Regional (consisting of vertical structures—i.e. the regional trade unions—and confederal horizontal structures linking the various trade unions).
- Industry-wide (consisting of the head structures of the sectoral unions and the confederation).

The division between sectoral unions and confederations is due to the division of competencies. Confederations have trade union policy functions, while federations have representation and negotiation functions. This same articulation exists in the employers' organisations.[111]

[109] First level or industry-wide agreements are referred to in Italian as *contratti collettivi nazionali di lavoro* or by the acronym CCNL, while second level agreements are referred to in Italian as *contatti collettivi aziendali* or *territoriali*. In Italian collective agreements are also referred to by the generic phrase *contratti collettivi di lavoro* or by the acronym CCL.

[110] Del Punta, *Diritto del lavoro*, 244 ff.

[111] Giugni, *Diritto sindacale*.

3.1.3 Collective Agreements in the Private Care Sector

The report considered collective agreements in the public and private care sectors and those of domestic workers. In this Subsection the contracts of the private health sector and those of domestic workers are highlighted, while the next one deals with the public health contract.

Methodologically, for the private health sector a preliminary analysis was conducted in the CNEL archives which led to the identification of about fifty contracts. A selection of them was necessary, based on the following criteria:

a) Rate of application of the collective agreement.
b) Degree of representativeness of the stipulating social partners.
c) Type of facilities covered by the collective agreement.

The following table shows the collective agreements for health professionals, social and health workers, and social assistance workers, selected on the basis of the criteria just mentioned and illustrated in Subsection 1.1.

Table 1 – Selected National Collective Labour Agreements (CCNLs) in the private care/health sector and their coverage (2022).

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for non-medical staff employed by the Scientific Hospitalization and Treatment Institutes and hospital health facilities registered with Aiop and Aris (*CCNL per il personale non medico dipendente degli IRCCS e delle strutture sanitarie ospedaliere iscritte ad Aiop e Aris*)	ARIS; AIOP	CGIL FP; CISL FP; UIL FPL	146.397
CCNL for the staff of nursing homes and other residential and social welfare facilities (*CCNL per il personale delle RSA e delle altre strutture residenziali e socio-assistenziali*)	AIOP	UGL SANITÀ; FISMIC CONFSAL; SI-CEL; FIALS; CONFSAL; FSE	11.594
CCNL for workers employed by the associative structures belonging to the network National Association of Families and People with intellectual disabilities and neurodevelopmental disorders Onlus (*CCNL per le lavoratrici ed i lavoratori dipendenti dalle strutture associative aderenti alla rete ANFFAS Onlus*)	ANFFAS ONLUS	FP CGIL; CISL FP; UIL FPL	5.569
CCNL for staff employed by the Italian Blood Volunteers Association (*CCNL per il personale dipendente dall'AVIS*)	AVIS	FP CISL; UIL FPL	1.211
CCNL for staff employed by nursing homes and rehabilitation centres (*CCNL per il personale dipendente da residenze sanitarie assistenziali e centri di riabilitazione*)	ARIS	CISL FP; UIL FPL; UGL SANITÀ	15.178

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for staff employed by the Association of Managers of Institutions Dependent on Ecclesiastical Authority (*CCNL Socio-Assistenziale AGIDAE*)	AGIDAE	FP CGIL; FISASCAT CISL; UILTUCS UIL	16.136
CCNL for staff employed in the socio-assistance, socio-health and educational sectors UNEBA (*CCNL per il personale dipendente dai settori socio assistenziale, socio sanitario ed educativo UNEBA*)	UNEBA	FP CGIL; FISASCAT CISL; FP CISL; UILTUCS UIL; UIL FPL	134.985
CCNL for workers of cooperatives in the socio-healthcare-educational and work integration sectors (*CCNL per le lavoratrici e i lavoratori delle cooperative del settore socio-sanitario assistenziale-educativo e di inserimento lavorativo*)	AGCI SOLIDARIETÀ; CONFCOOPERATIVE FEDERSOLIDARIETÀ; LEGACOOPSOCIALI	FP CGIL; FPS CISL; FISASCAT CISL; UIL FPL; UILTUCS	370.134
CCNL for employees of member associations of the Italian Spastics Assistance Association (*CCNL per i dipendenti dalle associazioni aderenti all'Associazione Italiana Assistenza Spastici – AIAS*)	AIAS	CISL FP; UIL FPL; UGL Salute; FIALS CONFSAL; CONFSAL; ISA	4.264
CCNL for staff employed by the National Association of Public Assistance (*CCNL per il personale dipendente ANPAS*)	ANPAS	CGIL FP; CISL FP; UIL FPL	7.797
CCNL for staff employed by the social-healthcare-assistance-educational sector organisations (*CCNL per il personale dipendente dalle realtà del settore socio-sanitario-assistenziale-educativo*)	ANASTE	CIU; SNALV; CONFSAL; CSE; CSE Sanità; CSE Fulscam; CONFELP	10.962
CCNL for non-medical staff employed by private health institutions (CCNL per il personale non medico dipendente dagli istituti sanitari privati)	UNILAVORO PMI	CONFSAL FISALS	12
CCNL for private health and social-sanitary sector employees (*CCNL comparto privato sanitario e sociosanitario*)	CONFIMPRESE ITALIA	FESICA CONFSAL; CONFSAL	206
CCNL for non-medical staff employed by private health, social health and welfare facilities and cooperatives (*CCNL personale dipendente non medico da strutture sanitarie, socio-sanitarie e cooperative socio sanitarie ed assistenziali private*)	FEDERTERZIARIO; CONFIMEA; CFC	UGL SANITÀ	887
CCNL Care Homes and Social and Health Care Services (*CCNL Case di Cura e Servizi Assistenziali e Socio Sanitari*)	ANPIT; CIDEC; CONFIMPRENDITORI; PMI ITALIA; UAI TCS; UNICA	CISAL Terziario; CISAL	2.210

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL Social cooperatives in social and welfare services (*CCNL Cooperative sociali nei servizi socio-assistenziali*)	UNCI; ANCOS	CISAL; CISAL Terziario	2.046
CCNL Clinical analysis laboratories and polyclinic centres (*CCNL Laboratori di analisi cliniche e centri poliambulatoriali*)	CIFA ITALIA; FEDERLAB ITALIA	CONFSAL; FIALS	2.562
CCNL Cooperatives, consortia and consortium companies in the personal services sector (*CCNL cooperative, consorzi e società consortili del settore servizi alla persona*)	SISTEMACOOP; SISTEMA COMMERCIO E IMPRESA	FESICA CONFSAL; CONFSAL FISALS; CONFSAL	356

Regarding home caregivers, a preliminary analysis was conducted in the archives of the CNEL resulting in the identification of sixteen collective agreements. Given the small number of these contracts, the research analysed all of them. As shown in the table, there is a plurality of agreements and social partners, however, a closer look reveals that some of these unions are poorly representative and probably yellow. The coverage is not available since there is no official measurement.

Table 2 – Selected National Collective Labour Agreements (CCNLs) for domestic work: signatory organisations and trade unions.

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for domestic work (*CCNL del lavoro domestico*)	FIDALDO; DOMINA	FILCAMS CGIL; FISASCAT CISL; UILTUCS UIL; FEDERCOLF	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	CONAPI	CNAL; Federazione Commercianti Artigiani PMI (in CONFASI)	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	CONAPI	UNSIL	Not available
CCNL on the regulation of the domestic employment relationship (*CCNL sulla disciplina del rapporto di lavoro domestico*)	CONFIMITALIA	SNALP (in CONFSAL); CONFAEL	Not available
CCNL on the regulation of the domestic employment relationship (*CCNL sulla disciplina del rapporto di lavoro domestico*)	ESAARCO; CIU; CEPA-A; ESAARCO SANITÀ; ESAARCO FEDERCOOP; SAI; UNICOLF-ESAARCO; SIA CONFSAL	UGL; FISNALCTA; SI CEL; CLI CIU; FINAOPS CLI CIU; ASSOCOLF – CLI CIU; ONAPS	Not available

National Collective Labour Agreements (CCNLs) – First level collective agreements	Signatory business organisations	Signatory trade unions	Coverage (2022)
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	FMPI; ARCO e PMI	CONFASI	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	FMPI	CONFINTESA; CONFINTESA SMART	Not available
CCNL for cohabiting and non-cohabiting domestic workers – domestic helpers and home caregivers (*CCNL domestici – colf e badanti – conviventi e non conviventi*)	SIDA	Sindacato SLI	Not available
CCNL for domestic work (*CCNL del lavoro domestico)*	ANIAC; ADICOLF	SINALP; SLI	Not available
CCNL for domestic work (*CCNL del lavoro domestico*)	CONFIMPRESEITALIA; CONFAE	CSE; CSE FNLEI; CSE FILAI; CONFENAL	Not available
CCNL for employees in the domestic work sector (*CCNL per i dipendenti del settore lavoro domestico*)	FIDAP IMPRESE	FISAL ITALIA	Not available
CCNL for employees in the domestic sector (*CCNL per il personale dipendente del settore domestico*)	ITALPMI	UNSIL	Not available
CCNL on the discipline of the domestic labour (*CCNL sulla disciplina del rapporto di lavoro domestico*)	UIDD	CIU; SEAL; SALP; SEPI	Not available
CCNL on the discipline of the domestic employment (*CCNL sulla disciplina del rapporto di lavoro domestico*)	UNILAVORO PMI; ASSOCIAZIONE FAMILYCARE; FISDAT	CONFSAL FISALS	Not available
CCNL for the domestic work sector (*CCNL settore lavoro domestico*)	UNIONE; FDP ITALIA	CONFLAP	Not available
CCNL domestic labour (*CCNL lavoro domestico*)	UNSIC; UNSICOLF; ASNALI	CONFSAL; CISA; CONFIAL; SNALV-CONFSAL	Not available

3.1.4 The Italian Industrial Relation System: Public Sector

Following the reform initiated by Legislative Decree No. 29 of 3 February 1993, subsequently transposed into the current Legislative Decree No. 165 of 30 March 2001, the collective agreement has assumed a paramount significance in shaping labour regulations within the public sector. Serving as a pivotal source of labour regulation alongside statutory laws, the collective agreement holds comparable weight and universal applicability across the sector. Nonetheless,

its distinct features and jurisdictional prerogatives are meticulously delineated by statutory provisions, striking a delicate equilibrium between autonomy and legislative oversight. This statutory framework ensures that the collective agreement operates within defined parameters, maintaining coherence and consistency in its application throughout the public sector.[112]

Collective bargaining in the public sector can only take place on matters specified by law. Consequently, some matters are reserved to the exclusive competence of the law itself. The core of collective bargaining is the CCNL (first level collective agreement) concluded at national level by the trade unions of the sector. This collective agreement defines the economic and regulatory treatment of workers in four sectors of the administration (central functions, local government, health, education and research). Autonomous bargaining is provided for senior managers.[113]

The scenario is much simpler than in private employment, since for each sector there is only one collective agreement, which has general effectiveness (*erga omnes*) vis-à-vis all workers belonging to the sector.

The parties to collective bargaining at the national level are the Agency for the Negotiating Representation of Public Administrations (in Italian Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni or ARAN), which represents the State, and trade unions that have a representativeness of at least 5% in the sector or area. The bargaining procedure is established by law. In particular, the funds available for negotiation are established by law. ARAN conducts the bargaining on the basis of guidelines formulated by the Sector Committees, which are composed of the administrations of the relevant sector. The bargaining process ends with the signing of a draft agreement, which ARAN transmits to the Sector Committee concerned for its binding opinion, and to the Government for its observations. Afterwards, the draft agreement is transmitted to the Court of Auditors for certification of its compatibility with the budget. If the draft agreement is approved, ARAN signs the definitive agreement with the trade unions and publishes it in the Official Journal.[114]

Various administrations may negotiate secondary level agreements within the confines of legal regulations, sector-specific collective bargaining agreements (CCNL), and allocated budgetary provisions.[115] The secondary level collective agreement shall be executed by the legal representative of the administration and the RSU of labour organizations already party to the national-level collec-

[112] Del Punta, *Diritto del lavoro*, 271 ff.; Giugni, *Diritto sindacale*; Riccardo Salomone, "Rappresentatività sindacale, ambiti negoziali e procedure nella contrattazione collettiva del pubblico impiego," *Diritti lavori mercati* 2 (2014): 495; Tiziano Treu, "La contrattazione collettiva nel pubblico impiego: ambiti e struttura," *Giornale di diritto del lavoro e di relazioni industriali* (1994).

[113] Del Punta, *Diritto del lavoro*, 271 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 27–43.

[114] Del Punta, *Diritto del lavoro*, 271 ff.; Galantino e Lanotte, *Diritto del lavoro pubblico*, 31–3.

[115] In italian, *Rappresentanza Sindacale Unitaria*. This Unitary Workplace Union Structures are elected by workers employed in the administration.

tive agreement. Unlike in the private sector, public-sector collective agreements cannot provide conditions more favourable than the statutory minimum, because they must comply with legally binding spending ceilings.

The most recent national collective agreement for the health sector (non-managerial staff, i.e. health professionals, social and care workers, and basic care workers) covers the three-year period 2019/2021 and was concluded on 2 November 2022, applying retroactively to all personnel.

3.2 Whistleblowing Legislation

Whistleblowing in Italy is regulated by Law No. 179 of 30 November 2017 that sets out protective measures for workers in both the private and public sector. In the private sector, protective measures for workers are applicable only when the employer has adopted the company's compliance program (Model 231).[116] In particular, Law No. 179 of 30 November 2017 requires companies that have implemented or intend to implement such Model 231 to set up a reporting system and ensure the whistleblowers' protection. Further, there is specific legislation concerning whistleblowers in Banking, Finance or Insurances.[117]

Law No. 179 of 30 November 2017 provides that public employees can report any "unlawful conduct that they become aware of by reason of their employment." The National Anti-Corruption Authority (ANAC) has clarified that "unlawful conduct" includes crimes against the public administration, situations of abuse of administrative power to obtain private benefits, and cases of malfunctioning of the administration due to the use of public functions for private purposes (waste, nepotism, failure to comply with procedural deadlines, non-transparent recruitment, accounting irregularities, false declarations, violation of OSH regulations).[118]

In the private sector, whistleblower protection measures apply when a worker reports unlawful conduct that could lead to the company's liability for one of the criminal offences covered by Legislative Decree no. 231 of 8 June 2001 on corporate liability for criminal offences. Therefore, whistleblowing concerns crimes such as corruption, forgery, money laundering, crimes against industry and trade, fraud against the state, cybercrimes; and/or violations of the company's Model 231. The whistleblower becomes aware of such offences as a result of his/her work. According to Article 6.2-*bis*(a) Legislative Decree no. 231 of 8 June 2001, reports must be based on "precise and concordant elements of fact."

[116] In Italian *Modello 231*.

[117] Angela Paola Annamaria Della Bella and Silva Zorzetto, edited by, *Whistleblowing e prevenzione dell'illegalità. Atti del I convegno annuale del dipartimento di scienze giuridiche "Cesare Beccaria"* (Milano: Giuffrè 2020).

[118] ANAC, "Delibera n. 469 Del 9 giugno 2021, Linee guida in materia di tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza in ragione di un rapporto di lavoro, ai sensi dell'art. 54-bis, del d.Lgs. 165/2001 (c.d. Whistleblowing (2021)"; ANAC, "Determinazione n. 6 del 28 Aprile 2015, Linee guida in materia di tutela del dipendente pubblico che segnala illeciti" (2015).

Concerning the personal scope, Law No. 179 of 30 November 2017 provides that whistleblowers' protection covers public employees/managers as well as employees of state-owned companies and workers/collaborators of private companies providing goods or services and carrying out activities for the public administration. In the private sector, Article 6.2-*bis*(a) Legislative Decree no. 231 of 8 June 2001 refers to senior managers and their subordinates. However, according to National Anti-Corruption Authority guidelines, whistleblowing procedures should also be addressed to third parties including collaborators, consultants with any type of contract or assignment, persons acting on behalf of the organisation as intermediaries and agents, and suppliers of products or services.[119]

In the public and private sectors, Law No. 179 of 30 November 2017 states that the protection of whistleblowers applies when the report does not constitute an offence of calumny or defamation or is in good faith. The protection does not apply in cases where the report contains false information made with malice or negligence.

Law No. 179 of 30 November 2017 does not provide guidance on the possibility of making anonymous reports. However, in the public sector, the ANAC guidelines explain that the protection can only cover public employees who identify themselves and is limited only to retaliation that may occur within the employment relationship. In the private sector, the question remains open. In any case, in both the private and public sectors, entities must guarantee the confidentiality of the whistleblower's identity.

Italian legislation provides for two reporting channels: internal and external. In the public sector, the law requires that measures be taken to provide an effective internal reporting system. In the private sector, companies may voluntarily adopt an internal reporting system that complies with whistleblower protection rules. With respect to external reporting, the law only indicates the authorities competent to receive public employees' whistleblowing, which are the ANAC, the judicial authority and the accounting authority.

The protections guaranteed by the legislation are the same as those provided by Directive 2019/1937 on whistleblowers. Thus, whistleblowers are protected against dismissal, demotion, and other forms of discrimination.[120]

4. Employment Status, Flexible Forms of Employment, and Employment Protection

Section 4 describes the regulation of both employment and self-employed relationships. Furthermore, the section deals with fixed-term employment, tem-

[119] Diana-Urania Galetta e Paolo Provenzano, "La disciplina italiana del whistleblowing come strumento di prevenzione della corruzione e dell'illegalità nella pubblica amministrazione: luci e (soprattutto) ombre," *federalismi.it* (2020); Anna Francesca Masiero, "La disciplina del whistleblowing alla luce della direttiva 2019/1937/UE. Tra prevenzione dei fenomeni corruttivi e tutela del denunciante," *Archivio penale* (2020) 1.

[120] Antonio Riccio, "La tutela del whistleblower in Italia," *Giornale di diritto del lavoro e di relazioni industriali* 153 (2017): 139.

porary agency work and other forms of flexible and/or precarious employment. The report then deals with employee protection against summary dismissal, dismissal for personal reasons and reasons of redundancy.

4.1 The Status of Workers: Subordinate Employee and Self-Employed Person in Italy

In Italy, labour law intricately governs the conduct of occupational activities, historically placing considerable emphasis on subordinate employment as the cornerstone of protective regulations. This traditional doctrinal perspective stems from the premise that employees represent the vulnerable party within contractual relationships and thus warrant significant legal safeguards. Conversely, self-employed persons have traditionally operated outside such regulatory frameworks, with their presumed autonomy and professional expertise seen as sufficient protection. However, the shifting economic landscape has necessitated legal adaptations to ensure equitable protections for all workers.

Central to Italian labour law is the legal distinction between subordinate employee and self-employed person. Article 2094 of the Civil Code delineates subordinate employee as the person engaged in intellectual or manual labour under the direction of an entrepreneur, receiving compensation for their services. This relationship is characterised by the "hetero-direction" of the employers, whereby the employer exercises managerial control, authority to monitor, and disciplinary power.[121]

Identifying subordination is not always simple. To qualify the relationship, the case law applies the following cumulative criteria: permanent inclusion of the worker in the company's organisation; use of working equipment owned by the company; working time; regular payment of a salary based on working time; no economic risk for the worker; exclusivity of working activity.[122] When a worker is identified as a subordinate employee, legislation provides for the application of protective apparatus (see Section 4.2). The type of contract is unavailable to the parties and is determined,[123] in the event of a dispute, by the court having regard to the substantive manner in which it is carried out.

In contrast, self-employed individuals, as outlined in Article 2222 of the Civil Code, undertake work or services for compensation without subordination to a specific client. Unlike subordinate workers, self-employed individuals primarily rely on personal labour and autonomy in executing their tasks. In the Italian legal system, self-employed persons are those who perform a work or service in favour of an employer, for remuneration and without subordination

[121] Del Punta, *Diritto del lavoro*, 384 ff.

[122] Del Punta, *Diritto del lavoro*, 390–97.

[123] The principle of unavailability of the contractual type applies to employment contracts. This notion signifies that the constitutional requirement of alignment between the actual conduct of the relationship and the application of all protective aspects ascribed to the subordinate employment contract safeguards only those employment relationships characterized by subordination.

(e.g. artisans, professionals, consultants, agents, and sales representatives). The current regulation is contained both in the Civil Code and in Law No. 81 of 22 May 2017, which intervened by outlining a defined framework of protections and rights relating to self-employment relationships under Title III of the Civil Code (Articles 2222–2238), with the express exclusion of entrepreneurs and small businessmen (Article 2083 Civil Code).[124]

Law No. 81 of 22 May 2017 provides for the written form of the contract and regulates abusive conduct of the principal that renders certain clauses ineffective (Article 3). In particular, the following are considered unfair clauses and, therefore, ineffective:[125]

- Those that give the principal the power to unilaterally amend the terms of the contract.
- Those that allow the principal to terminate the contract without reasonable notice in the case of a contract having as its object a continuous service.
- Those by which the parties agree on terms of payment exceeding 60 days from the date of receipt by the principal of the invoice or request for payment.

Similarly, a refusal by the principal to enter into the contract in writing is deemed abusive. In the event of the occurrence of such conduct or in the presence of unfair clauses, the self-employed worker is entitled to compensation for damages, also by promoting an attempt at conciliation through the authorised bodies. Moreover, the Law grants to self-employment relationships the principle of the prohibition of abuse of economic dependence (Article 9, Law No. 192 of 18 June 1998) on the part of the principal, in order to counteract an imbalance of rights and obligations between the parties to the relationship.[126]

With a view to fostering work-life balance processes, self-employed parents, including adoptive or foster parents, are entitled to parental leave of three months each within the first 12 years of the child's life. In addition, within the same period, parents are entitled, alternatively, to a further 3 months of leave. The financial payments for parental leave may not exceed the overall limit of 9 months between both parents (Article 8, paragraph 4, Law No. 81 of 22 May 2017, as amended by Legislative Decree No. 105 of 30 June 2022).

Law No. 81 of 22 May 2017 granted a monthly unemployment benefit to self-employed workers carrying out coordinated and continuous collaboration activities, research fellows and doctoral students. The Budget Law 2021 (Article 1, paragraphs 386–401) established on an experimental basis, for the three-year period 2021–2023, the extraordinary income and business continuity allowance (Indennità Straordinaria di Continuità Reddituale e Operativa or ISCRO), paid by INPS, in favour of persons enrolled in the Separate Account who habitually

[124] Oronzo Mazzotta, *Diritto del lavoro* (Milano: Giuffrè, 2022): 86.

[125] Del Punta, *Diritto del lavoro*, 403–6.

[126] Del Punta, *Diritto del lavoro*, 403–6.

carry out self-employment activities. The budget law of 2024, Law 213 of 30 December 2023 confirmed the measure with minor modifications.

Lastly, Decree-Law No. 146 of 21 October 2021 (Article 13), converted with amendments into Law No. 215 of 17 December 2021, introduced the mandatory communication of occasional self-employment relationships.

In addressing self-employment, lawmakers acknowledged that certain contracts, such as coordinated and continuous collaborations (co.co.co.), warranted protections akin to those afforded to employees.[127]

The concept of co.co.co. represents a significant aspect of this evolution. Recognised as a form of self-employment, co.co.co. contracts exhibit characteristics resembling subordination due to the significant coordination exerted by users or clients over the service providers. Consequently, regulatory measures have been introduced to mitigate potential abuses and ensure adequate protections for individuals engaged in co.co.co. arrangements. Legislative interventions, such as Legislative Decree No. 276 of 10 September 2003, aimed to address widespread abuses by transforming co.co.co. into project-based collaborations (co.co.pro.) and imposing additional constraints.[128]

However, persistent challenges led to further legislative amendments, including Legislative Decree No. 81/2015, which abolished co.co.pro. and reinstated co.co.co., subjecting such arrangements to rules akin to subordinate employment. Article 2 of this decree stipulates that the rules of subordinate employment apply to self-employed workers engaged in hetero-organised but not hetero-directed work activities.[129]

The emergence of platform workers further complicates the landscape of labour relations. These workers, who operate within digital platforms, may take on the status of self-employed workers or employees (although most of them are self-employed), raising questions about their qualification and protection under existing labour laws. Legislative measures, such as Article 47-bis of Legislative Decree No. 81 of 15 June 2015, seek to establish minimum levels of protection for self-employed platform workers, encompassing various aspects such as access to information, remuneration, data protection, non-discrimination, and insurance coverage against occupational hazards.[130]

Furthermore, the employment status of care workers, whether in the public or private sectors, adds another layer of complexity to the legal framework. Their classification may vary, with some falling under subordinate employment arrangements while others operate as self-employed individuals. This nuanced approach underscores the importance of ensuring adequate protections for all

[127] Del Punta, *Diritto del lavoro*, 403–24.

[128] Del Punta, *Diritto del lavoro*, 410–14.

[129] Del Punta, *Diritto del lavoro*, 410–14.

[130] Del Punta, *Diritto del lavoro*, 409 f.; Marco Novella e Patrizia Tullini, a cura di, *Lavoro digitale* (Torino: Giappichelli, 2022); Matteo Borzaga e Michele Mazzetti, "Discriminazioni algoritmiche e tutela dei lavoratori: riflessioni a partire dall'ordinanza del tribunale di Bologna del 31 dicembre 2020," *BioLaw Journal* 1 (2022): 225.

workers, irrespective of their employment status, within the evolving landscape of labour relations in Italy.

4.2 The Employment Relationship and Protection

The subordinate employment relationship is protected by a set of mandatory rules. Defining the difference between subordinate employment and self-employment is particularly relevant because it determines the application of the rights, powers and obligations of the parties established in laws and collective agreements. In the public and private sectors, the employment relationship is based on a contract founded on the exchange between work and remuneration.[131]

The employee works for the employer by performing a task identified in the contract whose content is determined during the relationship through the exercise of managerial control by the employer.[132]

During the course of the labour relationship, the main employees' obligations are: diligence, obedience, loyalty and non-competition. The obligation of diligence entails that the worker executes the service with the diligence corresponding to the professionalism possessed and the task performed (Article 2104 of the Civil Code). The obligation of obedience entails that the worker has to comply with the employer instructions in performing the working activities (Article 2104 of the Civil Code). The obligation of loyalty and non-competition implies that the worker shall not: a) conduct business on his/her own account or on behalf of third parties in the same sector of the company for which he/she works; b) disclose confidential information relating to the organisation and production methods of the company or use it in such a way as to prejudice the company (Article 2105 of the Civil Code). Furthermore, the employee must respect the general principle of good faith and fair conduct in the fulfilment of the employment relationship (Article 1375 of the Civil Code).[133]

In the employment relationship, the employer's powers are managerial control, authority to monitor, and disciplinary power. These powers are functional to the organisation of the productive activity and when exercised, they make it possible to discern a subordinate worker from a self-employed one.

The employer exercises managerial control by orienting the worker's activities towards the achievement of the company's aims and concretely determining the content of the work obligation. The managerial control includes the power to modify the tasks contractually assigned to the worker within the limits of the provisions of Article 2103 of the Civil Code. Indeed, the Civil Code provides that the employer has the possibility of assigning the employee to tasks belonging to a lower level than that of employment. This possibility is contemplated only in the event of organisational needs, without prejudice to the origi-

[131] Mazzotta, *Diritto del lavoro*, 323–405.

[132] Mazzotta, *Diritto del lavoro*, 509–22.

[133] Mazzotta, *Diritto del lavoro*, 515.

nal contractual classification and corresponding remuneration, which may not be diminished. However, demotion agreements with a simultaneous reduction in level and salary are permitted if agreed before a public authority that certifies the consent of the parties.[134]

The employer exercises the authority to monitor to protect company assets and ensure workplace health and safety. The law limits indirect control by the employer in order to protect the privacy of workers. These limits concern control entrusted to persons outside the business organisation or carried out by means of technological instruments that allow remote control (in time and space).[135]

The employer exercises disciplinary power in the event of a breach by the worker of his/her obligations. In fact, the employer may impose conservative disciplinary sanctions (verbal warning, written warning, fine and suspension) and expulsive sanctions (disciplinary dismissal) to sanction the worker's behaviour contrary to the contractual rules. The law (Article 2106 of the Civil Code and Article 7 of the Statute of Workers) limits the disciplinary power in a substantive (gravity of the sanction) and procedural (manner of infliction) way.[136]

The Civil Code states that the sanction must be proportionate to the offence (substantive limit). Collective agreements establish the correspondence between infringements and sanctions, but it is ultimately up to the judge to assess proportionality. Moreover, the law dictates a precise procedure that must be followed to impose the sanction, under penalty of its nullity (Article 7 of the Statute of Workers).

The employee has numerous rights protecting his/her physical and psychological integrity. The rights are provided for by law, in accordance with the EU law, and by collective agreements, which tend to introduce only more favourable treatment.[137] The worker has the right to proportionate (Section 5) and sufficient pay and to work in healthy and safe conditions (Section 6).[138] In addition, the employee has the right not to be subjected to discriminatory treatment on the grounds of personal characteristics (gender, race…), both at the recruitment and at the termination stage (Subsection 4.7). Both direct and indirect discrimination is prohibited. Harassment and sexual harassment also fall under the same protection regulation, in line with the EU Directives.[139]

Over the last twenty years, the legislator has allowed collective agreements to introduce even worsening derogations in the event of specific needs, mostly corresponding to company crises and temporary difficulty in maintaining the bargained-for wages.

[134] Mazzotta, *Diritto del lavoro*, 523–55.
[135] Mazzotta, *Diritto del lavoro*, 532.
[136] Mazzotta, *Diritto del lavoro*, 542.
[137] Mazzotta, *Diritto del lavoro*, 559–74.
[138] Mazzotta, *Diritto del lavoro*, 580–85.
[139] Del Punta, *Diritto del lavoro*, 637–49.

4.2.1 Resignation and Dismissal

Historically, under the Civil Code, termination of employment was permitted at will by either party, with the requirement of providing notice to the other party. However, this notice was not necessary if there was a just cause for termination, such as serious misconduct by one party that undermined the employment relationship.

Resignation, as outlined in Article 2118(1) of the Civil Code, allows an employee to resign at their discretion, provided they give notice. Failure to provide notice incurs an indemnity obligation to the employer, unless there is a just cause as defined in Article 2119, in which case resignation without notice is acceptable.[140]

Dismissal is regulated by Articles 2118 and 2119 of the Civil Code. While in the past, employers could dismiss employees with notice at their discretion, current regulations demand justification. Acceptable grounds include just cause, subjective reasons based on contractual breaches, and objective reasons related to job duties. However, before resorting to objective dismissal, employers must prove that reassigning the employee isn't feasible.[141]

Just cause is a significant breach of the worker's obligations that irreparably undermines the employer's trust and does not permit the continuation, even provisional, of the employment relationship (Article 2119 of the Civil Code). In this hypothesis, no notice is due. A justified subjective reason is determined when there is a significant breach of contractual obligations by the worker. Collective agreements in the private and public sectors contain examples of the main conduct constituting subjective justified reason and just cause. The judge is not bound by the examples of collective agreements but must take them into account when assessing the grounds for dismissal. The justified objective reason occurs when the dismissal is intimated for facts inherent to the productive activity, the organisation of work and the regular operation of that production activity. The legislator used a very broad formulation in order to guarantee the freedom of enterprise provided for by the Constitution. However, case law has established that before issuing an objective dismissal, the employer must verify the impossibility of using the employee within the company in similar tasks.[142]

The termination process must adhere to formal requirements. Written notice of termination is mandatory, with oral dismissal only permissible for domestic workers. Failure to provide written notice of termination and the ground for dismissal renders the measure ineffective. In cases of disciplinary dismissal (based on justified subjective reasons), employers are obligated to adhere to the rules outlined in the disciplinary procedure. Consequently, disciplinary dismissal is deemed legitimate if the violation is outlined in the company's disciplinary

[140] Del Punta, *Diritto del lavoro*, 682–85; Mazzotta, *Diritto del lavoro*, 649–67.

[141] Mazzotta, *Diritto del lavoro*, 671 ff.

[142] Del Punta, *Diritto del lavoro*, 693–703; Mazzotta, *Diritto del lavoro*, 684–700.

code, the accusation is formally contested by the employee, and the employee is afforded the opportunity to defend themselves in writing or orally, and to be represented by a trade unionist.

For terminations based on justified objective reasons, in companies with more than 15 employees per production unit or 60 in total, employers must notify the labour inspectorate, specifying the reasons and outplacement assistance measures. The labour inspectorate then forwards the notice to the provincial conciliation commission, which endeavours to reach a conciliation between the parties, aided by trade union organizations or legal representation. If conciliation efforts fail, the employer may proceed with dismissal; however, if conciliation results in dismissal, the worker is entitled to unemployment benefits. This procedure is applicable to all workers hired on an indefinite-term basis until 6 March 2015, after which it was repealed by Legislative Decree No. 23 of March 4, 2015, for workers hired from 7 March 2015, onwards. [143]

The worker has 60 days from receipt of the notice to challenge the dismissal. A worker who has challenged the dismissal within 60 days acquires a delay of 180 days to bring legal action. In Italy, there are many different sanction regimes related to the dimensions of the enterprise and the date of the hiring (before and after 7 March 2015).[144]

For workers hired before 7 March 2015 in enterprises with more than 15/60 employees, Law No. 92 of 28 June 2012 stipulates:[145]

- In cases of discriminatory dismissal, termination during marriage or maternity leave, the court mandates reinstatement and compensation. Alternatively, the employee can opt for an indemnity equal to 15 months of the last global *de facto* salary, in addition to damages (full reintegration protection).
- In instances of dismissal for subjective reasons or just cause, where contested facts are proven non-existent or could have been handled differently, the court orders reinstatement and an indemnity ranging from 5 to 12 months of the last global *de facto* salary. As an alternative to reinstatement, the employee can request a 15-month indemnity (attenuated reintegration protection).
- For other unlawful dismissals based on subjective or objective grounds, or just cause, the court mandates compensation ranging from 12 to 24 months of the last global *de facto* salary (economic protection).
- In remaining unjustified dismissal cases, the court orders compensation between 6 and 12 months of the last global *de facto* salary (reduced economic protection).
- For workers hired before 7 March 2015, in companies with less than 15/60 employees, Article 8 of Law 604 of 15 July, 1966, amended by Law 108 of May 11, 1990, and further amended by Law No. 92 of June 28, 2012, specifies.

[143] Del Punta, *Diritto del lavoro*, 691 ff.

[144] Mazzotta, *Diritto del lavoro*, 705–60.

[145] Del Punta, *Diritto del lavoro*, 706–19.

That thecourt can order reinstatement within three days or compensation ranging from 2.5 to 6 months' salary of the last global *de facto* remuneration.

For workers hired after 7 March 2015 in enterprises with more than 15/60 employees, Legislative Decree No. 23 of 4 March 2015 states:[146]

- In cases of discriminatory, null and void, oral, or unmotivated dismissal, particularly involving individuals with disabilities, the court mandates reinstatement and compensation. As an alternative to reinstatement, the employee can request a 15-month indemnity of the last remuneration for the calculation of severance pay (full reinstatement protection).
- In instances where contested facts in disciplinary dismissals are proven nonexistent, the court orders reinstatement and a compensation cap of 12 months' salary of the last remuneration for the calculation of severance pay. As an alternative to reinstatement, the employee can opt for a 15-month indemnity of the last remuneration for the calculation of severance pay (mitigated reinstatement protection).
- In all cases of unjustified dismissal, whether objective or subjective, or due to just cause, the court mandates compensation ranging from 6 to 36 months' salary of the last remuneration for the calculation of severance pay (economic protection).
- For dismissals affected by formal or procedural irregularities, the court orders compensation ranging from 2 to 12 months' salary of the last remuneration for the calculation of severance pay (reduced economic protection).

For workers hired after 7 March 2015 in enterprises with less than 15/60 employees, Legislative Decree No. 23/2015 specifies:

- In cases of discriminatory or null and void dismissals or those unlawful due to physical or mental disability, the court mandates reinstatement and compensation of no less than 5 months' salary of the last remuneration for the calculation of severance pay, reduced by earnings during the dismissal period.
- In all other unlawful dismissal scenarios, the court orders compensation based on years of service, ranging from 1 to 6 months' salary of the last remuneration for the calculation of severance pay.
- In cases of dismissal breaching the sanctions procedure outlined in Article 7 of the Statute of Workers, the court mandates compensation based on years of service, with a minimum of 1 month's salary and a maximum of 6 months' salary of the last remuneration for the calculation of severance pay.

In the public sector, Article 63 of Legislative Decree No. 165 of March 30, 2001, stipulates that upon determining the unlawful nature of dismissal, the court orders reinstatement and compensation not exceeding 24 months of the last remuneration, reduced by earnings from other employment during the dis-

[146] Del Punta, *Diritto del lavoro*, 719–24.

missal period. Additionally, the employer must cover social security and assistance during this period.[147]

4.2.2 Collective Redundancies

Collective redundancies can be realised following the procedures laid down in Law 223 of 23 July 1991. Article 24 of this law states that it is collective redundancies when an undertaking with at least 15 employees intends to make at least five redundancies within a period of 120 days in the same or several production units. The employer's intention to terminate contracts is determined by the reduction or transformation of activity or work or the termination of the activity.[148]

The procedure provides that the entrepreneur notifies the trade union representatives of the intention to proceed with collective redundancies, specifying:[149]

a) The reasons that determine the redundancy situation.
b) The technical, organisational or production reasons for which it is deemed impossible to adopt appropriate measures to prevent redundancies.
c) The number and the job profiles to be eliminated.
d) The timing of the implementation of the workforce reduction programme.
e) The measures to reduce the social consequences of redundancies.
f) The method of calculating the severance payment.

Following the communication, a negotiation phase starts in order to examine the causes that contributed to the redundancy situation and the possibility of a different use of such personnel. If no agreement is reached the local directorate of the National Labour Inspectorate convenes the parties for further negotiations. Once an agreement is reached or the negotiation procedure is completed, the undertaking is entitled to dismiss the surplus workers.

The identification of the workers to be dismissed must follow the selection criteria laid down in the collective agreement. In the absence of an agreement, the law provides for three criteria to be applied concurrently:[150]

- family loads,
- seniority, and
- technical, productive, and organisational requirements.

The employee may challenge the legitimacy of the collective dismissal on the grounds of violation in the written form, violation of the procedure and violation of the selection criteria. For all those who were hired before 7 March 2015:[151]

[147] Del Punta, *Diritto del lavoro*, 728 ff.; Mazzotta, *Diritto del lavoro*, 759 ff.
[148] Del Punta, *Diritto del lavoro*, 751; Mazzotta, *Diritto del lavoro*, 780.
[149] Mazzotta, *Diritto del lavoro*, 791–99.
[150] Mazzotta, *Diritto del lavoro*, 799.
[151] Del Punta, *Diritto del lavoro*, 753.

- If the dismissal is issued without observing the written form, full reinstatement protection applies.
- If the dismissal is issued in violation of legal procedures, economic protection applies.
- If the dismissal is issued in breach of the selection criteria, mitigated reinstatement protection applies.

For all those hired after 7 March 2015:[152]

- If the dismissal is issued without observing the written form, full reinstatement protection applies.
- If dismissal is issued in violation of legal procedures or selection criteria, economic protection applies.

4.3 Temporary Agency Work

Historically, Law No. 1369 of 23 October 1960 (now repealed) prohibited a worker from being employed by a company other than the one where the worker was working. The first significant derogation came with Law No. 196 of 24 June 1997, which introduced temporary agency work only on a fixed-term basis and in the presence of circumscribed hypotheses established by collective agreements.[153]

Legislative Decree No. 276 of 10 September 2003 has completely reformed the matter by providing that a user company may turn to an authorised staff agency to obtain a certain supply of labour based on an agency work contract. The agency work contract regulates the relationship between the user and the agency and may be either permanent (so-called "staff leasing") or fixed-term. The employee, employed under this contract, works for the user, under its direction and control, but maintains an employment relationship only with the agency, which is responsible for exercising disciplinary power. Moreover, the law lists in a defined manner the cases in which it is prohibited to use an agency work contract and, in the case of irregular or fraudulent administration, provides specific safeguards to protect the worker.[154]

The employment contract shall be written. The principle of equal treatment applies to remuneration and trade union rights and protections. Moreover, the temporary worker, like any other worker, must be employed for the tasks specified in the contract. If, on the other hand, he/she is employed for different tasks, specific protective actions can be proposed.

Agency work has undergone a rather troubled legislative evolution: following the amendments introduced to the original regulation by the so-called Poletti Decree, the discipline was subject to a comprehensive revision as part of the reforms introduced by the so-called Jobs Act, being then partly reformed

[152] Del Punta, *Diritto del lavoro*, 759.

[153] Mazzotta, *Diritto del lavoro*, 834–69.

[154] Mazzotta, *Diritto del lavoro*, 276.

also by Decree-Law No. 87 of 12 July 2018, converted by Law No. 96 of 9 August 2018. In particular, Legislative Decree No. 81 of 25 June 2015, provided for the elimination of the peremptory list of grounds for legitimising temporary agency work and, on the other hand, the confirmation of the choice not to subordinate the possibility of signing a fixed-term agency contract to the necessary indication of specific productive, technical, organisational or replacement reasons.

Decree-Law No. 87 of 12 July 2018 amended the discipline of temporary agency contracts, seeking to make it consistent with the new regulations for fixed-term contracts. Moreover, the reform amended the regulation of the relationship between the agency and the worker, providing that almost the entire discipline of the fixed-term contract (including the regime of the grounds for the contract) also applies to the relationship between the agency and the worker. Some further minor changes were introduced by Decree-Law No. 48 of 4 May 2023, converted into Law No. 85 of 3 July 2023.

Finally, fraudulent agency work has been reinserted.[155]

4.3.1 The Temporary Agency Work of Home Caregivers

Temporary agency work of home caregivers responds to a genuine need for families not to be burdened with managing the employment relationship and for workers to find jobs. However, it presents problems related to the cost squeeze obtained by worsening working conditions, the need to pay a commission by the families and sometimes (even if forbidden) by the worker, and the possibility of giving rise to serious forms of exploitation and violation of human rights.[156]

In Italy, temporary agency work of home caregivers is also practised with sometimes irregular methods. There are four main ways in which temporary agency work is applied:

a) Temporary agency work of home caregivers employed as coordinated and continuous collaborators.
b) Temporary agency work of home caregivers employed by the agency.
c) Temporary agency work of home caregivers employed by families.
d) Transnational temporary agency work of home caregivers.

These modes of temporary agency work are used interchangeably by providers. The choice to change the mode of supply depends both on economic convenience and on circumventing controls.

Temporary agency work of home caregivers employed as coordinated and continuous collaborators is practised by cooperatives or associations that stipulate contracts of coordinated and continuous collaboration with workers who

[155] Mazzotta, *Diritto del lavoro*, 294.

[156] Borelli, *Who care? Il lavoro nell'ambito dei servizi di cura alla persona*, 190–201.

are then sent to the homes of elderly persons to provide their services. Since they are not employment agencies, these entities do not require any authorisation from the Ministry of Labour.[157]

Some employment agencies have opted to directly employ domestic workers, applying the sector's CCNL to them. In essence, a discipline intended for employers who use work at home for personal needs is applied by employment agencies to lower the cost of the service provided. As pointed out by Borelli, the CCNL for domestic work of UNSIC, UNSICOLF, and ASNALI expressly regulates this case.[158]

The third modality of temporary agency work is that of illicit labour mediation, in which the agency arranges for the domestic worker to be engaged by the family but, in fact, manages the employment relationship entirely, charging the family a commission. In this case, in addition to the additional cost passed on to the families (who have to pay for the service provided by the agency), there is an exposure of the worker to the employer's power by the agency, without having the necessary protections.[159]

The fourth type of temporary agency work is the transnational temporary agency work of home caregivers. If the agency work takes place between two or more Member States, it is governed by EU legislation on the posting of workers. According to these regulations, the conditions under which the agency may operate are set by the sending state, which may also decide not to provide for any authorisation, registration, or supervision of the agency. The domestic worker posted in Italy is subject to the discipline provided for administered labour by Article 35 Legislative Decree No. 81 of 15 June 2015 (Article 4 co. 3 Legislative Decree No. 136 of 17 July 2016). However, social security contributions continue to be paid in the State of origin (Article 12 Reg. 883/2004). A comparative advantage linked to lower labour costs for the transnational service provider may therefore remain. Moreover, in the hypothesis of transnational agency work, Article 13 of Reg. 883/2004 could apply, which, for the exercise of the activity in two or more States, provides, among the criteria for determining the applicable law, that of the place where the undertaking has its head office; in this hypothesis, the undertaking may choose the social security legislation applicable to the employment relationship. Moreover, checks on transnational agency work are much more complex as they require cooperation between several national authorities. It is therefore no coincidence that this case sometimes gives rise to serious offences, such as serious labour exploitation or human trafficking.[160]

[157] Borelli, *Who care?*, 191.

[158] Borelli, *Who care?*, 197.

[159] Borelli, *Who care?*, 198. The National Labour Inspectorate clarified in its Note of 21 June 2017, protocol no. 5617, that in the case of domestic work, the sanction of direct employment by the user does not apply in cases of illicit temporary agency work.

[160] Borelli, *Who care?*, 199.

4.4 Fixed-Term Employment

The fixed-term contract is a subordinate employment contract in which a predetermined duration is provided in advance. Fixed-term contracts are governed by Legislative Decree No. 81 of 15 June 2015 (Articles 19–29) recently revised by Decree-Law No. 48 of 4 May 2023 converted into Law No. 85 of 3 July 2023. The ordinary form of the subordinate employment relationship remains the permanent contract, therefore, the setting of a term – although permitted – is subject to compliance with certain conditions.[161]

Decree-Law No. 87 of 12 July 2018 provides that a term may be added to a subordinate employment contract provided that it is agreed in writing and subject to a duration limit of 12 months. However, a term may be added to the contract for a duration of more than 12 months, but not more than 24 months, as long as there are three legal grounds:[162]

a) Temporary and objective needs, unrelated to the ordinary activity, or needs to replace other workers.
b) Needs related to significant and unforeseeable temporary increases in ordinary activities.
c) Specific needs provided for by collective agreements.

These grounds were repealed by Decree-Law No. 48 of 4 May 2023 converted into Law No. 85 of 3 July 2023, which essentially referred to the determination of the grounds justifying the imposition of a term to national or company collective agreements. Furthermore, the provisions on causal grounds do not apply to contracts concluded by public administrations, as well as fixed-term employment contracts concluded by private universities, including branches of foreign universities, research institutes. Therefore, fixed-term contracts may not last longer than 24 months, including extensions or renewals, unless otherwise provided for in national, territorial or company collective agreements. Periods of temporary agency work are also taken into account for the purposes of calculating the 24 months.[163]

The term of the fixed-term contract may be extended, with the worker's consent, only when the initial duration of the contract is less than 24 months and, in any case, for a maximum of 4 times within 24 months, regardless of the number of contracts. If the number of extensions is higher, the contract is converted into a permanent contract from the date of commencement of the fifth extension (Article 21). Extensions may be made freely during the first 12 months and, thereafter, only in the presence of the so-called causal reasons legitimising the signing of a fixed-term contract (under Article 19(1)). However,

[161] Del Punta, *Diritto del lavoro*, 783–88; Mazzotta, *Diritto del lavoro*, 352.
[162] Del Punta, *Diritto del lavoro*, 788–95.
[163] Del Punta, *Diritto del lavoro*, 788–95.

for renewal purposes, a time gap must be observed between the signing of the two fixed-term contracts:[164]

- 10 days for contracts up to 6 months.
- 20 days for contracts of more than 6 months.

If the provisions on these time gaps are breached, the second contract is converted into a permanent contract.

The current legislation also regulates the hypotheses of continuation of the relationship beyond the expiry of the term, providing that in such cases the employer is obliged to pay the employee an increase in salary for each day of continuation of the relationship equal to 20% up to the tenth day and 40% for each additional day (Article 22). Moreover, provision is made for the transformation of the fixed-term contract into an open-ended contract if the employment relationship continues:

- Beyond the 30th day, in the case of contracts lasting less than six months.
- Beyond the 50th day, in other cases.

Employers may hire fixed-term workers to an extent not exceeding 20% of the number of permanent workers in force on 1 January of the year of hiring, unless otherwise provided by collective agreements (Article 23).

Public administrations, as a general rule, hire exclusively with permanent employment contracts. However, the public administration may also use flexible forms of employment provided for by law, albeit only subject to certain limits and modalities (Article 36). Indeed, in the public sector, it is possible to use these types of contracts only for proven needs of an exclusively temporary or exceptional nature.[165]

4.5 Job on-Call

Legislative Decree No. 81 of 15 June 2015 regulates the job-on-call. The job-on-call contract is concluded in writing and may be for a fixed-term or permanent period; this contract stipulates that the worker works in a discontinuous or intermittent manner according to the needs identified by collective agreements or, in the absence thereof, by decree of the Minister of Labour.

Even beyond the hypotheses provided for in the above-mentioned Ministerial Decree, the job on-call contract can be concluded:[166]

a) With persons under 24 years of age, provided that the work is carried out by the age of 25.
b) With persons over 55 years of age.

[164] Del Punta, *Diritto del lavoro*, 788–95.
[165] Mazzotta, *Diritto del lavoro*, 799.
[166] Del Punta, *Diritto del lavoro*, 776–80.

Except for the sectors of tourism, public establishments and entertainment, the job on call is admitted for each worker with the same employer for a total period not exceeding 400 days of actual work within three years. If this period is exceeded, the employment relationship is transformed into a full-time, permanent employment contract.[167]

During the periods in which the on-call worker is not employed, he/she does not earn any salary, unless he/she has contractually guaranteed his/her availability to answer calls to the employer. In the latter case, the worker is entitled to the on-call allowance determined by collective agreements or by decree of the Minister of Labour. An unjustified refusal to answer the call may constitute grounds for dismissal and lead to the reimbursement of the on-call allowance for the period following the refusal. [168]

Job on call is forbidden:[169]

c) To replace workers on strike.
d) In establishments where collective redundancies have taken place within the previous 6 months.
e) To employers who have not carried out a risk assessment in application of the OSH legislation.

4.6 Peculiarities of Care Workers: Home Caregivers

The employer may be an individual, a family or a non-profit community. Domestic work is regulated by the rules on employment, provided that the work must be: a) performed within the family; b) continuous and not sporadic (there must be an employment relationship with fixed and repeated hours at fixed intervals); c) "prevalent", i.e. it must take at least four hours, even if separate from each other, within each day. Fixed-term employment is permitted in compliance with the provisions of Legislative Decree No. 81 of 15 June 2015 (Articles 19–29).

Law No. 339 of 2 April 1958 distinguishes domestic workers between clerical workers and manual workers. However, the classification into categories and the specification of tasks are regulated by collective agreements.

Remuneration can be either in cash or in kind. However, it is the collective agreement that establishes the minimum wage as well as the annual adjustment. In addition, domestic workers are entitled to maternity and paternity leave (but not parental leave), rest leave, sick leave and holidays. Working hours are determined by the collective agreement and may not exceed a maximum weekly limit of 54 hours for cohabiting workers and 40 hours for non-cohabiting workers.

[167] Mazzotta, *Diritto del lavoro*, 501–5.
[168] Del Punta, *Diritto del lavoro*, 776–80.
[169] Mazzotta, *Diritto del lavoro*, 501–5.

The domestic employment relationship may be terminated for one of the following reasons: a) interruption of the probationary period; b) termination of employment at will with notice (Section 4.2.1); c) termination for just cause; d) resignation; e) death of the employee.

4.7 Elements of Italian Anti-Discrimination Law and Discriminations in the Care Sector

Italian anti-discrimination laws are constitutionally grounded in Article 3. This article asserts the principle of equal social dignity among citizens and mandates equality before the law, prohibiting discrimination based on sex, race, language, religion, political opinions, and personal or social conditions. However, it is widely believed that this list is not exhaustive, meaning that violations of the principle of equality can occur outside of those cases. Paragraph 2 of Article 3 indicates the principle of substantive equality, which requires the Republic to remove economic and social obstacles that effectively limit the equality of citizens.

One of the first legislative provisions to implement these principles within the framework of labour law is Article 15 of the Statute of Workers. This provision renders null any agreement or action aiming to condition a worker's employment on union membership, dismissal for union activity, or discriminatory treatment based on affiliation, participation in strikes, or other factors. Moreover, Article 15, paragraph 2, extends the nullification to agreements or actions rooted in political, religious, racial, linguistic, or gender discrimination.

In alignment with EU directives, Italian legislation has evolved by integrating specific anti-discrimination provisions addressing various facets. However, a comprehensive regulatory framework is yet to be established.[170] The principle of non-discrimination renders discriminatory acts unlawful only if they contravene the grounds specified by legislation, including gender (Legislative Decree no. 198 of 11 April 2006), political opinions and trade union activity (Article 15 of the Statute of Workers), race and ethnic origins (Legislative Decree No. 215 of 9 July 2003), language group and nationality (Article 2(3) and Article 43(2)(e) Consolidated Act on Immigration), religion, belief, disability, age, and sexual orientation (Legislative Decree No. 216 of 9 July 2003).[171]

Discrimination may manifest in direct or indirect forms, either individually or collectively. Legitimate discrimination is recognised when it aligns with lawful purposes (Article 3(4) Legislative Decree No. 215 of 9 July 2003). Furthermore, discrimination that necessitates a protected characteristic for performing certain work is considered legitimate if it is proportionate and rea-

[170] Marzia Barbera e Silvia Borelli, "Principio di eguaglianza e divieti di discriminazione," *WP CSDLE "Massimo D'Antona".IT* – 451/2022.

[171] Silvia Borelli, Alberto Guariso e Lara Lazzeroni, "Le discriminazioni nel rapporto di lavoro," in *La tutela antidiscriminatoria. Fonti, strumenti, interpreti*, a cura di Alberto Guariso e Marzia Barbera (Torino: Giappichelli, 2020).

sonable (Article 3(3) Legislative Decree No. 215 of 9 July 2003). In cases of discrimination, Article 28 of Legislative Decree no. 150 of 1 September 2011 provides for a partial reversal of the burden of proof in favour of the worker.[172]

To bolster gender equality in the workplace, Italy enacted Law No. 162 of 5 November 2021. This legislation expands the scope of direct discrimination to include the personnel selection stage. Moreover, it mandates companies to produce periodic reports on personnel to combat gender disparity. Enterprises that attain gender equality certification receive incentives such as exemption from total social security contributions and priority access to funding opportunities. Additionally, the introduction of Equality Counsellors (*Consigliere di Parità*) aims to address gender discrimination and promote equal opportunities through collaboration with relevant bodies responsible for labour policies, training, and mediation.

However, access to justice and case law concerning discrimination remains limited compared to other areas of labour law. This scarcity underscores the challenge of identifying and addressing discrimination, particularly within the framework of individual contractual freedoms versus the principle of equality.

Regarding discrimination in the care sector, the survey for Equality Councillors and the Italian National Stakeholder Meeting highlighted several cases of discrimination faced by workers in the care sector. These cases shed light on significant challenges related to equality and fair treatment in the workplace.[173]

One prominent form of discrimination highlighted during the Italian National Stakeholder Meeting was gender-based discrimination, particularly concerning maternity rights. For example, a female worker in a public health institution encountered resistance when seeking to transition from full-time to part-time employment due to maternity reasons. Despite legal provisions mandating equal treatment for part-time and full-time working mothers, the administration initially denied her request. However, following intervention from the Inspectorate of Labour and legal action, the issue was ultimately resolved.[174]

Another prevalent issue discussed was discrimination based on contractual terms, particularly concerning part-time employment. A young mother employed under a discriminatory part-time contract faced challenges in negotiating fair working conditions. Despite efforts by the worker, her union representative, and legal counsel, the employer refused to engage in discussions, leading to the worker reluctantly accepting a full-time position to avoid job loss.

Additionally, cases of discrimination against foreign workers were highlighted during the dialogue. In one instance, a worker from Albania faced harassment

[172] Giulia Frosecchi, "La tutela contro le discriminazioni sul lavoro," in *Elementi di diritto del lavoro*, a cura di William Chiaromonte, Maria Luisa Vallauri e Maria Paola Monaco (Torino: Giappichelli, 2021).

[173] CARE4CARE, "Minutes"; Consigliera Nazionale di Parità, "Responses".

[174] CARE4CARE, "Minutes".

and coercion to resign after returning from maternity leave. Despite attempts to intervene and address the discriminatory behaviour of the employer, procedural limitations hindered effective resolution of the issue. The Equality Councillors highlighted forms of intersectional discrimination, particularly concerning gender, religion, and ethnicity. Individuals of colour, especially Moroccan women wearing the Hijab, experienced significant difficulties in the workplace, often encountering discrimination and prejudice.[175]

Regarding workers employed in the care sector, including nursing professionals, healthcare assistants, caregivers, and similar roles, several critical issues were identified. The boundary between gender discrimination, work-life balance issues, organizational discomfort, endogenous or induced psychological distress, harassment, or bullying is often blurred. The precarious nature of the female labour market, especially among young women, leads to increased apprehension about speaking out, with many preferring to seek advice and information from equality councillors rather than directly confronting their employers.[176]

The Italian National Stakeholder Meeting also revealed challenges related to work-life balance, temporary work assignments, and flexible working hours within the healthcare sector. While positive steps have been taken, such as the signing of agreements to promote work-life balance initiatives, the dialogue underscored the ongoing need for vigilance and proactive measures to combat discrimination in the workplace.[177]

5. Wages and Benefits

The primary obligation of the employer is to correspond to the worker a remuneration, which according to Article 36 of the Italian Constitution must be proportionate to the quantity and quality of the work performed (retributive function), and sufficient to guarantee the worker and his family a free and decent existence (social function). In the Italian system, wage levels are set by collective bargaining. A legislative proposal to set the legal minimum wage at 9.00 euros gross had been introduced in 2023 but was rejected by Parliament after obtaining the opinion of the National Economic and Labour Council (CNEL) (see *infra*, Section 5.2).

Section 5 deals with collective agreement regulation of wages, benefits including overtime pay, inconvenience pay, and bonuses. Space is given to the minimum contractual wage provided for in collective agreements.

5.1 Remuneration and Minimum Wage

Remuneration is the compensation for the work carried out by the employee, entitling them to a remuneration commensurate with the quantity and qual-

[175] Consigliera Nazionale di Parità, "Responses".
[176] Consigliera Nazionale di Parità, "Responses".
[177] CARE4CARE, "Minutes".

ity of their work. This remuneration should, in any case, be adequate to ensure both the employee and their family a dignified standard of living, as enshrined in Article 36 of the Constitution.[178]

In Italy, the minimum wage is not established by law. Generally, remuneration is determined freely by the parties involved, yet subject to a minimum threshold. However, due to the non-implementation of Article 39, second part, of the Constitution, which if implemented would have provided for universal effect of collective agreements, the judiciary has identified this threshold in the minimum wage values set by collective agreements signed by the most representative unions in the sector. Remuneration may be provided in cash or in kind and is determined by regular monthly payments, payments made more frequently than monthly, and severance pay.[179]

The law does not provide an explicit definition of remuneration. In contrast, the Supreme Court defines it as everything the worker receives from the employer in exchange for his work and because of the personal subjection to the employment relationship (Cass. SS.UU. 13 Decembre 1984, no. 1069). The four principles that govern remuneration are consideration, obligatory nature, continuity, and irreducibility. These principles cannot be derogated by collective agreement or by the parties.

The most common forms of remuneration include time-based wages, piecework compensation, in-kind benefits, as well as profit-sharing, commissions, and product sharing schemes. The remuneration is paid on a monthly basis. Employer-paid wages comprise both fundamental components and supplementary or in-kind elements. Fundamental elements consist of the minimum contractual remuneration stipulated by collective agreements corresponding to each contractual qualification, contingency allowances (formerly used for adjusting wages to cost-of-living increments until 31 December 1991, but now static), separate pay elements (such as the 10.33 euros per month EDR introduced from 1 January 1993), and length-of-service increments. These amounts vary by qualification and are periodically adjusted according to the relevant collective agreement's terms and conditions.[180]

In addition to the basic elements, remuneration may consist of other accessory elements. These elements are established by collective or individual agreements and are of two types:[181]

1) *Superminimum* (consisting of sums agreed in the individual contract between the parties, or as part of company agreements).
2) Allowances (consisting of sums agreed in collective agreements and intended to compensate for performing work that entails greater burdens and difficulties for the worker).

[178] Mazzotta, *Diritto del lavoro*, 585.
[179] Del Punta, *Diritto del lavoro*, 585–92.
[180] Del Punta, *Diritto del lavoro*, 595–600.
[181] Mazzotta, *Diritto del lavoro*, 594–613.

In addition to monetary benefits, the employer may also provide benefits in kind such as accommodation, canteen, and fringe benefits.

The Italian system provides for compensation paid on a multi-monthly basis, which may be compulsory or voluntary. The remunerations that fall into this category are the thirteenth-month wage, the fourteenth-month wage and loyalty/productivity/performance bonuses. The thirteenth-month wage is provided for by law (Presidential Decree No. 1070 of 28 July 1960) and is currently regulated by collective agreements. The thirteenth month's wage is paid once a year, usually in December. This wage is normally equal to one month's ordinary salary. The fourteenth-month wage is an additional monthly payment provided for by some collective agreements. The amount and modalities are similar to those of the thirteenth-month wage, but usually, the fourteenth-month wage is paid in the summer. Bonuses are regulated by collective agreements and are often linked to the achievement of a production, seniority, or productivity goal.[182]

The elements of remuneration are compiled by collective agreements in tables that are used to determine the correct wage to be paid. The items included in these tables are numerous and have a decisive influence on the salary. Thus, the wage actually paid to an employee to whom all the allowances provided for in the collective agreement are applied may be much higher than the basic wage and may fluctuate significantly over time. In this system, it is rather complex to determine the value of the work performed. Furthermore, collective agreements do not value soft skills or do so only to a very limited extent, giving much more weight to qualifications and hard skills. This is problematic precisely in the care sector, in which interpersonal skills, empathy and other soft skills are indispensable.

As we have seen, Italy has historically adopted the wage determination model based on collective bargaining. This model has allowed a progressive increase in the national wage. However, the precondition for the functioning of the bargaining system is a high rate of unionisation and enforcement of collective agreements. The unionisation rate is difficult to measure in Italy, but since the 1980s there has been a reduction in the number of trade union members. Visser's studies, conducted between 2004 and 2016, showed a national downward trend, placing Italian national unionisation at around 50% in 2003, 40% in 2005, and around 35% in 2016.[183] Additionally, the variability of unionisation in relation to the sector of work must be considered: in some sectors, it is very high, while in others, such as domestic work, it is very low. Regarding the application of collective agreements, measurement is virtually unfeasible

[182] Mazzotta, *Diritto del lavoro*, 594–613.

[183] Jelle Visser, *I sindacati in transizione. Documento OIL/ACTRAV* (Ginevra: ILO, 2020); Jelle Visser, "The Rise and Fall of Industrial Unionism," *Transfer: European Review of Labour and Research* 18, 2 (2012): 129; Jelle Visser, "L'iscrizione al Sindacato in 24 Paesi," *Economia & lavoro* 42, 3 (2008): 17.

because there is no authority to record this data. Moreover, as there is no certification of representation and the constitutional mechanism of collective bargaining is not applied, the statistics on this issue have very limited value.

The adoption of Directive 2022/2041 on adequate minimum wages in the EU, as is well known, does not oblige member states to introduce legal minimum wages, nor does it establish a common threshold valid throughout the EU. It merely establishes some criteria to ensure minimum wages, above the subsistence threshold, taking into account the cost of living and purchasing power of the relevant member state. The two alternative ways to achieve this are to set a statutory minimum wage or to extend the coverage of collective bargaining. This coverage will have to reach 80% also, if necessary, through an action plan under EU monitoring.

All available estimates for Italy indicate a coverage rate, at least formally, well above 80% (100% for the OECD, 99% for the ILO, 97% for Eurofound's European Business Survey); from a formal point of view, therefore, no action by the Italian legislator seems necessary to comply with the directive.[184]

It is worth mentioning, however, that in July 2023 a bill (A.C. 1275) for the establishment of a legal minimum wage was submitted to the Italian Parliament by the opposition parties.[185] The proposal aims to introduce a minimum wage of 9.00 euros per hour. According to the proponents, this figure would be calculated on the basis of 50% of the national average wage revalued in light of last year's inflation. Again, according to the proponents, this minimum level would correspond to approximately 70% of the median wage. The parliamentary process was suspended due to the government's decision to entrust the CNEL with a study on the subject, before also taking a position in relation to the transposition of the 2022/2041 directive.

The document drawn up by the CNEL, and approved on 12 October 2023,[186] expressed a negative opinion on the need to legislate on the minimum wage, also in view of the high rate of coverage of collective bargaining, which far exceeds the 80% threshold stipulated in the directive. According to the CNEL, therefore, collective bargaining is still the medium to be privileged and valorised for the definition of an adequate wage. Nevertheless, it is acknowledged, as also evidenced from discussions with national stakeholders engaged in the Care4Care project, that reliance solely on minimum wages established by collective agreements may not consistently ensure an adequate wage, primarily due to the time required for agreement renewal. This stance has, temporarily, halted the legislative progression.

[184] Orlandini and Meardi, "Round Table," 255–57.

[185] Camera dei Deputati, *Proposta di legge concernente disposizioni per l'istituzione del salario minimo* (A.C. 1275 e abb., 2023).

[186] CNEL, *Osservazioni e proposte sul salario minimo in Italia*. Documento n. 3/2023, approvato dall'Assemblea il 12 ottobre 2023.

5.2 Collective Agreements in the Private Sector

The table compares the wage levels of health professionals, social and health workers and basic care workers.[187] In the table, social and health workers and basic care workers are reported together, because the relevant collective agreements treat them as a single category. The remuneration shown in the table is gross annual remuneration. The economic amounts shown in the table are those provided for in the collective agreements analysed, at the time they were concluded. The table uses as its main reference the salary levels established by the CCNL concluded by the most representative social partners (CCNL for non-medical staff employed by the Scientific Hospitalization and Treatment Institutes and hospital health facilities registered with AIOP and ARIS). Furthermore, the salary range established by other collective agreements has been indicated.

Table 3 – Gross annual remuneration under key private-sector National Collective Labour Agreements (CCNLs)for health professionals, social and health workers and basic care workers.

Professional profile	Salary scale (most applied CCNL – private hospitals) T011	Salary scale (most applied CCNL – residences for the elderly) T141	Salary scale (most applied CCNL – cooperatives) T151	Salary scale (min-max variation) in euros
Health professionals	25,400.25	21,126.98	23,147.04	16,016.00 to 29,495.05
Social and health workers and basic care workers	21,701.69	18,677.68 to 19,290.04	21,245.29	13,551.98 to 24,308.96

In the following table,[188] two job profiles were selected: cohabiting (live-in) home caregivers, whose pay is determined monthly by the CCNL, and non-cohabiting (non-live-in) home caregivers, whose pay is determined on an hourly basis by the CCNL. Each job profile has three possible salary levels, depending on the applicable contractual classification. The table shows the pay levels established by the most representative social partners (CCNL DOMINA FIDALDO) and the pay range established by other collective agreements. The lowest figure corresponds to the lowest remuneration set for the B SUPER level, while the highest figure represents the highest remuneration set for the D SUPER level. Note that in every collective agreement only Level D SUPER enjoys an indemnity. Also, the other collective agreements provide for "night assistance", which is nearly always close to the "night assistance" set by the CCNL DOMINA FIDALDO.

[187] Remuneration tables effective 1 January 2024.

[188] Remuneration tables effective 1 January 2024.

Table 4 – Classification and remuneration of home caregivers: CCNL DOMINA–FIDALDO vs other CCNLs (as of 16-01-2023).

Professional profile	Classification in CCNL DOMINA – FIDALDO and MOST REPRESENTATIVE TRADE UNIONS (16-01-2023)	Remuneration in CCNL DOMINA – FIDALDO and MOST REPRESENTATIVE TRADE UNIONS (16-01-2023)		Remuneration in other CCNLs (min – max) (only daily assistance)
Cohabiting (live-in) home caregivers (monthly remuneration)	Level B SUPER (assistance to self-sufficient people)	994.44	Night assistance: 1,143.60	852.48–1384.50 (plus indemnity between 160.00 and 190.00)
	Level C SUPER (not-trained assistance to dependent persons)	1,127.04	Night assistance: 1,296.09	
	Level D SUPER (trained assistance to dependent persons)	1,392.21 (plus indemnity of 194.98)	Night assistance: 1,601.09	
Non-cohabiting (non-live-in) home caregivers (hourly remuneration)	Level B SUPER (assistance to self-sufficient people)	7.03		5.97–9.36
	Level C SUPER (not-trained assistance to dependent persons)	7.83		
	Level D SUPER (trained assistance to dependent persons)	9.41		

5.3 Collective Agreements in the Public Sector

The table illustrates the gross annual remuneration outlined in the collective agreement for the public health sector, encompassing health professionals, social and health workers, and basic care workers. The collective agreement is unique for the whole sector.

Table 5 – Gross annual remuneration in the public health sector CCNL (comparto sanità) by professional profile.

Professional profile	Remuneration in CCNL public health sector (CCNL comparto sanità)
Health professionals	23,298.93
Social and health workers and basic care workers	20,105.34

It is noteworthy that in 2022, the collective agreement for the public health sector underwent revisions in classification levels and remuneration, placing greater emphasis on supplementary elements of remuneration. Consequently,

the actual salary of each worker comprises not only the basic salary delineated in the table but also various specific allowances.

This emphasis on supplementary elements also extends to the private health sector. However, following the renewal of the national collective agreement for the public health sector in 2022, the significance of these auxiliary components in relation to the basic salary is more pronounced within the public sector.

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

Section 6 of this report discusses Italian regulations on working time, leave arrangements, occupational safety and health, the impact of the pandemic on care workers and the training of care workers.

6.1 Working Time, Rest Periods, Holiday Leave and Night Work

The regulation of working time has been amended several times in recent years. Initially, the legislator intervened with Law No. 196 of 24 June 1997 (the so-called "Treu Law"). Subsequently, Legislative Decree No. 66 of 8 April 2003, implementing EU Directives 93/104/EC and 2000/34/EC, introduced a framework regulation on working time and other important related issues.[189]

Based on the new legislation, working time can be defined as the period during which the worker is at work and at the disposal of the employer, with the obligation to perform his activity or duties. Conversely, any period that is not part of working time is defined as rest time. The law distinguishes between normal working time and overtime. The former is set at 40 hours per week, although the law introduces a number of exceptions to this general rule:[190]

- Collective agreements may provide for a shorter duration.
- Collective agreements may refer the duration of the normal weekly working time to the average over a multi-week period. This means that in a given week the worker may be called upon to work more than 40 hours; however, work in excess of 40 hours will not be considered overtime if, in the multi-week period taken as a reference, the average number of hours worked is still 40. In this regard, the law specifies that, in any event, over the course of the week the working time must not exceed an average of 48 hours (including overtime) in 4 months, which may be increased by collective agreements up to 12 for objective reasons specified in the agreement. Appropriately, the law specifies that periods of holidays or sick leave are not to be taken into account when calculating the average.

Numerous categories of workers are excluded from the regulation of normal working hours and, in particular, from the legislative limit of 40 hours,

[189] Mazzotta, *Diritto del lavoro*, 454.

[190] Del Punta, *Diritto del lavoro*, 541–47.

without prejudice; however, to more favourable conditions established by collective agreements.

A distinction is made between normal working hours and overtime, i.e. work in excess of normal working hours and which must in any case be contained, as well as separately remunerated and compensated with increases laid down by collective agreement. The latter may allow workers to benefit from compensatory rest time as an alternative or in addition to pay increases.[191]

Collective agreements indicate the manner in which overtime work is to be performed, subject to the aforementioned limit of an average of 48 hours of work per week over four months. In the absence of such agreements, the law provides that recourse to overtime work is permissible only by agreement with the employee and for a period not exceeding 250 hours per year. However, the law also provides for other cases in which overtime is nevertheless permitted, i.e. irrespective of the will of the individual worker and unless otherwise provided for by collective agreements:

- Exceptional technical and production needs, with the impossibility of meeting them by employing other workers.
- Cases of *force majeure* or such that failure to work overtime could result in serious and immediate danger or damage to persons or production.
- Special events, such as exhibitions, fairs and events related to production activity, or the preparation of prototypes or models prepared for them.

6.1.1 Rest Period and Holiday Leave

Legislative Decree No. 66 of 8 April 2003 defines rest periods as everything that is not part of working time. Rest periods include:[192]

- Daily rest.
- Breaks.
- Weekly rest.
- Holiday leave.

Daily rest is a worker's right under the law. The worker is entitled to 11 hours of rest every 24 hours. This rest must be continuous unless the work is characterised by split periods of work during the day. [193]

If the working day exceeds 6 hours, the employee is entitled to a break to restore mental and physical energy and to have a meal. The timing and duration of these breaks are established by collective agreements; in their absence, the employee must be provided with a break to be taken within the start and end of the daily work period, lasting no less than ten minutes. The placement of this

[191] Del Punta, *Diritto del lavoro*, 547 ff.

[192] Del Punta, *Diritto del lavoro*, 545–47.

[193] Del Punta, *Diritto del lavoro*, 545–47.

break should consider production needs. These breaks are unpaid and cannot be counted towards the total working hours.

The worker is entitled to a weekly rest period of at least 24 consecutive hours, in addition to the 11 hours' rest of the previous day. However, this right does not apply to certain categories of workers (shift work, whenever the worker changes teams and cannot take daily or weekly rest periods between the end of one team's service and the beginning of the next team's service; activities characterised by periods of work split throughout the day; for certain categories of persons working in the rail transport sector). The weekly rest period must, as a rule, coincide with Sunday, except in cases—provided for by law—where the weekly rest day may be fixed on a day other than Sunday.[194]

The worker is entitled to an annual period of paid leave of not less than four weeks, with the option for collective agreements to establish more favourable conditions. If the holiday is not taken, it cannot be replaced with the corresponding allowance for the unused holidays, except at the time of termination of the relationship.[195]

6.1.2 Night Work

Night work is regulated by Legislative Decree No. 66 of 8 April 2003 and by collective bargaining to which the law refers. The decree defines nighttime as a period of at least seven consecutive hours including the interval between midnight and 5 am. A night worker is one who alternately during the night period performs at least three hours of his daily working time in the normal way, or one who performs during the night period at least part of his working time according to the rules defined by collective labour agreements. In the absence of collective agreements, any worker who performs at least three hours of night work for a minimum of 80 working days per year shall be regarded as a night worker; the above minimum limit shall be multiplied in the case of part-time work.[196]

A specific regime is outlined for domestic workers, which includes home caregivers, as Legislative Decree No. 66 of 8 April 2003 does not encompass this category. However, the legislation concerning domestic work is notably vague, merely stipulating that

> The worker is entitled to suitable rest periods during the day and not less than 8 consecutive hours of rest at night. In cases of necessary night duties, adequate compensatory rest during the day is obligatory (Article 8, Law No. 339 of 2 April 1958).

Collective agreements provide more precise regulations, albeit applicable only if adopted by the employer. Under the FIDALDO collective agreement (concluded among the most representative unions), cohabiting home caregivers are subject to a maximum daily working period of 10 hours, inclusive of a two-

[194] Del Punta, *Diritto del lavoro*, 549.
[195] Del Punta, *Diritto del lavoro*, 550.
[196] Del Punta, *Diritto del lavoro*, 548.

hour break. The total weekly working hours must not surpass 54 hours (Article 14, CCNL DOMINA FIDALDO). This framework is consistently applied across various collective agreements.

When live-in home caregivers are required to remain available during nighttime hours, they should ideally be guaranteed 11 hours of rest within each 24-hour cycle (Article 10, CCNL DOMINA FIDALDO). However, in practice, these rest hours are often not fully implemented. Moreover, in emergency situations, cohabiting home caregivers can decline to work beyond the stipulated hours only with a "justifiable reason" and do not receive additional compensation for those hours, instead being entitled solely to compensatory rest time (Article 16, CCNL DOMINA FIDALDO).

Non-live-in home caregivers are limited to a maximum of 8 hours per day and a weekly schedule not exceeding 40 hours, calculated over 5 or 6 days.[197]

6.1.3 Part-Time Work

Part-time employment was initially introduced by Law No. 863 of 19 December 1984, under a relatively rigid framework aimed at safeguarding work-life balance in favour of the employee. However, over time, the regulations have evolved to incorporate elements of flexibility, which some argue may compromise the predictability of work schedules. Legislative Decree no. 61 of 25 February 2000, which transposed Directive 81/1997/EC, was subsequently replaced by Article 5(1)(a) of Legislative Decree No. 81 of 15 June 2015, currently governing part-time employment in Articles 4–12.

The part-time contract shall be concluded in writing for evidentiary purposes only (Article 5(1), Legislative Decree No. 81 of 15 June 2015). It shall precisely specify the duration and working hours, detailing the hours on a daily, weekly, monthly, and annual basis.[198]

Recourse to "supplementary work" is possible but must not exceed the normal weekly working time limit (Article 6(1), Legislative Decree No. 81 of 15 June 2015).[199] Overtime regulations are typically determined by collective agreements. However, in their absence, employers may employ supplementary work up to 25% of the agreed working time, provided employees may decline additional work if justified by legitimate reasons such as work, health, family, or vocational training needs, with a corresponding 15% pay increase (Article 6(2), Legislative Decree No. 81 of 15 June 2015). Beyond the normal hours of work, overtime rules apply, calculated on a weekly basis, or averaged over a year.[200]

Parties may include flexible clauses in the part-time employment agreement, as per Article 6 of Legislative Decree 81/2015, regarding changes to service sched-

[197] Borelli, *Who care?*, 182.

[198] Del Punta, *Diritto del lavoro*, 768–69.

[199] "Supplementary work" (*lavoro supplementare*) in the context of part-time employment refers to tasks carried out beyond the predetermined hours outlined in the contract.

[200] Del Punta, *Diritto del lavoro*, 772.

ules or duration increases. In such cases, employees are entitled to a two-day notice and compensation, either through extra payment or compensatory rest.

Overtime becomes mandatory if a flexible clause is agreed upon; otherwise, employers can refuse additional work. A flexible clause may also be agreed upon before a Certification Committee.[201] Regardless, employees cannot be required to exceed 25% of overtime work, except where collective agreements provide otehrwise, with compensation not less than 15% of their salary.[202]

Part-time workers enjoy the same rights as full-time workers and are protected against discrimination based on working hours. Salaries and certain rights are adjusted proportionally to the duration of the working time.[203]

Transformation between part-time and full-time employment is only permissible if agreed upon by both parties. In exceptional cases prescribed by law, there is a right to part-time work, while in other instances, priority is given to part-time assignments.

Part-time employees are allowed to pursue other work or professional activities, as long as they adhere to rules regarding compatibility and conflicts of interest. Requests for part-time employment are subject to company regulations and must be formalised through a written contract that outlines details like duration, working hours, and compensation.[204]

In the public health sector, part-time work is granted by the administration according to an annual planning of personnel needs and at the employee's request for proven personal and/or family needs.

When examining part-time work, it is crucial to acknowledge that in Italy, this employment arrangement frequently engenders difficulties, as it is often not a matter of choice. Involuntary part-time employment is particularly widespread in the service sector, including caregiving, which disproportionately affects women and has considerable economic and social repercussions. One of the underlying factors contributing to this phenomenon is the informal caregiving duties that women typically assume within their families.[205]

6.2 Sick Leave, Accident Leave, Maternity and Parental Leave

Italian law provides legal and social security protection for illness, accident and the birth or adoption of a child.[206]

[201] Certification is a voluntary procedure aimed at confirming that the contract intended for signing meets the form and content requirements mandated by law, with the aim of reducing litigation concerning the classification of certain employment contracts. Certification is performed by a Certification committee.

[202] Del Punta, *Diritto del lavoro*, 772.

[203] Del Punta, *Diritto del lavoro*, 774.

[204] Del Punta, *Diritto del lavoro*, 774–76.

[205] CARE4CARE, "Minutes".

[206] Del Punta, *Diritto del lavoro*, 663–77; Maria Luisa Vallauri, *Genitorialità e lavoro. interessi protetti e tecniche di tutela* (Torino: Giappichelli, 2020).

The worker has the right to be absent from work and to receive pay or an allowance in the event of illness or accident. The rules are partially different depending on whether the pathological event has an aetiology in the performance of work or not. In particular, the social security body that pays the allowance and the duration of the so-called "time of respite" change. In order for an illness or an accident to have the effect of suspending work performance, imputing to the employer the burden of bearing the employee's absence, it is necessary that they cause absolute and temporary inability to work. When, on the other hand, the impossibility generated by the event is permanent, it determines an unfitness for work that justifies dismissal for objective reasons, unless it is possible to employ the worker in different tasks compatible with his psycho-physical condition. Case law has also brought under this protection cases in which the worker needs to undergo therapeutic treatment, as well as the convalescence time necessary for the restoration of a normal state of health.[207]

In the case of illness or accident due to a common risk, the worker may be absent from work for the duration of the so-called "time of respite" fixed by collective agreements or, in the absence of a provision, by the court according to equity. If the illness or injury is caused by a work-related cause, the worker has the right to be absent until full recovery. During this time, the employee may not be dismissed. Dismissal prior to the expiry of the leave period for a reason inherent in sick leave is null and void. Dismissal for reasons other than sickness and attributable to a justified reason for termination is temporarily ineffective and does not take effect until the end of the sickness or the expiry of the "time of respite". On the other hand, dismissal for just cause, dismissal due to cessation of activity and termination due to expiry of the term in a fixed-term contract shall have immediate effect.

During the period of absence from work due to illness, the worker is entitled to remuneration or an equivalent allowance. The sum paid to the worker is subject to social security contributions. When the law places the financial burden of the worker's absence from work for health reasons on the social security institution (generally INPS, in the case of illness or accident caused by common risks, and INAIL, in the case of occupational illness or accident at work), the employer is in any case obliged to advance the allowance, and can then recover the sum through the mechanism of adjustment of contributions due. The indemnity paid by the social security institution does not correspond to the entire remuneration due to the worker, but collective agreements may provide for an obligation on the part of the employer to supplement the amount due to the worker up to 80% or 100% of the remuneration. There is also a so-called three-day waiting period, during which the employee is not entitled to any economic benefit. The duration of the economic treatment (be it remuneration or indemnity), in any case, may be less than the duration of the period of comportment, and therefore the economic burden of part of the tolerated period of absence

[207] Del Punta, *Diritto del lavoro*, 665–74.

from work may fall on the worker. Sickness and accident periods are counted in the length of service.[208]

Special protection is provided for the mother worker. The source regulating the matter of maternity and parental leave is Legislative Decree No. 151 of 26 March 2001. From the day the pregnancy is notified and until the child is seven months old, the woman has the right not to be employed in dangerous, hard and unhealthy work, including work that involves lifting weights. The employer, when assigning the woman to new tasks, must comply with the provisions of Article 2103 of the Civil Code but, as a last resort, may assign her to inferior tasks while maintaining her level of classification and salary unchanged. When this change of tasks is not possible, the employee is entitled to anticipation of maternity leave. The employer has the obligation to carry out the assessment of specific risks with respect to the condition of pregnant workers and mothers (Article 11 and Article 28 c. 1 Legislative Decree No. 81 of 9 April 2008) and to inform the workers and safety representatives of the results of the assessment and of the prevention and protection measures to be adopted. The worker is also entitled to an indefinite number of paid leaves for carrying out prenatal controls.[209]

The law establishes an absolute prohibition for the employer to engage the employee in any work activity during the two months preceding the birth and the three months following the birth of the child, as well as during the days between the presumed date of birth and the day of the birth. The prohibition also covers days not taken before the birth if the birth takes place before the expected date, even if they exceed the five-month limit. The employee may postpone the start of her leave to the eighth and up to the day of delivery, provided, however, that there is double medical certification. Violation of this prohibition is punishable under criminal law with imprisonment for up to six months. The commencement of maternity leave is brought forward to the third month before the expected date of childbirth if the woman is engaged in work that is burdensome or prejudicial to her own health and/or that of the foetus. During the maternity leave period, the woman is entitled to an allowance equal to 80% of her salary, paid by INPS. In addition, the taking of leave entitles the employee to the crediting of the notional contribution and the periods of absence are taken into account for the purposes of seniority, calculation of 13th-month wage and holidays and are considered as periods of employment for the purposes of career progression. Adoptive and foster parents shall be placed on an equal footing with biological parents in taking maternity leave.[210]

If the mother has died or is seriously ill or has abandoned the child or the child has been entrusted exclusively to the father, the father has the right to abstain from work for the whole duration of the maternity leave (up to 5 months) and certainly for the remaining part of the postpartum maternity leave (Article

[208] Mazzotta, *Diritto del lavoro*, 631–38.

[209] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[210] Vallauri, *Genitorialità e lavoro.*

28). The leave is covered by an allowance equal to 80% of salary, paid by INPS. In 2012, a mandatory paternity leave was provided for (Article 4(24) Law No. 92 of 28 June 2012), on an experimental basis. The measure was financed until 2022, to become structural in 2023. The employed father, within 5 months from the birth of the child, has the obligation to abstain from work for a period of 10 days, subject to written notice to the employer at least 5 days before the beginning of the leave. An allowance of 100% of the salary is paid for the days of leave. Unlike in the case of maternity leave, the employer is not penalised if he does not require the working father to be absent from work for 10 days. Rather, it is penalised if it prevents or hinders the working father from taking the leave once he has requested it. The paternity leave is also due to adoptive fathers.[211]

Under Article 32, each parent is entitled to take leave from work regardless of whether the other parent is entitled to it. Parents may also take parental leave at the same time, just as the father may take parental leave while the mother takes maternity leave. Each parent may take a maximum of 6 months leave, which becomes 7 months, as an incentive, for the father who is absent for at least 3 months. However, in total, the father and mother may take a maximum of 10 months of leave, raised to 11 if the father has taken at least 3 months of leave. The leave must be taken by the end of the child's twelfth year of life or, in the case of fostering or adoption, by the twelfth year of the child's entry into the family or into Italy, respectively in the case of national or international fostering/adoption. The lone parent, on the other hand, has 11 months of parental leave. The leave, as described, is due to the parents for "each child". It follows that, in the case of a twin or multiple births, the duration of the leave will be proportional to the number of births. Parental leave is also due in the case of national or international fostering and adoption. Worker and/or woman taking parental leave is entitled to an allowance equal to 30% of salary, paid by INPS, for a maximum total period of 9 months, 3 of which are non-transferable. It is due within the 12th year of the child's life or within the 12th year of the child's entry into the family/Italy in case of fostering or adoption.

The Budget Law 2024 (Law No. 213 of 30 December 2023) increased the amount of the parental leave allowance available to mothers or fathers for a second month, out of the total of 6 months within the 6th year of the child's life. In particular, the allowance (ordinarily set at 30% of taxable salary) is increased: a) to 80% for two months in 2024 and b) to 80 per cent for one month and 60 per cent for a further month, when fully effective, from 2025. The innovation is applicable to employees in both the public and private sectors ending their maternity or, alternatively, paternity leave after 31 December 2023.

Periods of parental leave are counted in the seniority and do not lead to a reduction in holidays, or 13th-month wage, with the exception of additional emoluments linked to actual presence on duty, unless otherwise provided for

[211] Vallauri, *Genitorialità e lavoro*.

by collective bargaining. More favourable economic conditions are provided for parents with very low incomes.[212]

The working parent may, in lieu of parental leave and within the limits of his/her remaining leave entitlement, request to convert the full-time employment relationship into a part-time one. There is also a priority in the assignment to the agile work (*lavoro agile*).[213]

During the first year of the child's life, female workers are entitled to two rest periods, of one hour each, which can also be accumulated during the working day. The rest period is only one when the working day is less than six hours. In the case of multiple births, the rest periods are doubled. The working father is also entitled to these rest periods, but only: when the children are entrusted exclusively to him; as an alternative to the employed mother who does not make use of them; when the mother is not an employee and is not entitled to use them. Daily leave is also granted to foster and adoptive parents. These leaves are covered by an allowance equal to the full amount of the salary due for the hours of suspension of work. Both parents, alternatively, are entitled to leave on the occasion of illness of their child up to 8 years of age. When the child is less than 3 years old, the parent may take off work for an indefinite number of days per year, while when the child is between 3 and 8 years old, each parent may take off work for only 5 days per year. If the child's illness results in hospitalisation, it interrupts any leave the parent may be enjoying. Adoptive or foster parents may also take this leave.[214]

The dismissal of a mother worker during the period from the beginning of her pregnancy to the completion of the child's first year of age is prohibited and administratively sanctioned, regardless of whether the employer is aware of the worker's condition. The judge who determines the illegitimacy of the dismissal orders the employer to reinstate the employee. In addition, the judge orders the employer to pay an indemnity of no less than 5 months of the last global remuneration, reduced by the remuneration received from other work activities during the dismissal, with the obligation to pay social security and welfare contributions. Moreover, resignations tendered by the employee during the period of pregnancy and during the first 3 years of the child's life or during the first 3 years of the child's placement with an adopted or foster child, or, in the case of international adoption, during the first 3 years of the child's stay in Italy, must be validated by the territorial labour inspectorate. The same applies in the case of consensual termination of employment.[215]

[212] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[213] Agile work (*lavoro agile*) is a mode of execution of the employment relationship characterised by the absence of time or space constraints and an organisation by phases, cycles and objectives, established by agreement between the employee and employer; a mode that helps the employee to balance work and lifetime and, at the same time, encourages productivity growth.

[214] Del Punta, *Diritto del lavoro*, 664–73; Vallauri, *Genitorialità e lavoro.*

[215] Del Punta, *Diritto del lavoro*, 671; Mazzotta, *Diritto del lavoro,* 177.

6.2.1 Domestic Workers and Home Caregivers

In case of illness, the job retention period is established by the applicable collective agreement. In the FIDALDO collective agreement, it is set that the domestic worker is entitled to job retention for 10 days in case of seniority up to 6 months; 45 days in case of seniority between 6 months and 2 years; 180 days in case of seniority longer than 2 years. During these periods, the employer must pay an allowance for a period of, respectively, 8, 10, and 15 days, for one year and an amount equivalent to 50% of pay until the 3rd day and 100% from the 4th day onward. Some CCNLs provide for shorter illness protection periods and lower economic compensations.

In the event of an occupational injury or illness, the FIDALDO collective agreement ensures the same illness protection period seen above. However, in this case, the employer must pay wages only for the first 3 days of leave. Many of the applicable collective agreements reduce the illness protection period.[216]

A special and less extensive discipline is provided for parents working in domestic and family services (Article 62 of Legislative Decree No. 151 of 26 March 2001). They are entitled to maternity leave and paternity leave, and to the relevant remuneration. Article 25 of the collective agreement for domestic helpers and carers of 8 September 2020 (FIDALDO CCNL) stipulates that it is forbidden to work for women during the two months preceding the presumed date of birth, except for any advance or postponement provided for by the law; for the period between that date and the actual date of birth; during the three months after the birth, except for authorised postponements. These periods must be counted in the length of service for all purposes, including those relating to Christmas bonuses and holidays. Female domestic workers can apply for household allowances only on a deferred basis, with payments made semi-annually (instead of monthly); these allowances are also calculated not on wages received, but on hours subject to insurance (Article 14 Presidential Decree No. 1403 of 31 December 1971).[217]

Domestic workers and home caregivers are excluded from the rules limiting dismissal (Article 62 and Articles 2240 and 2244 of the Civil Code). However, it should be noted that the FIDALDO CCNL states that

> from the beginning of the pregnancy, provided it occurred in the course of the employment relationship, and until the end of the period of compulsory abstention from work, the female worker may not be dismissed, except for just cause.

Resignations by a domestic worker or a home caregiver during this period are ineffective and of no effect if not communicated in writing or if not made in the protected forums provided for by law. Absences not justified within five days, where there are no force majeure reasons, are to be considered just cause

[216] Borelli, *Who care?*

[217] Borelli, *Who care?*, 177.

for dismissal. In the event of voluntary resignation during the protected period, the employee is not required to give notice.[218]

6.3 Occupational Safety and Health

The employer has an obligation to ensure the occupational safety and health (OSH) of workers (Article 2087 of the Civil Code) through the implementation of all measures that meet the case law requirement of the "best technologically feasible arrangement". The notion of workers' health includes psychological health, so the employer is also obliged to detect the risk of work-related stress and to implement all the necessary measures to prevent a condition of psychological malaise from arising from the performance of work.[219]

Specifically, Legislative Decree No. 81 of 9 April 2008 is divided into 14 Titles and about fifty annexes and implementing decrees, substantially taking up in its formulation a regulatory technique of EU derivation.

Title I (common principles), Title XII (provisions on criminal law and criminal procedure) and Title XIII (transitional and final provisions) are those that contain general provisions to which specific provisions are added for each sector, including the healthcare sector. [220]

Legislative Decree No. 81 of 9 April 2008:

a) Lists subjects, functions and activities that cover the whole range of prevention legislation.
b) Identifies the scope of application of this legislation, which extends to all private and public sectors of activity except for domestic workers.
c) Establishes the general protective measures, the duties of the persons involved and the activities that the employer may delegate to designated persons.
d) Provides for risk assessment (a fundamental activity that the employer cannot delegate).
e) Establishes the prevention service, the responsible person for the service appointed by the employer, the tasks and the organisation of the service (internal or external, with one or more members, carried out by the employer himself).
f) Provides for the education, information and training of workers.
g) Provides for health surveillance conducted- in the cases provided for by law—by a competent doctor through a series of medical acts (not only personal examinations) aiming to assess the suitability of the worker for a specific task rather than for work in general.
h) Identifies procedures for emergency management, first aid and fire prevention.
i) Provides for consultation and participation of workers' representatives.
j) Establishes sanctions.

[218] Borelli, *Who care?*, 177.
[219] Del Punta, *Diritto del lavoro*, 615–33.
[220] Del Punta, *Diritto del lavoro*, 621.

Moreover, the legislature strengthened Article 25-septies of Legislative Decree No. 231 of 8 June 2001, expanding corporate administrative liability for manslaughter and for serious or very serious bodily injury committed in breach of OSH rules, where the offence is carried out by corporate representatives and in the company's interest or to its advantage.[221]

Finally, the legislator superseded special legislation based on the technological vision by imposing diversified, interconnected, and planned behaviour and technical, organisational and procedural measures on the employer and workers.[222]

In both private and public healthcare institutions, there is a concerning rise in incidents of physical assault perpetrated by patients or their relatives, particularly targeting nurses. In 2022, a significant 130,000 cases of physical assaults on nurses were recorded.[223] A study conducted by FNOPI in 2023 revealed that 40.2% of surveyed nurses reported experiencing multiple assaults within a year. Notably, these aggressions disproportionately target female nurses and are most prevalent in emergency departments.[224]

During the Italian national stakeholder meeting, trade unions brought attention to the serious issue of physical assaults. Proposed remedies ranged from the deployment of security personnel in hospitals to augmenting public investment in the healthcare sector to enhance service efficiency, thereby addressing the underlying grievances contributing to these assaults.[225]

6.3.1 Domestic Workers and Home Caregivers

Despite the exclusion of domestic workers from the scope of Legislative Decree No. 81 of 9 April (Article 2(1)(a)), aligning with Directive 391/1989, there remains a significant concern for the protection of their well-being. Furthermore, Legislative Decree No. 81 of 9 April has repealed Presidential Decree No. 547 of 27 April 1955 that extended several health and safety guarantees to domestic workers.

However, the applicable law for domestic workers provides for a guarantee that may be read as extensive, as prescribes the employer's obligation to

[221] Mazzotta, *Diritto del lavoro*, 566.

[222] Mazzotta, *Diritto del lavoro*, 559.

[223] Del Bufalo Paolo, "Infermieri: aggrediti 130mila l'anno. Le cause, le azioni e i costi (fino a 34 milioni)," *fnopi*, 16 giugno 2022: <https://www.fnopi.it/2022/06/16/aggressioni-130mila-infermieri/> (Accessed January 11, 2024); NURSIND, "Aggressioni ai sanitari, il triste primato spetta agli infermieri," *Nursind Sanità*, <https://www.nursindsanita.it/articolo/6285/aggressioni-ai-sanitari,-il-triste-primato-spetta-agli-infermieri> (Accessed April 29, 2024).

[224] FNOPI, "Aggressioni agli infermieri, nel 2023 i dati si confermano allarmanti: il 40,2% degli intervistati denuncia anche più casi in un anno," (2024), <12-marzo-2024-FNOPI-I-dati-2023-sulle-aggressioni-agli-infermieri-1.pdf> (Accessed January 11, 2024).

[225] CARE4CARE, "Minutes".

> provide the worker… with an environment that is not harmful to the worker's physical and moral integrity, as well as healthy and sufficient nutrition; protect his health particularly if there are sources of infection in the family (Article 6, Law No. 339 of 2 April 1958).

Despite this legal framework, in practice, there exists a noticeable gap in safety standards compared to those in business environments. This discrepancy significantly reduces the burden on domestic employers, leaving domestic workers inadequately protected.[226]

Moreover, collective agreements often fail to sufficiently address OSH protocols for domestic workers. At best, these agreements may require employers to inform workers of potential risks, but they typically lack provisions for training workers in health and safety procedures. This oversight violates ILO Convention 201, No. 19, which Italy has ratified.

6.4 Short-Term, Long-Term, and Post-Pandemic Implications COVID-19 Pandemic Measures

The COVID-19 pandemic significantly affected the working conditions of care workers. Being essential workers, this group kept performing its tasks even during the pandemic peaks, thus being exposed to a higher health risk. Moreover, the intense working rhythms and the difficulties associated with managing the virus exacerbated their working conditions.

The pandemic reaffirmed the indispensability of care workers. At the same time, the pandemic exposed the vulnerabilities of this sector: employment shortages, difficult working conditions, widespread reliance on foreign workers, often irregularly employed.[227]

Decree-Law No. 34 of 19 May 2020, converted into Law No. 77 of 17 July 2020 introduced a collective regularisation procedure for irregular (undocumented) migrant workers employed in agriculture, care, and domestic work. This measure benefits irregular (undocumented) migrant workers employed in one of these sectors and residing on Italian territory as of 8 March 2020. Article 103 of this decree established that, between 1 June and 15 August 2020, the employer could submit an application to conclude an employment contract or to declare the existence of an irregular employment relationship with an irregular migrant worker present on Italian territory in one of the identified sectors. This application should specify the duration of the employment contract

[226] Luciano Angelini e Paolo Pascucci, "La tutela della salute e sicurezza dei lavoratori domestici. nuovi spunti di riflessione dopo il d.Lgs n. 81/2008," in *Lavoro domestico e di cura: quali diritti?*, a cura di Raffaella Sarti (Roma: Ediesse, 2010), 226–39.

[227] Teresa Matarazzo et al., "CORONAcrisis, studio osservazionale sull'esperienza del personale sanitario nell'emergenza pandemica," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 251–73; Chiara Contri, Fabrizio Vincenzi, e Katia Varani, "Emergenza sanitaria e condizioni psico-fisiche degli operatori sanitari: un focus sui trattamenti farmacologici," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 273–96.

and the agreed remuneration, which could not be lower than that provided for in the collective agreement applied in the sector.

The government conceived this procedure to regularise and reduce labour shortages in the agricultural sector. However, at the urging of the sector's employer organisations, 85% of the regularisation applications submitted concerned care and domestic workers[228] This procedure posed serious problems for its implementation. The data on the status of the processing of applications show serious delays and long completion times due to critical issues in the wording of the law and administrative difficulties.[229]

The recent Decree of the President of the Council of Ministers concerning the programming of legal entry flows for migrant workers into Italy for the 2023–2025 period has resulted in an increase in quotas for lawful entry for employment purposes. Furthermore, it has expanded the scope of professional categories and production sectors eligible for consideration. Over the span of three years, a total of 452,000 new admissions are projected (136,000 for 2023, 151,000 for 2024, and 165,000 for 2025), contrasted with an identified demand of 833,000 (274,800 for 2023, 277,600 for 2024, and 280,600 for 2025). Specifically, in sectors such as transportation, construction, tourism, mechanics, telecommunications, food processing, and shipbuilding, additional professional profiles have been approved for entry into Italy. In the sector of care and healthcare, employers are permitted to apply for the admission of 9,500 migrant workers annually over the three-year period, equating to a total of 28,500 individuals. However, this figure falls significantly short of meeting the demands of the care sector.[230] According to recent research, the care sector requires between 57,000 and 68,000 migrant workers during the 2023–2025 period.[231]

As part of the emergency measures temporarily adopted to deal with the COVID-19 pandemic, Decree-Law No. 18 of 17 March 2020 converted into Law No. 27 of 24 April 2020 (*Decreto Cura Italia*), also granted domestic workers the right to abstention from work during periods of active surveillance when in close contact with confirmed cases (Article 26(1)). For the purposes of economic treatment, this period was equally equated with illness, so the cost fell entirely on families. Law Decree 18/2020 also extended the provision on contracting the COVID-19 virus at work to domestic workers (Article 42(2)). However, domestic work has not been listed among the services at high risk of contagion for

[228] William Chiaromonte e Madia D'Onghia, "Migranti, lavoro e pandemia: nuovi problemi, vecchie risposte?" *Rivista giuridica del lavoro e della previdenza sociale* 1 (2021): 3, 11.

[229] Radicali, I. Comitato promotore *Ero Straniero – L'umanità che fa bene. La proposta di legge di iniziativa popolare* (2023) <https://erostraniero.radicali.it/la-proposta/> (Accessed September 18, 2023).

[230] William Chiaromonte, "Una lettura giuslavoristica del D.L. 20/2023: le inadeguate politiche migratorie del governo Meloni," *Giornale di diritto del lavoro e di relazioni industriali* 3 (2023).

[231] Fabio Massimo Rottino e Luca Di Sciullo, *Il fabbisogno aggiuntivo di manodopera straniera nel comparto domestico. stima e prospettive* (Roma: Assindacolf, Fondazione CENSIS, 2023).

which "the simple presumption of occupational origin" operates (INAIL Circular No. 13/2020), although the list provided by INAIL is merely illustrative.

During the COVID-19 pandemic, the legislator confirmed the exclusion of domestic workers and home caregivers from the Wages Guarantee Fund in derogation (Article 22(2) Decree-Law No. 18 of 17 March 2020) but created an allowance paid in the case of non-cohabiting domestic workers and home caregivers with Decree-Law No 34 of 19 May 2020. In essence, the legislator presumed that, during the pandemic, cohabiting domestic workers continued to carry out their activities, being regularly paid, a presumption that has been largely disproved.[232]

During the COVID-19 pandemic emergency, the Italian Government adopted a series of assistance measures. A series of economic benefits were provided for employers, workers (both subordinate and—although to a lesser extent—self-employed) and families.[233]

The Italian government recently enacted a landmark reform aimed at addressing the care needs of elderly individuals, both able-bodied and non-self-sufficient.[234] This legislative initiative, which came into effect on 19 March 2024, represent an effort to modernise its eldercare system. The reform seeks to streamline existing policies, enhance coordination in elderly care services, and promote active aging.

The reform, mandated by National Recovery and Resilience Plan directives, was enacted through Legislative Decree No. 29 of 15 March 2024. Article 9 of Legislative Decree No. 29 of 15 March 2024 establishes the Essential Levels of Social Benefits (*Livelli essenziali delle prestazioni sociali*, or LEPS) and the Essential Levels of Health and Sociomedical Assistance (*Livelli essenziali di assistenza sanitaria e sociosanitaria*, or LEA), which are included in the individualised integrated assistance projects (*Progetti individualizzati di assistenza integrata*, or PAI), which are activated by accessing the single access points (*Punti unici di accesso*, or PUA) pertaining to the social territorial ambits (A*mbiti territoriali sociali*, or ATS).

A core aspect of the reform is the emphasis on preventive healthcare measures and promoting active aging. Initiatives such as telemedicine and preventive health screenings aim to enhance early detection and management of health issues among the elderly population, enabling timely interventions and improved health outcomes. Recognising the importance of social connections, the reform introduces measures to combat social isolation and promote community engagement among older adults. Initiatives such as slow tourism, volunteering, and life-

[232] Borelli, *Who care?*, 187.

[233] Rocco Reina e Marzia Ventura, "Profili organizzativi delle Aziende che si occupano di salute," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 89–118; Caterina Pasquariello, "L'adeguatezza dell'organizzazione nelle aziende sanitarie: l'emergenza COVID-19 e la spinta verso l'innovazione," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 119–36.

[234] Silvia Borelli, "L'interregno dei servizi di assistenza per le persone non autosufficienti. Spunti di riflessione nella prospettiva giuslavoristica," in Buoso e Passaro, *Organizzazione e lavoro in sanità*, 55–88.

long learning programs aim to enhance social inclusion and overall well-being among seniors. Moreover, to address housing needs, the reform encourages the adoption of innovative housing models, including shared living arrangements and intergenerational cohabitation. These initiatives aim to create supportive environments where older adults can live independently while fostering social connections and mutual support.

While the reform outlines a comprehensive architecture for elderly care, significant challenges remain, particularly concerning the integration of healthcare and social services across the country. Although the government allocated approximately one billion euros to kickstart the reform, experts estimate that at least seven billion euros will be needed over the legislative term to fully realise its objectives. The challenge lies in mobilising adequate resources and fostering collaboration among regional authorities, local health agencies, municipalities, the third sector, private entities, and citizens to ensure the seamless delivery of care services.[235]

6.5 Training and Competence Development

Articles 5 and 6 of Law No 53 of 8 March 2000 and collective agreements regulate training leave in both the private and public sectors.

To ensure the right to education, employees, both in the public and private sectors, have the option to request specific training leave from their employer, as outlined in Article 5 of Law No. 53 of 8 March 2000. This leave is intended to facilitate the completion of the employee's studies or participation in independently chosen training activities not organised by the employer. Collective agreements govern the procedures and timing for taking this leave, within the legal parameters.

These parameters include: a maximum duration of 11 months over the entire working life; the leave can be taken continuously or in fractions; it's only available after 5 years of service in the same company or administration, with a minimum notice period of 30 days. The employer retains the right to refuse or postpone the request based on proven organisational needs, as outlined in collective bargaining agreements.

Training leave is unpaid, it does not contribute to seniority, it cannot be combined with vacation, sick leave, or other types of leave, and it does not qualify for social security coverage. However, job retention is guaranteed during the leave period.[236]

[235] Barbara Gobbi, "Decreto Anziani, con la pubblicazione in Gazzetta operativa la riforma della non autosufficienza. Bellucci: attuazione corale e progressiva," *Il sole 24 ORE*, 19 March, 2024, <https://www.sanita24.ilsole24ore.com/art/dal-governo/2024-03-19/decreto-anziani-la-pubblicazione-gazzetta-operativa-riforma-anche-non-autosufficienza-bellucci-attuazione-corale-e-progressiva-114101.php?uuid=AFhRcB3> (Accessed March 19, 2024); for a critical discussion, see Sofia Gualandi, "Il tradimento della popolazione anziana non autosufficiente. Analisi di una riforma (mancata), tra rinvii a futuri provvedimenti, eccessi di categorialità e dogma dell'invarianza finanziaria," *Rivista giuridica del lavoro e della previdenza sociale* 4 (2024).

[236] Mario Grandi and Giuseppe Pera, *Commentario breve alle leggi sul lavoro* (Padova: CEDAM, 2009).

Life-long learning leave is leave aimed at enhancing professional knowledge and skills throughout working life and all workers are entitled to it. The training may correspond to an autonomous choice of the worker or be organised by the company, through company or territorial plans agreed between the social partners. Collective agreements define criteria, modalities and number of hours and may provide for a reduction in working hours for worker training projects, financed by the Regions, using an annual share of the Employment Fund. These training projects can also be submitted directly by workers.[237]

During the national stakeholder meeting, two key challenges within the sector were highlighted, both of which could be addressed through enhanced training initiatives. Firstly, there's a notable gap in understanding among professionals regarding each other's competencies. This lack of clarity often leads to uncertainty about what tasks can be reasonably expected from each role. Secondly, there's a recognised lack of team collaboration skills. Effective teamwork not only relies on understanding the capabilities of team members but also on the development of individual competencies. It was noted that current educational programs fail to provide ample opportunities for professionals to acquaint themselves with one another's strengths. Introducing collaborative elements into training courses could be beneficial in fostering teamwork capabilities among future practitioners.[238]

7. Social Security Coverage and Benefits

Section 7 of the report describes the Italian welfare state. Specifically, it deals with social security measures, social assistance, the national health service and the complementary role of collective bargaining.

7.1 The Italian Welfare State Model

Social security law in Italy encompasses legislation aimed at guaranteeing the protection of persons in situations of socially relevant need. This legislation finds its constitutional foundation in Article 3(2) of the Constitution, which states that the Republic has the obligation to "remove obstacles of an economic and social nature" that prevent substantial equality among citizens.

The Italian welfare state model is a mixed one and incorporates elements of the Bismarckian model (i.e. the social insurance model) and the Beveridgian model (i.e. the social security model).[239]

[237] Grandi e Pera, *Commentario*.

[238] CARE4CARE, "Minutes."

[239] Italian law uses the term "social security" (*previdenza sociale*) to refer to forms of insurance-based social measures, the regulation of which is based on cooperation in the financing of the beneficiaries and on the close correlation between social security contributions and labour income. As opposed to social security, Italian law regulates "social assistance" (*assistenza sociale*) guaranteed by the State through general taxation within the limits of available resources and

The constitutional provision that governs the welfare state in Italy is Article 38 of the Constitution, which provides for social assistance and social security.[240] Article 38(1) establishes a right to social assistance for citizens who are both unable to work and lack the economic means to meet basic living needs. These persons are entitled to existential maintenance in order to meet every day needs. Article 38(2) provides for a right to social security for workers. Workers have the right to have adequate means provided and insured for their life needs in the event of an accident, illness, invalidity and old age, or involuntary unemployment. Article 38(3) affirms the right of disabled and disadvantaged persons to education and vocational training. Article 38(4) stipulates that it is the State that is required to intervene, through specially designed or integrated bodies and institutions to guarantee both assistance and social security. Finally, Article 38(5) recognises the freedom of private care.[241]

Regarding social legislation, the Italian Constitution guarantees equal treatment of nationals and non-nationals. However, legislation limits access to certain social security and assistance benefits for non-nationals. Specifically, benefits under the ordinary social security system (e.g. sickness or old age insurance) tend to be guaranteed to nationals and non-nationals. However, non-national seasonal workers are excluded from unemployment protection and the right to family allowances. Regarding social assistance, non-nationals face significant legislative limitations that link access to benefits to citizenship and/or a specific residence title and/or prolonged residence in the territory.

7.2 Social Security

The Italian social security system tends to cover all workers, employed and self-employed. The five essential pillars that constitute the Italian social security system are:[242]

concerning health services (National Health Service), allowances for the subsistence of persons below the poverty threshold and inclusion measures for marginalised persons.

[240] Maurizio Cinelli, *Diritto della previdenza sociale* (Torino: Giappichelli, 2022); Maurizio Cinelli e Stefano Giubboni, *Lineamenti di diritto della previdenza sociale* (Padova: CEDAM, 2022); Mattia Persiani e Madia D'Onghia, *Diritto della sicurezza sociale* (Torino: Giappichelli, 2022); Edoardo Ales et al., *Diritto della sicurezza sociale* (Milano: Giuffrè, 2021).

[241] Paola Olivelli, *La costituzione e la sicurezza sociale* (Milano: Giuffrè, 1989); Lorenzo Gaeta, *Infortuni sul lavoro e responsabilità civile. Alle origini del diritto del lavoro* (Napoli: Edizioni Scientifiche Italiane, 1986).

[242] Simonetta Renga, *La tutela del reddito. Chiave di volta per il lavoro sostenibile* (Napoli: Editoriale Scientifica. 2022); Stefano Giubboni, Giuseppe Ludovico e Andrea Rossi, *Infortuni sul lavoro e malattie professionali* (Padova: CEDAM, 2020); Gian Guido Balandi et al., *I lavoratori e i cittadini. Dialogo sul diritto sociale* (Bologna: il Mulino, 2020); Simonetta Renga, "La famiglia nella previdenza sociale," in *I lavoratori e i cittadini. Dialoghi sul diritto sociale*, a cura di Gian Guido Balandi et. al. (Bologna: il Mulino, 2020); Guido Canavesi e Edoardo Ales, a cura di, *La tutela per la disoccupazione nelle trasformazioni del lavoro seminari previdenziali maceratesi 2018* (Macerata: eum, 2020); Rosa Casillo, *La pensione di vecchiaia. Un diritto in trasformazione* (Napoli: Edizioni Scientifiche Italiane, 2016); Giuseppe Ludovico, *Tutela previdenziale per gli infortuni sul lavoro e le malattie professionali e respon-*

- Insurance against accidents at work and occupational diseases.
- Insurance against disability, old age and survivors.
- Insurance against unemployment, reduced employment and income discontinuity.
- Protection against employer insolvency.
- Family protection.

A distinction must be made between pension treatments and other forms of social security protection both in relation to subordinate employment and self-employment.

Pension benefits cover all employed and self-employed workers, and also extend to situations where work was absent (e.g. survivor's pension). Employees and, in different forms, self-employed persons have social security protection in case of illness and maternity. Conversely, insurance against accidents at work and occupational diseases applies to all employees and only to a limited number of categories of self-employed workers.

Instruments designed to respond to economic needs following the suspension or loss of work cover all employees and, following the financial and economic crisis of 2009–2012 and the COVID-19 pandemic emergency, partially the self-employed workers.

Institutionally, all forms of protection for employees and some categories of self-employed workers are mainly managed by two public bodies at the national level: the National Social Security Institute (INPS) for pensions and the National Insurance Institute for Accidents at Work (INAIL) for insurance against accidents at work and occupational diseases.

The financing of the social security system is mixed and therefore based on social security contributions and state transfers. The latter increased following the emergence of a structural shortfall during the COVID-19 pandemic and the economic crisis of 2009–2012. However, the increase in contributions has posed the problem of the financial sustainability of the system, leading to periodic consolidation interventions.

The Italian social security model evolved in the 1980s, moving away from the social insurance model to structure itself around the principle of solidarity from a social security perspective. The central moment in this process was the adoption of the pay-as-you-go pension system in the management of social security resources, instead of the capitalisation system typical of social insurance.

The cornerstone of the pension system is intergenerational solidarity between those who work today and those who will work tomorrow. As a consequence of

sabilità civile del datore di lavoro (Milano: Giuffrè, 2012); Giuseppe Alibrandi, *Infortuni sul lavoro e malattie professionali*, a cura di Francesco Facello e Patrizio Rossi (Milano: Giuffrè, 2002); Pietro Zanelli, "Morte del titolare del reddito nel diritto della sicurezza sociale," in *Digesto delle discipline privatistiche. Sezione commerciale* (Torino: UTET, 1994); Olivelli, *La costituzione e la sicurezza sociale* (n.239); Gaeta, *Infortuni sul lavoro e responsabilità civile* (n.239).

the adoption of this model, minimum pensions, the indexation of pensions, and the principle of automaticity of benefits were progressively introduced, allowing the worker access to protection even if the employer fails to pay contributions.

It is noteworthy that Legislative Decree 21 April 2011, No. 67 delineates a framework for "heavy work" (*lavori usuranti*) classifications and the corresponding benefits extended to individuals engaged in physically demanding tasks, which often lead to a diminished quality of life or premature aging. Workers falling within these categories are afforded facilitated access to pension schemes. However, a significant concern highlighted by stakeholders involved in the CARE4CARE project pertains to the exclusion of certain care workers from the benefits outlined in the decree, despite their engagement in unquestionably strenuous activities.[243]

Another pertinent issue, particularly relevant to migrant care workers, revolves around the retention of social security rights accrued in Italy upon their return to their country of origin.[244] Existing legislation precludes the reimbursement of contributions upon repatriation, potentially fostering indifference towards fulfilling social security obligations. One potential mitigation strategy lies in international social security conventions between Italy and select non-EU countries. The latest agreement, a rarity in number, was finalised with Moldova on18 June 2021, officially enforced on 1 December 2023, as ratified by Law no. 94 of 11 July 2023, which formalised the Agreement between the Italian Republic and the Republic of Moldova on social security. This development was also acknowledged in the INAIL Circular Letter, 11 April 2024, no. 9.[245] This mechanism prevents career fragmentation and ensures entitlement to pension benefits, with contributions distributed proportionally between the respective insurance institutions. However, it is imperative to note that this system's applicability is limited to workers from countries with which Italy has such agreements in place.

7.2.1 Domestic Workers and Home Caregivers

Regarding the calculation of social security contributions of domestic workers and home caregivers, the legislator has provided for four bands of conventional hourly wages on the basis of which social security contributions are calculated (Article 1 of Decree-Law No. 155 of 22 May 1993). However, the hourly contribution amount paid for domestic workers and home caregivers employed for more than 24 hours per week (hence full-time) is lower than that paid for domestic workers employed for less than 24 hours per week (hence part-time).[246]

[243] CARE4CARE, "Minutes"; NOSOTRAS, "Responses".

[244] Chiaromonte e D'Onghia, "Migranti, lavoro e pandemia," 521 ff.

[245] INAIL, "Accordo tra la Repubblica italiana e la Repubblica di Moldova," INAIL, 11 aprile 2024, <https://www.inail.it/cs/internet/comunicazione/avvisi-e-scadenze/avv-internet-accordo-italia-moldova-23.html> (Accessed February 7, 2024).

[246] Borelli, *Who care?*, 187.

Consequently, the pension treatment of domestic workers and home caregivers employed for more than 24 hours may be lower than that enjoyed by other domestic workers and home caregivers. This system, instead of incentivising the declaration of actual working hours, has the effect of incentivising undeclared work; however, the workers, if they are immigrants, can keep their permits. Another problem concerns the modest pension amount calculated according to the contributory method, which, however, affects all workers.

Domestic workers and home caregivers are penalised in relation to unemployment benefits. Article 5 of Legislative Decree No. 22 of 4 March 2015 conditions access to unemployment benefits to having actually worked for at least 30 days in the 12 months preceding the involuntary termination of employment. Given the impossibility of ascertaining actual presence at work on each day, 5 weeks of work (conventionally considered to be 6 days each) are required in the case of domestic work. For the coverage of a working week 24 hours are required, so in order to find the number of actual working weeks it is necessary to divide the total number of working hours in the quarter by 24. The calculation system is clearly disadvantageous for domestic workers. In the case of part-time work for less than 24 hours per week, domestic workers are charged with fewer days of actual work than other workers. In this case, the amount of unemployment benefits is affected by the calculation on the basis of the conventional wage. Domestic workers and home caregivers do not qualify for other income support measures (such as, for example, the wage guarantee fund).[247]

7.3 Social Assistance

Regarding social assistance, Law No. 328 of 8 November 2000 established an integrated system of measures and social services with an explicit character of universality, which recognises the right to benefits and services for Italian and EU citizens and their family members, as well as for documented third-country nationals, refugees and stateless persons. However, the legitimacy of the different treatment of non-nationals is debated in the case law. Among all protected persons, priority is given to those in conditions of poverty or economic need.[248]

Institutionally, the social assistance system is structured around the principle of subsidiarity, recognised by Article 118(4) of the Constitution.

Administrative functions are divided among several local authorities that compose the Italian State's institutional framework: the Municipalities, the Regions and the State. The municipalities are responsible for the functions concerning welfare interventions at the local level and participation in regional planning. The Regions are responsible for planning, coordinating, directing social interventions and verifying their implementation. The State has powers to direct, coordinate and regulate social policies, as well as to identify the es-

[247] Borelli, *Who care?*, 187–90.

[248] Cinelli, *Diritto della previdenza sociale*.

sential levels of services. Moreover, public administrations must recognise and facilitate the role of private operators.

As for the sources of funding, welfare benefits and services are primarily addressed to those without means of subsistence and are subsidised through taxes paid by citizens.

The typology of benefits and services is very diversified both because of the social dynamics that can generate new needs and because the competence to regulate them lies with the Regions. However, these benefits are provided in the presence of situations of personal and/or family need, both from an economic point of view and in relation to health conditions or social difficulties.

Some economic benefits are provided at the national level and granted by INPS in favour of certain categories of civil invalids: persons with visual disabilities (Law No. 66 of 10 February 1962 and Law No. 382 of 27 May 1970), persons with hearing disabilities (Law No. 381 of 26 May 1970), persons with physical disabilities (Law No. 118 of 30 March 1971).The benefits provided are the civil disability pension and the monthly assistance allowance (Law No. 118 of 30 March 1971). In order to be entitled to these disability benefits, it is necessary to prove a significant reduction in working capacity or a total inability to work, as well as a situation of economic need, attested by the possession of an income requirement. A disabled person who needs continuous assistance and is unable to perform daily acts of life is also entitled to an accompaniment allowance (Law No. 18/1989) in addition to the disability allowance. Upon reaching retirement age (67 years of age), the allowances change to a civil disability pension.[249]

At the state level, the citizenship income was introduced (Law No. 26 of 28 March 2019). It was a social assistance measure to combat poverty and, at the same time, an active labour policy. However, this benefit was repealed by the Meloni government with Budget Law 2023 (Article 1(318) Law No. 197 of 29 December 2022) and will no longer be applied from 2024.

7.4 National Health Service

Article 32 of the Italian Constitution stipulates the right to health.[250] To implement this article, Law No. 833 of 1978 established the National Health Service (NHS). The NHS provides free healthcare to all citizens (including non-nationals) regardless of gender, location, age, income and employment and is based on the following fundamental principles:

- Public responsibility for health protection.
- Universality and fair access to health services.

[249] Cinelli, *Diritto della previdenza sociale*; Cinelli e Giubboni, *Lineamenti di diritto della previdenza sociale*.

[250] For a discussion on the economic and social sustainability of the Italian healthcare organisation see Giulia Pancioli, "La Sostenibilità economico-sociale come modello di sviluppo dell'organizzazione sanitaria," in Buoso e Passaro, *Organizzazione e lavoro in sanità,* 137–60.

- Global coverage based on the care needs of each individual, in accordance with the essential levels of care.
- Public financing through general taxation.
- "Portability" of rights throughout the national territory and reciprocity of care with other Regions.

The governance of the health system is exercised mainly by the State and the Regions, according to the distribution of competencies established by the Constitution and the legislation. The healthcare system is a shared competence between State and Regions. State legislation is responsible for determining the essential levels of care that must be guaranteed throughout the national territory. Regions legislate on the matter in compliance with the fundamental principles and essential levels of care laid down by State legislation. According to the constitutional principle of subsidiarity, the health service is articulated according to two levels of responsibility and governance:[251]

- Central level: the State is in charge of ensuring the right to health to all citizens through a strong system of guarantees, through the essential levels of care.
- Regional Level: the Regions have direct responsibility for the implementation of governance and expenditure to achieve the country's health objectives. The Regions have exclusive competence in regulating and organising services and activities for the protection of health and the criteria for financing local health agencies and hospitals.

The NHS is composed of agencies and bodies of different institutional levels, which contribute to achieving the objectives of protecting the health of citizens. The Ministry of Health is the central authority and is assisted at the national level by the Superior Institute of Health and the Experimental Zoo-prophylactic Institutes. At the territorial level, the Regions and Autonomous Provinces and the Local Health Authorities are NHS bodies.

For the purposes of this study, it is of relevance to note that irregular foreigners are entitled to benefit from health services that cannot be postponed and are urgent on the basis of the provisions of Article 35 of the Consolidated Immigration Act.

7.5 Complementary Role of Collective Bargaining

Since 2016, collective agreements have started to introduce company welfare schemes. The metalworkers' trade unions were the first to sign a collective agreement providing for company welfare in November 2016, followed in June 2017, by the goldsmiths-jewellers and in 2018, by the telecommunications workers.

[251] Ministero della Salute, "Quadro istituzionale e organizzativo del sistema', *Relazione sullo stato sanitario del Paese* (Ministero della Salute 1999) 201 ff.

National collective agreements in the care sector do not provide for specific forms of company welfare. However, healthcare institutions may sign supplementary territorial or company agreements that provide for benefits and company welfare.

In Italy the existing models of company welfare are of two types: compulsory and optional. Compulsory company welfare is that specifically established by a collective agreement, whereas optional welfare is a disbursement established by the employer.[252]

Existing company welfare schemes mainly include purchase vouchers (provided by the company itself or through agreements with other organisations); fuel vouchers; recreational benefits (e.g. magazine or pay TV subscriptions); scholarships; study holidays for youth; educational and training courses; cultural activities; sports activities; medical check-ups and specialist visits; and care services for children, elderly or disabled people.

The devices used to provide these forms of company welfare are digital platforms on which workers have an account that allows them to use the vouchers. These company welfare schemes are not subject to taxation or social security contributions.

8. Concluding Remarks

The Italian care sector has numerous peculiarities from an economic, social, labour law, industrial relations, and social system perspective.

Starting from the economic and social aspects, it can be described based on statistical trends taking into account the different care workers. In the Italian public and private health sector, the health professionals with at least at most a bachelor's degree are predominantly women with a rather high average age who work predominantly as subordinate workers in hospital facilities and are in a condition of high work-related stress due to very severe staff shortages. Regarding remuneration, health professionals have a gross wage which varies between a minimum of 16,016.00 euros and a maximum of 29,495.05 euros per year, which is on average lower than their colleagues in Western European countries. Moreover, to reduce labour costs, public and private health facilities have resorted to widespread outsourcing and precarity of these workers.

In the public and private health and care sectors, social and care workers, along with basic care workers, operate under varied regional regulations. Collective agreements often aim to harmonise these categories, establishing uniform compensation and regulatory standards. Remuneration for these workers typically falls between 13,551.98 euros and 24,308.96 euros annually. Predominantly female, with relatively advanced ages, these workers are primarily employed in health facilities, elderly care centres, and disability residences. Nearly

[252] William Chiaromonte e Maria Luisa Vallauri, a cura di, *Modelli ed esperienze di welfare aziendale* (Torino: Giappichelli, 2018).

all these workers are female, have a fairly high average age, although lower than that of health professionals.

In a 2019 report, the OECD and the European Commission showed that Italy employs fewer health professionals than almost all Western European countries. FNOPI estimates that Italy would need between 50,000 and 60,000 health professionals to bring the country in line with the EU average. Concerning the social and health workers, there are no precise data on the labour shortages.

In the home care sector, home caregivers are essential, as there is a severe lack of public home care. The percentage of migrant women in this sector is preponderant. The wages of these workers are extremely low and often undeclared. The level of irregular or undeclared workers in the sector is the highest in Italy. Home caregivers are subject to the regulation of domestic work at both a legislative and contractual level. This special regulation guarantees far less protection than that generally provided for subordinate workers (e.g. termination of employment at will). This is the result of a progressive reduction of public investments and a corresponding privatisation of home care work. The legislative choice is to shift the costs of caring for the elderly, people with disabilities and vulnerable persons onto families. Therefore, the state reduces public home care and provides monetary allowances to buy the necessary care services on the market. Since the costs of home care are high for families, it can be argued that the legislation provides for less strict and more flexible regulation of home caregivers to enable families to access these services.

Another relevant aspect concerns labour law. Italian labour law aims to protect the subordinate worker who is the weaker party in the employment relationship. Whereas self-employed workers benefit from much less protection than subordinate workers by their alleged professional ability to stay on the market. Italian labour law is the result of the intertwining of legal and contractual regulations. The legal discipline regulates the framework of the employment relationship by determining the powers and obligations of the parties and the sanctions in the event of violation. Collective agreements pervasively complement and derogate from legal regulation. However, the production of collective agreements in the private sector presents several problems. Indeed, private industrial relations are little regulated by law and have developed following a private model. Italian trade unions are unregistered private associations; they have proliferated over time, multiplying based on the constitutional and legal principle of freedom of trade union association. The most representative trade unions in Italy have a confederal character, gathering within them sectoral federal unions. However, the representativeness of trade unions is not certified by any authority (because trade unions are not registered) and this also affects the determination of the coverage of collective agreements negotiated by the social partners. Indeed, collective agreements in the private sector do not have a general effect on all workers because they are not concluded based on the provisions of Article 39(2) of the Constitution, thus being of private law with validity between the parties that signed them. Conversely, in the public sector, the law regulates the system of industrial relations, thus determining collective agree-

ments that have general validity for all workers in the sector and are signed by trade unions whose representativeness is certified.

This system of industrial relations has a strong impact on workers. The proliferation of collective agreements under private law has economically and regulatory disadvantaged workers. Many collective agreements provide for very low wages and poor working conditions. These agreements are often negotiated by trade unions with very little representativeness, but – as the constitutional model of industrial relations is not implemented – they have the same nature of the agreements negotiated by more representative organisations and can be applied by an employer. A further problem with collective agreements concerns the opacity of personnel classification systems. This opacity can lead to economic disadvantages for workers; hence a debate exists as to whether collective agreements are adequate in classifying workers, especially in the care sector. The existence of precise legislation and a collective agreement with general validity in the public sector also raises a problem. Between private and public collective agreements there is both an economic and regulatory discrepancy, which raises the issue of equal treatment and equality between workers doing the same job.

Likewise, the Italian welfare system impacts strongly on workers in the care sector. Italy has a public national health service that allows everyone (national and non-national, regular or irregular) access to healthcare. This system is strongly regionalised; therefore, it is very unequal concerning the services provided and the role of private healthcare. Furthermore, the Regions regulate differently the procedures for obtaining qualifications to exercise the social and care worker and the basic care worker professions. This difference poses a problem for the coherence of the system as well as for the protection of workers. Regionalisation also plays a role in social assistance. Although INPS offers universal benefits, Regions often provide vouchers and allowances to buy care services on the market, thus contributing to the do-it-yourself welfare. The latter has become widespread since the 1990s when Italian public social policy started to place an increasing burden of care costs on families. The consequence was an increase in the supply of social benefits on the market and a reduction in worker protection. Therefore, families to meet basic care needs have resorted to hiring, often irregularly, non-national home caregivers. However, the contraction of regular access migration quotas pursued by Italian governments has resulted in a shortage of these home caregivers, leading to an increase in the employment of undocumented migrants. A reversal in the restrictive access policy occurred in 2021.

The lack of public investment negatively impacted both home caregivers and families. The former receive very little economic and regulatory treatment and experience very stressful working conditions, the latter are deprived of public assistance and have to acquire care services on the market. Other categories of workers are also negatively impacted. Health professionals, social and care workers and basic care workers face complex economic and social conditions. The consequence is an overall deterioration of the work and services offered by the care sector. This system has enormous social and economic costs and is unable to meet care needs decently for all those involved.

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Appendix

The tables below provide a summary of the key elements of the collective agreements applicable to health professionals, social and care workers and basic workers employed in the public and private health sector.[253] The reference contracts include the unified contract for the public sector and the most representa-

[253] The tables are elaborated on the basis of the analysis conducted in Chiara Vannini, "Diritti e doveri del contratto in sanità pubblica e privata," *Nurse24.it*, 21 luglio, 2018, <https://www.nurse24.it/dossier/pubblico-impiego/ccnl-confronto-sanita-privata.html> (Accessed January 26, 2024).

tive contract for the private sector (CCNL for workers in the private healthcare sector associated with ARIS, AIOP, three-year period 2016-2018, in provisional force pending renewal).

Table 1 – Recruitment and Working Hours.

	Public healthcare sector	Private healthcare sector
Recruitment	In the public healthcare sector, employment relationships are established through: - Public competition (for permanent contracts). - Public notice (for fixed-term contracts).	The hiring of employees for private employment is carried out through direct appointment (upon the request of the employee) in accordance with the provisions of the law regarding private law relationships.
Probationary period	- 2 months for categories A and B. - 6 months for all other categories.	- 2 months for categories A and B. - 6 months for all other categories.
Working time	In the public sector, the standard working week consists of 36 hours: - If work is distributed across 5 days, the daily schedule is 7 hours and 12 minutes. - If distributed across 6 days, the daily workload is 6 hours. The minimum weekly working hours are set at 28, while the maximum is capped at 44 hours per week. Additionally, employees are entitled to a minimum of 11 consecutive hours of rest within every 24-hour period.	In the private sector, working hours are structured as follows: - Employees categorized in economic positions ranging from A to DS3 (excluding D4) work for 36 hours. - D4 employees and others work for 38 hours, typically distributed across 6 days. The administration sets the working hours and their allocation. The minimum weekly workload ranges from 28 to a maximum of 44 hours. Workers are entitled to 11 consecutive hours of rest within every 24-hour period.
Part-time	Part-time employment in the public sector is granted according to an annual staffing plan and upon request of the employee for personal needs. It is established at the time of hiring or through transformation during the employment period upon the employee's request. The administration may decide to publish a notice with a related ranking list to assign priorities. The percentage of part-time workers must not exceed 25%. It can be carried out in the following forms: a) Horizontal part-time; b) Vertical part-time; c) Mixed part-time.	Part-time employment in the private sector is established either at the time of hiring or upon request by employees. The percentage of part-time workers must not exceed 25%. It can be carried out in two forms: a) Horizontal part-time; b) Vertical part-time.
Weekly rest	All workers are entitled to one day of rest per week. If this is not possible, they must be provided with two consecutive days off within a 15-day period.	All employees are entitled to a weekly day of rest, typically falling on Sundays. This weekly rest period is non-negotiable and cannot be substituted for monetary compensation.

Table 2 – Holidays and Leave.

	Public healthcare sector	Private healthcare sector
Holidays	Holidays for civil servants are allocated as follows: - Permanent employees with a six-day work schedule are entitled to 32 days of annual leave, with an additional 4 days off. - Fixed-term employees and new recruits within their initial three years receive 30 days of annual leave, with an additional 4 days off. - Permanent employees with a five-day work schedule are entitled to 28 days of annual leave, along with 4 designated public holidays.	30 days of annual leave, plus 4 designated public holidays per year.
Leaves	Paid leave entitlements include: - 8 days per year for participation in competitions, examinations, or optional further training. - 3 days for bereavement. - 3 days per year for personal reasons without justification. - 15 consecutive days for marriage. - Leave for blood donation. - 3 days per year for attendance at court, provided it pertains to a work-related case. - Leave for serving at election polling stations. - 3 days for medical visits or examinations.	Paid leave entitlements include: - Marriage (15 consecutive days). - Examination support for primary, secondary and vocational education courses in state, religious or legally recognised institutions, including universities, for the duration necessary to sit the examinations. - Bereavement (5 days). - Blood donation. - Election duties. - Up to 5 days for important family matters. - Three days per year for documented serious illness of spouse, cohabiting partner or second-degree relative. Unpaid leave may be granted for: - Participation in professional development courses pertinent to the service. If healthcare facilities necessitate staff attendance at such courses, the leaves will be compensated upon submission of exam results and attendance declarations. - Demonstrated need for prolonged care due to family illness (ranging from 15 days to 6 months).
Hourly leave	The employee may request and obtain prior authorisation from the head of the business unit for an hourly leave. - Leave must not exceed half of the daily working time. - Leave must not exceed a total of 36 hours per year. The employee is obliged to make up the missing hours within the following month; failure to make up the hours results in a proportional deduction from the salary.	The company may grant employees, upon request, leave for special personal needs under the following conditions: - Leave must not exceed half of the daily working time. - Leave must not exceed 36 hours per year. The employee is obliged to make up the hours not worked within the following month; failure to do so will result in a proportional reduction in pay.

Table 3 – Illness and Accidents.

	Public healthcare sector	Private healthcare sector
Illness	Job retention for a maximum of 18 months within a three-year period (an additional 18 months in case of serious illness) Economic treatment: - First 9 months: full monthly fixed salary. - Following 3 months: 90% of the salary. - Following 6 months: 50% of the salary. For any additional 18-month extension, the employee is not compensated.	Job retention is guaranteed for a maximum of 18 months within a four-year period. This duration is extended to 20 months in the case of recurrent illnesses requiring prolonged hospitalisation. If the employee remains hospitalised beyond 20 months, he/she has the option of requesting three months of unpaid leave. Regarding economic treatment: - Full compensation at 100% of salary is provided for the initial 12 months within the four-year period.
Accidents	Job retention up to a maximum of 18 months, extendable to a further 18 months in the case of particularly serious circumstances. Normal pay is due for the entire period	100% of remuneration for the first 12 months in a four-year period

Table 4 – Vocational Training.

	Public healthcare sector	Private healthcare sector
Training	- Participation in competitions, examinations, or optional training (8 days per year). - Specific leave for training, reserved for employees with at least 5 years' seniority in the same hospital unit and institution, reserved for 10% of employees.	Paid leave is granted to attend training, qualification, and retraining courses relevant to the respective subject, as follows: - Up to 12% of staff in the health and welfare sector, classified in categories A and B. - Up to 8% of the remaining staff, excluding medical personnel, across all classifications.
Learning leave	A maximum of 150 individual annual hours are allocated, targeting 3% of the workforce. These hours are compensated and assigned to pursue university, post-university, primary, secondary, or professional qualification studies leading to a professional degree.	A maximum of 150 individual hours are allocated to 3% of the staff on duty. These hours are compensated exclusively for the attainment of compulsory qualifications. On the other hand, attendance required for the attainment of qualifications or certifications in university courses, state schools or legally recognised institutes is not remunerated.

Table 5 – Overtime work and allowances

	Public healthcare sector	Private healthcare sector
Overtime work	- The annual limit for overtime hours is set at 180 hours, with provisions allowing for exceptions under extraordinary circumstances, permitting a maximum of 250 hours annually. Public employees have the option to receive compensation or time off for overtime worked. Economic compensation for overtime: - A 15% increase is applied for daytime overtime. - A 30% increase is applied for overtime worked on public holidays and during nighttime hours. - Overtime worked during nighttime hours and on public holidays is compensated at a rate of 50% above the standard wage.	- Annual overtime may not exceed 180 hours. - Overtime may be compensated with leave at the employee's request and according to the needs of the service. Overtime compensation rates are as follows: - 20% increase for daytime overtime hours. - 30% increase for night or holiday overtime hours. - 50% increase for night and holiday overtime.
Required availability or on-call service	The on-call service must: - Be limited to night shifts and holidays. - Be limited to a maximum of 6 shifts per month. - Have a duration of 12 hours, or for a shorter period, but not less than 4 hours. It entitles the employee to an allowance of 20.66 euros; for shifts shorter than 12 hours but longer than 4 hours, an allowance of 1.89 euros per hour is granted with a 10% premium. - In addition to the allowance, the service hours are remunerated as overtime with the applicable overtime premiums.	The on-call service entails the following guidelines: - It must occur outside of regular scheduled working hours. - Each session spans 12 hours, entitling the employee to a gross allowance of 21.69 euros per 12-hour period. For shorter durations, the allowance is prorated and increased by 10%. - The service cannot be less than 4 hours in duration. - Any work performed during a call-out is categorized as additional or overtime work, compensated either monetarily or with compensatory time off, depending on service needs and the individual's preference. - No more than 8 days of availability per month may be scheduled for each employee.
Allowances	The allowances for public employees are classified as follows: - Night duty allowance: 4 euros gross per hour worked between 10pm and 6am. - Holiday shift allowance: 2.55 euros gross per hour. - Allowances for intensive and sub-intensive care: 5.00 euros per day for health and social workers and 1.50 euros per day for technical assistants and support staff.	- Radiological risk allowance: 1,239.50 euros gross per year, distributed proportionally according to actual service. In addition, 15 days of leave per year are granted for radiological risk. - Anti-tubercular prophylaxis allowance: 0.16 euros gross per day, applicable to all staff working in the tisological wards or operating units. - Night shift allowance: 2.74 euros gross for each hour of service between 10pm and 6am.

	Public healthcare sector	Private healthcare sector
	- Allowances for nephrology and dialysis services: 5.00 euros per day for health and social workers and 1.50 euros for technical assistants and support staff. - Allowances for home care services: 5.00 euros gross for health and social work staff, and 1.50 euros for technical assistants and support staff. - Allowance for infectious disease or similar hospital unit workers: 5 euros gross per shift for health and social work staff, and 1.50 euros for technical care workers and support staff. - Allowance for emergency service operators: 5.00 euros gross per shift for healthcare and social-healthcare staff, and 1.50 euros for technical assistance and support staff.	- Holiday shift allowance: 17.82 euros gross if the service exceeds half of the shift, reduced to 8.91 euros gross if the service is half or less of the shift, with a minimum duration of 2 hours. - Allowance for 3-shift work: 4.50 euros per day, provided the staff is effectively rotated in the morning, afternoon, and night shifts during the month. - Allowances for intensive care: 4.13 euros per day. - Allowances for sub-intensive care, nephrology, and dialysis services: 4.13 euros. - Allowances for working two shifts: 2.06 euros per day, provided there is an effective rotation of staff between the two shifts during the month. - Home care allowance: 5.16 euros gross.

Table 6 – Personnel classification and disciplinary measures.

	Public healthcare sector	Private healthcare sector
Personnel Classification	The classification system comprises the following categories: - Health professionals and administrative officials. - Assistants. - Operators. - Support staff.	The classification system comprises five categories denoted as A, B, C, D, and E. Category D includes a subcategory known as the Super Economic Level (DS), which is further segmented into five economic positions.
Disciplinary measures	Misconduct by public employee, as provided for in the disciplinary rules, may result in the following administrative measures: - Verbal reprimand. - Written reprimand/censure. - Fine, up to a maximum of 4 hours' pay. - Suspension from duty without pay for up to 10 days. - Suspension from duty without pay, from 11 days to a maximum of 6 months. - Dismissal with notice. - Dismissal without notice. In addition: - Suspension from work without pay for up to 15 days. - Suspension from work without pay for a minimum of 3 days and a maximum of 3 months. - Suspension from work without pay up to a maximum of 3 months.	An employee's misconduct may result in the following disciplinary measures being taken by the Administration: - Verbal reprimand. - Written reprimand. - Fine not exceeding the amount of four hours' pay. - Suspension from work and pay for a period not exceeding 10 days.

	Public healthcare sector	Private healthcare sector
Termination of employment	The permanent employment contact may conclude under the following circumstances: - Upon reaching the maximum retirement age as stipulated by current legislation. - Through termination initiated by either the employer (dismissal) or the employee (resignation). - Due to the death of the employee. - For exceeding the sick leave duration outlined in the collective labour agreement (CCNL). - Following an accident, occupational disease, or incapacitating condition that renders the individual unfit for work (unfitness for profitable work). - For dismissal resulting from a serious breach of the disciplinary code. - Upon loss of citizenship, where citizenship is a prerequisite for employment. Notice Except in cases of automatic dismissal or dismissal without notice, notice of dismissal is provided as follows: - Two months for employees with a length of service of up to five years. - Three months for employees with a length of service of up to ten years. - Four months for employees with more than ten years of service. If the employee chooses to terminate the contract, he/she must give written notice to the company and the notice period is halved.	The employment relationship terminates in the following cases: - By dismissal of the employee under the laws in force for private law relationships. - By resignation of the employee. - By death of the employee. - By compulsory retirement due to age limit. Notice The notice period for dismissal or resignation, for personnel hired on an indefinite-term basis and who have completed the probationary period, is set at 30 days for all employees

CHAPTER 5

Polish Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Agata Ludera-Ruszel, Hubert Kotarski

1. Introduction

The aim of this national report is to analyse job quality and inclusive working conditions of care workers in Poland. The report will include analysis of law and policy, labour market characteristics, and industrial relations, as well as analysis of the interplay between national law and EU/European and international law.

A socio-legal research methodology will be applied.

The outline of the national report is as follows. Section 2 discusses various aspects of care work and domestic work, including occupations, labour market characteristics, overall regulatory framework, and current debates. Section 3 addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations. Section 4 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 5 presents a discussion on wages and benefits. Section 6 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 7 discusses social security coverage and benefits. Section 8, finally, contains a concluding discussion.

[1] The contents of this report were finalized on December 31, 2023.

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1.1 Main Characteristics of the Labour Law and Industrial Relations System and Welfare State Model in Poland

The current Polish model of regulating obligatory work relations is based on the assumption that within these relations, there are employment relations based on the paradigm of subordinated work (provided in conditions of subordination of one party of this relation to the other party) and employment relations based on the paradigm of independent work (provided in situations of autonomy [independence] of one party of this relation from the other party). This assumption results in a binary division between employee and non-employee employment and, in effect, a division of the employed into employees and independent contractors.[2] Employment relationship, created by employment agreement, is regulated by labour law, while employment provided on civil law agreement basis (contract of service, contract for a specific task) falls within civil law. In contemporary labour law literature, the appropriateness of the existing division of paid employment relations and its assumptions is increasingly being asked in the light of the Constitutional principle of the protection of *every* work (Article 24).[3] The Labour Code[4] remain the main source of labour law in Poland. The conditions of employment of a particular category of workers are regulated in a specific statues (*pragmatyki pracownicze*), where the provisions of the Labour Code are applied only alternatively. Since Poland have a continental European legal tradition the statutory labour law established by the Parliament play a dominant role.[5]

Polish labour law has been substantially altered with systemic transformation (the collapse of the Communist regime) and later Poland's integration with the European Union.[6] The duties of the State in respect of work protection have their origin in the adoption of the social market economy model[7] as the foundation of its economic system, that is an economy which takes into consideration the social aspects of its functioning (art. 20 of the Constitution). Within the social market economy model, the economic system is based, on the one hand, on free operation of market mechanisms, freedom of enterprise and private ownership, but on the other on solidarity, dialogue and cooperation between social partners—all constituting the pillars of an economy referred to as "social".[8] A social market economy

[2] Krzysztof Wojciech Baran, *System Prawa Pracy. Tom VII. Zatrudnienie niepracownicze* (Warszawa: Wolters Kluwer, 2015), 22; Mark Freedland and Nicola Koutouris, *The Legal Construction for Personal Work Relations* (Oxford: Oxford University Press, 2011), 530.

[3] Anna Musiała, *Prawo zatrudnienia* (Warszawa 2011); Małgorzata Gersdorf, *Prawo zatrudnienia* (Warszawa: Wolters Kluwer Polska, 2013).

[4] Act of 26 June 1974, Journal of Laws from 2023, item 1465.

[5] Ludwik Florek, "Democratic institutions of industrial relations: a Polish perspective," *Michigan Journal of International Law* "13, 3 (1991): 621, 623.

[6] Jacek Męcina, "Labour Market and Labour Relations. Part I," *Warsaw Forum of Economic Sociology* 9, 2, 18 (2018): 93.

[7] Wiesław Skrzydło, *Konstytucja RP. Komentarz* (Warszawa: Wolters Kluwer Lex/el, 2013).

[8] Teresa Liszcz "Praca i kapitał w Konstytucji Rzeczypospolitej Polskiej," *Studia Iuridica Lublinensia* 22 (2014): 259.

is characterized by a tendency to maintain balance between work and capital. In a social market economy, the State does not act solely as the "watchman" but, at the same time, is a welfare state which interferes with the course of its economy in order to realize specific social needs, including those connected with work protection, the fulfilment of which would be impossible if based only on free market laws.[9] In this sense, a social market economy rests upon the principle of social justice, expressed in art. 2 of the Constitution, but it also makes reference to art. 1 of the Constitution, which reflects the essence of a state seen as the common good of all its citizens, and which envisages — in the case of a conflict—the common good taking precedence over the individual interest of a person or a particular group.[10]

The current industrial relations system is based on a three inter-connected basic democratic institutions. These are: trade union freedom (trade union pluralism), collective bargaining and the right to strike. Democratic industrial relations are considered to be an important element of a market economy model based—as mentioned—on a dialogue and cooperation of social partners.[11] The main actors of industrial relations in Poland are trade unions and employers' organizations. However, the majority of workers and employers remain unaffiliated. In 2022, 353 employers' organizations and 11 656 trade unions organizations were active at various levels. According to the estimations of the Polish National Statistical Agency (GUS), enterprise and under-enterprise and branch trade union organizations constitute the most numerous group among trade unions (76.4%), followed by inter-enterprise trade union organizations (20.8%). In the years between 2014 and 2022, the number of employers' organizations increased by 28.8%, while active trade unions—edged down by 9.6%. In 2022, trade unions united over 1,4 million people, by 6.5% less than in 2018. People associated in trade unions accounted for 4.7% of the adult population of Poland and 14.8% employed on the basis of an employment contract in workplaces employing more than 9 people. Among the people on the membership lists of trade union organizations 0.5% employed on the basis of civil law contracts. The employers' organizations united 21,6 thousand employers.[12]

Currently, social welfare in Poland involves activities aimed at improving living and working conditions of population. The system implements the duty of the State to create a legal framework to ensure social security, that is given to all citizens whenever incapacitated for work by reason of different social risk, such as sickness, retirement, age and involuntary unemployment. This obligation of the State and corresponding right is guaranteed by the Constitution of Poland (Article 67). In Poland the social welfare system operate at municipal (Municipal Social Assistance Centers – MOPS) and regional (Regional Social Policy

[9] Dariusz R. Kijowski, Patrycja J. Suwaj "Kryzys prawa administracyjnego?" in *Wypieranie prawa administracyjnego przez prawo cywilne*, eds. A. Doliwa i S. Prutis (Warszawa: Wolters Kluwer, 2012).

[10] Skrzydło, *Konstytucja*.

[11] Florek, *Democratic*, 621.

[12] GUS, *Social dialogue partners – employers' organizations and trade unions in 2022* (2023).

Centers-ROPS) level. They are subject to Voivodship marshals. At the level of government administration, issues of social assistance belong to the Ministry of the Family, Labour and Social Policy. During their activities municipal social assistance centers and regional social policy centers cooperate with other institutions, including social organizations, non-governmental organizations, the Catholic Church, other churches, religious associations as well as natural and legal persons, that may take the form of joint actions.[13]

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

2.1 Labour Market Characteristics

Poland is experiencing an aging population. As a result, there is an increasing demand for care services, particularly in the elderly care sector. The COVID-19 pandemic has highlighted the essential role of care workers. It has led to increased demand for care services, particularly in the healthcare sector, while also placing immense pressure on existing care resources. Despite the growing demand for care services and the overall increase in number of care workers in the past few years, Poland faces the shortage of skilled workers in the care sector and insufficient supply of institutional care, that fulfills only a limited fraction of the care needs. Care sector in Poland is experiencing for a several years a significant outflow of skilled workers, in particular healthcare professionals. This can be attributed to factors related to challenging working conditions in the care sector and social undervaluation of care work, that is believed as having no real economic value. The care workers are one of group for whom having a decent working condition pose enormous challenges. In care sector decent work more often remains an "exclusive" and "luxurious" ideal.

The care sector in Poland includes both public and private employment opportunities. Public sector employment can be found in government-run healthcare facilities, social services agencies, and public nursing homes. Private sector employment includes privately-owned healthcare facilities, nursing homes, home care agencies, and other care service providers. Since the insufficient supply of institutional care in Poland, the care system in Poland is characterized by strong reliance on family commitment.[14] The care sector is highly women and migrant dominated. It has been estimated that in 2019, every fifth migrant worker is household worker which would give a total number of about 100,000 migrant household workers.[15] This includes care workers, coming mainly from Ukraine and

[13] Radosław Wolniak, "Social welfare organization in Poland," *Scientific Papers of Silesian University of Technology* 143 (2020): 307.

[14] Oliwia Beck, Kornelia Kędziora-Kornatowska and Michał Kornatowski, "Long-term home care in Poland – framework, problems, prospects," *Hygeia Public Health* 49, 2 (2014): 193.

[15] Emilia Roig, "Care crisis: Racialized women at the Cross-roads of Migration," *Labour Market and Family Policies, Heinrich Böll Stiftung E-paper* (2014). <https://heimatkunde.

Belarus. The current political situation (war that is taking place in Ukraine) has intensified the migration pressure from Ukraine. Unlike migration in other sectors of the economy, migration for care purposes, is alike all care sector, strongly gender biased with middle-aged females employed more frequently than men. Sometimes, a care work considered to be an additional job, performed in turns with spells of employment in the source country via a temporary agency work that are the main source of workers in a private care sector.[16] This informal care sector plays a vital role in supplementing the formal (institutional) care system, but also generates additional challenges. Firstly, it places additional strain on family caregivers who often face challenges in balancing their care responsibilities with other obligations, in the sphere of employment. The involvement of women in care work is followed by the traditional division of roles in the family by keeping men in a role subsidiary to that of women in relation to the exercise of their caring duties and the socially established view that the capacity to perform care work is considered as something "inherent" to the worker (women), thus not perceived as a "real" job. Thus, the combination of work with care responsibilities is more challenging for women who are more likely to resign (entirely or partly) from employment (at different stage of their professional activity as well as due to the existing options for an earlier retirement). Secondly, it is the access high-quality employment that guarantees adequate income and decent working conditions that for domestic care work is a particular cause for concern. This determines the even higher level of poverty among these workers. Besides, negative consequences for personal autonomy and general well-being, difficulties in access to high-quality employment, can also have severe social and economic implications, such as income inequalities and labour market segmentation.

2.2 Occupations

In Poland the occupations in the care sector can be divided into medical professions and non-medical professions. In Poland the is no one statutory catalogue of occupations in the care sector. Particular occupations may be identified based on the provisions of specific regulation that provides for the catalogue of occupations and specialties for the job matching and occupational guidance as an instrument for employment promotion.[17] Based on this catalogue, in Poland care work, including domestic care work, can be divided into two main categories: basic care work and socialized care work.

boell.de/sites/default/files/emilia_roig_epaper_maerz2014_care_crisis_engl.pd> (Accessed April 24, 2024).

[16] Agnieszka Sowa-Kofta et al. "Long-term care and migrant care work: Addressing workforce shortages while raising questions for European countries," *Eurohealth* 25, 4 (2018): 16.

[17] For a classification of occupations in care sector see "The Regulation of the Minister of Labour and Social Policy of 27 April 2010 on classification and specialties for need in the labour market and scope of its use," *Journal of Laws* item 227 (2018).

Basic care work includes low complexity and varied care tasks that meet the primarily bio-psycho-social needs of a person concerned, including personal care and domestic care (household tasks, preparation of meals), hygiene/health services, excluding a service that require a special (including medical) knowledge and qualification, social activation, accompanying in walks, lunchtime etc. To provide basic care work as an assistant for a disabled person, care worker in social home, care worker for elderly, environmental care worker, medical caregiver, hospital orderly a specific level of education (secondary school education) and/or formal qualification (graduation of vocational course or postsecondary school) and/or experience (length of service) may be needed, which fosters the professionalization of a basic care work. Basic care work can be provided: a) at home upon a decision of a person in need (or his/her family member) or upon a decision of a municipal welfare social center or in settings such as assistance centers, family assistance homes, social assistance homes, healthcare institution, such as hospital. Within current classification of occupation basic care work falls within a different category of occupations. Some of them have the status of medical profession, some of them not. The following graph illustrates the complexity of occupations within basic care work.

BASIC CARE WORK

I. TECHNICIANS AND ASSOCIATE PROFESSIONALS

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ASSOCIATE PROFESSIONALS FOR SOCIAL ISSUES

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Workers for social assistance and support for family:

- Assistant for a disabled person: provides support in everyday activities aimed at achieving independence, integration and preventing the isolation of people with disabilities. This includes among others: help in learning and at work, providing company and support, help in hygiene activities, help in mobility, help in cooking and eating.
- Care worker in social home: a first contact employee with the residents of social home, who meets the bio-psycho-social needs of a person who is beneficiary of social home. By using many methods and therapeutic tools he activates and stimulate a person in care. Its role is to motivate the residents to actively spend their time, for self-realization and developing their interests, but also to accompanying during walks, feeding, helping with personal hygiene, assisting with rehabilitation exercises.
- Environmental care worker: primarily act as a career for an elderly, disabled, chronically ill persons. He is responsible, in particular for: maintaining cleanliness at home, assistance in cooking, washing clothes, ironing, making necessary purchases, assistance in care and hygiene activities, such as washing, clothing, eating, controlling the medication taken, assistance in dealing with official matters, including taking care of scheduled medical appointments.
- Care worker for elderly: primarily act as a career for an elderly person. His scope of duties is like the duties of environmental care worker, closely adopted to the particular needs of an elderly person.

II. SERVICE PROVIDERS

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PERSONAL CARE WORKERS IN HEALTH SERVICES

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Healthcare assistants:

- medical caregivers: primarily perform broadly understood care activities under a stick, elderly or otherwise dependent person that among others consist satisfying basis needs of a person concerned. This include: care activities related to hygiene, nutrition, movement and mobility, undertaking comprehensive cooperation with or therapeutic staff and helping during rehabilitation treatment, including disinfection and maintenance of professional tolls using during these treatments.

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Home-based personal care workers:

- domestic caregivers: perform the tasks related to the provision safety and meeting the basic needs of person concerned (disabled, elderly), including among others: taking care of hygiene, helping with washing, bathing and getting dressed, putting to sleep, taking care of hygiene and aesthetic of the environment: cleaning rooms, washing dishes, ironing, shopping, preparing meals, feeding, controlling the corrections of taking medicines, arranging walks and recreational activities. Additional tasks can be ordered by employer that may include among others: making municipal payments, looking after animals and plants.
- PCK nurse: supports the person concerned in all his daily activities. Depending on the needs of the ward, she performs: nursing and hygienic activities, economic and caring activities and provides psychological support, working closely with doctor, environmental nurse or ward's family. Among others the duties of PCK nurse includes: personal hygiene of ward, preparing meals and feeding, washing and cleaning the household clean, organizing purchases, organizing free time, helping pay bills, taking care of the mental health of ward.

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Other personal care workers:

- hospital orderly: paraprofessional who assist individuals with physical disabilities, mental impairments, and other health care needs with their activities of daily living and provide bedside care — including basic nursing procedures.

III. BASIC WORKERS

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Cleaning staff:

- hospital ward: primary responsible for cleaning hospital environment, but also responsible for transporting breakfast and lunches to patients, providing basic assistance to patients, providing support related to maintaining the cleanliness of patients and assistance in performing psychological activities, taking care of the safety of patients, guiding patients to examinations in another part of the building, moving dirty linen and clothes.

Specialized care work requires a specialized formal knowledge (at most a bachelor's or master's degree studies) and qualifications adopted to a particular type of illness or disability of a person concerned. Specialized care work is provided: a) at home upon a decision of a person in need (or his family members); b) in settings such as assistance centers, social assistance homes and healthcare institution such as hospital.

The occupations related to the specialized care work have in majority the status of medical profession, with the exception for psychologist and psychotherapist. The following graph illustrates the occupations within specialized care work.

SPECIALIZED CARE WORK

I. HEALTH PROFESSIONALS

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SPECIALISTS FOR HEALTH PROTECTION

- nurses with specialization (e.g., in anesthesiology or oncology),
- nurse without specialization
- midwife with specialization (e.g., in gynecology or neonatology),
- midwife without specialization

II. TECHNICIANS AND ASSOCIATE PROFESSIONALS

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ASSOCIATE PROFESSIONALS FOR HEALTH PROTECTION

- paramedic: providing health services in the event of sudden threat to life or health. He may independently undertake medical actions and activities in accordance with current medical knowledge and administer potent drugs independently without a doctor's order, also in all hospital wards.
- occupational therapist: providing care and cooperation with the ward by recognizing and then striving to meet their life needs, considering health, psychological and social factors.

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Environmental workers for health protection:

- environmental therapist: works with people with mental and emotional disorders. Provides comprehensive support and therapeutic assistance to the patients and their family. This include among others: recognizing the needs and capabilities of the patient, planning therapeutic activities, developing an individual plan of support, educational of patient's environment in the matters related to the disease.
- environmental nurse: planning and providing a comprehensive nursing, care, medical and rehabilitation activities for the patient in his residential environment, when necessary, with cooperation with doctor, midwife, family of patient.

2.3 Overall Regulatory Framework

In Poland there is no one specific regulation addressed exclusively to workers in the care sector. Consequently, care work is the subject of the regulations that are addressed generally to healthcare sector and to employment in general. Under the Healthcare Institutions Law,[18] a person practicing a medical profession is a person authorized under separate regulations to provide health services and persons who have acquired professional qualifications to provide health services in a specific scope or in a specific field of medicine (article 2(1)(2)). Among the medical professionals who provide a care work, only a part of them is the subject of a specific statutory regulations. These are: nurse and midwife,[19]

[18] Act of 15 April 2011, *Journal of Laws* item 991 (2023).

[19] Act of 15 July 2011 on the occupations of nurse and midwife, *Journal of Laws* item 2702 (2022).

paramedic.[20] Currently the Parliament is working on the general statutory regulation on medical professions, that will also cover: occupational therapist and medical caregiver.[21] These statutory regulations are designed to cover all relevant issues related to the occupations concerned, including the rules and conditions of performing the professions. However, in the area of employment the regulation of this specific law is limited only to the general issues, therefore for a specific issues related to the employment status and working conditions, the relevant provisions of Labour Code[22] and Civil Code[23] (depending on a form of employment and consequently employment status: employee or nonemployee), will be appropriate, in the same way as to the workers in the care sector that are not the subject of a specific statutory regulations.

2.4 Current Debates

In recent years, the ongoing debates surrounding care work in Poland concentrates over a few interrelated issues: 1) the quality of care services: professionalization of care work, the quality of care services provided to vulnerable populations, such as the elderly and individuals with disability, the standards of care, the adequacy of staffing levels, and the need for improved training and supervision of care workers to ensure high-quality and compassionate care; 2) improvement of working conditions of care workers, recognition of care work and assurance of fair and dignified wages, in particular for informal domestic care workers; 3) better accessibility of care services that is linked to effective strategies on how to attract and retain professionals in the country; 4) the need to develop a comprehensive long-term care system to meet the needs of aging population; 5) integration of formal care and informal care providing by family members; 6) the need to challenge gender stereotypes and promotion of a gender balance in the care sector and ensure equal opportunities and remuneration for both women and men in care professions, that is linked to the wider debate on gender equality and work-life balance.

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining

3.1 Fundamental Trade Union Rights

In Poland fundamental trade union rights in the care sector are protected under the general regulations, in particular Polish Constitution,[24] Labour Code,

[20] Act of 1 December 2022 on the paramedic and the professional self-government of paramedic, *Journal of Laws* item 2705 (2022).

[21] Draft of the Act on medical professions: <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=3183> (Accessed July 10, 2023).

[22] Act of 26 June 1974, *Journal of Laws* item 1510 (2022).

[23] Act of 23 April 1964, *Journal of Laws* item 1360 (2022).

[24] The Constitution of the Republic of Poland of 2 April 1997, *Journal of Laws* no. 78, item 483 (1997).

Trade Union Act[25] and other statutory and non-statutory regulations, that apply to care workers on the same basis as to the other workers. Thus, in the care sector there are no specificities in relation to fundamental trade union rights. Trade union rights in the care sector include:

1) Freedom of Association: workers in the care sectors have the right to join and form trade unions of their choice. This right is enshrined in Polish Constitution (Article 12 and 59(1). According to Article 2(1) of the Trade Union Act, the right to form and join trade unions is enjoyed by all persons engaged in gainful employment. The amendment from 2018 (that was effective since 1 January 2019)[26] expanded the personal scope of freedom of association above employee to any person, who performs work for remuneration on a different basis than employment (on the basis of a contract of mandate, a contract for the provision of services, a contract for a specific task, as well as so-called self-employed persons, i.e. those who conduct their own economic activity and provide work largely or entirely for one employer), and have such rights and interests in the connection with the performance of the work which can be represented and defended by a trade union. Additionally, since 1 January 2019 extended the right to join trade unions (excluding the right to for trade union) to volunteers and other persons who provide unpaid work.[27]
2) Collective bargaining: trade unions in the care sector have the right to engage in collective bargaining on behalf of their members. This right is enshrined in Polish Constitution (Article 20 and 59(2)) and more detailed subject to regulation by Chapter 11 of the Labour Code. However, not also self-employed persons can be covered by collective agreement.[28] Regarding care sector trade unions can negotiate with employers on various issues, in particular wages, benefits and other working conditions that are challenging in the care sector.
3) Right to strike: workers in the care sector who have the right to join trade unions have the right to engage in strakes as a form of industrial action to protest against unfair labor practices or to demand improvements in their working conditions. Workers can engage in strike, but the right to organize strike is reserved only to trade unions. Strikes must comply with legal requirements, such as proper notification and participation in strike ballots. The right to strike is enshrined in Polish Constitution (Article 59(3). The implementation of the right to strike is laid down in the Act on Resolution

[25] Act of 23 May 1991, *Journal of Laws* item 854 (2022).

[26] Such change was pointed out by the Constitutional Tribunal in its judgement of 2 June 2015, case ref. no. K 1/13.

[27] More on this issue see Tomasz Duraj, "Prawo koalicji osób pracujących zarobkowo na własny rachunek po nowelizacji prawa związkowego – szanse i zagrożenia," *Studia z zakresu prawa pracy i polityki społecznej* 2 (2020): 67.

[28] Barbara Surdykowska "Osoby samozatrudnione a prawo do rokowań zbiorowych," in *Samozatrudnienie konieczność czy wybór przedsiębiorczych*, eds. Małgorzata Skrzek–Lubasińska i Roman Sobiecki (Warszawa: SGH, 2017), 121, 136.

of Collective Disputes.[29] It is important to note, that Act on the rights of patients,[30] specifies penalties of up to PLN 500,000 for organizers of strikes in the health care that had infringed on the Act on Resolution of Collective Disputes (Articles 59 and 68 of the act).

4) Representation and Participation: trade unions remain a primary channel of workplace representation. Under Trade Union Act, trade unions are required to "represent the rights and collective interests of all employees regardless of their trade union membership". However, due to the relatively low level of union membership in Poland, including in the care sector, most employees are in workplaces where there is no union presence. As an alternative to workplace representation through trade union, is the representation by works council, that were introduced to Polish legislation in 2006 with the aim to implement EU directive.[31] Unlike representation by trade unions, works council applies only to employees. Trade unions in the care sector have the right to participate in social dialogue and engage in consultations with employers, government authorities, and other relevant stakeholders on matters affecting care sector. This is implemented through the Council on Social Dialogue laid down in the Act on the Council on Social Dialogue.[32] The Council is a forum for a tripartite dialogue of employers, employees and government on employment and workplace—related issues on a country and regional level. It supplements a bipartite form of social dialogue in the form of collective bargaining between social partners—employers and employees at enterprise and sectoral level. Among others, the competence of the Council include: giving opinions on every matters related to social policy, giving opinion on legal act drafts, preparing of legal act drafts. In addition to trade unions, the Council—at country and regional level—includes representatives of employers (organization of employers) and the government (at country level and regional level: Voivode). In addition, there is the Tripartite Healthcare Team (*Zespół Trójstronny ds. Ochrony Zdrowia*) which deals with matters of the health sector. It was founded in February 2005. It is affiliated with the Ministry of Health (*Ministerstwo Zdrowia*). It includes six representatives of government ministries of health, economy, family and social policy, finance, state treasury, and education and science, two representatives of each nationally representative employer organizations and two representatives of each nationally representative trade unions.
5) Legal protection: trade union members in the care sector are protected against discrimination, unfair treatment, or dismissal based on their union affiliation or participation in union activities. Employers are prohibited from taking retaliatory actions against workers exercising their trade union rights.

[29] Act of 23 May 1991, *Journal of Laws* item 123 (2020).

[30] Act of 6 November 2008, *Journal of Laws* item 1876 (2022).

[31] The representation through works council is laid down in Act of 7 April 2006 Act on Information and Consultation of Employees, *Journal of Laws* no. 79, item 550 (2006).

[32] Act of 24 July 2015, *Journal of Laws* item 2232 (2018).

3.2 Social Partners

In the care sector in Poland, the main social partners include:

a) Trade unions, that play a crucial role in advocating for the rights and welfare of workers in the care sector, they work to ensure that care workers have a collective voice and can negotiate for better wages, benefits and working conditions. There are a trade union organization that are affiliated to one of the nationally representative trade union confederations, that take part in tripartite social dialogue:
   - the All-Poland Union of Nurses and Midwives (*Ogólnopolski Związek Zawodowy Pielęgniarek i Położnych, OZZPiP)*, affiliated to the Trade Unions Forum (*Forum Związków Zawodowych, FZZ)*, 80,000 members, including 78,000 nurses and around 2,000 midwives.
   - The All-Poland Union of Midwifes (*Ogólnopolski Związek Zawodowy Położnych*), affiliated to the Trade Unions Forum (*Forum Związków Zawodowych, FZZ*).
   - the Health Care Secretariat of the Independent and Self-Governing Trade Union "Solidarity" (*Sekretariat Ochrony Zdrowia Niezależny Samorządny Związek Zawodowy "Solidarność", SOZ NSZZ Solidarność*), 45,000 members, all medical occupations, including nurses, midwifes, paramedic.
   - the Federation of Healthcare and Social Care Employee Unions (*Federacja Związków Zawodowych Pracowników Ochrony Zdrowia i Pomocy Społecznej, FZZPOZiPS*), affiliated to the All-Poland Alliance of Trade Unions (*Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ*), 20,500 members, all medical occupations.

In addition, there are a trade union that are not affiliated to nationally representative confederations, that are involved in collective bargaining at the company level and at the regional level, such as All-Polish Union of Medical Rescue (*Ogólnopolski Związek Zawodowy Ratowników Medycznych*), Trade Union Employees of Psychiatric Care and Addiction Treatment (*Związek Zawodowy Pracowników Lecznictwa Psychiatrycznego i Uzależnień*).

b) Employer's associations, that represent the interests of employers in the care sector, such as healthcare facilities, nursing homes, home care agencies. They engage in social dialogues at bipartite (with trade unions) and tripartite (also with government authorities) level to address employment issues and contribute to the development of labor policies in the care sector. There are two nationally representative employer organizations, which are active in the care sector, that are involved in social dialogue at the national and regional level:
   - The Confederation of Polish Employers (*Konfederacja Pracodawców Polskich, KPP*).
   - Business Centre Club (BCC).

The employer's organizations that are the members of the Confederation of Polish Employers, include:

- The Nationwide Union of Private Healthcare Employers (*Ogólnopolski Związek Pracodawców Prywatnej Służby Zdrowia, OZZPPSZ*).
- The Nationwide Association of Non-Public Hospitals (*Ogólnopolskie Stowarzyszenie Szpitali Niepublicznych, OSSN)*, that consists of more than 150 non-public hospitals.
- The Nationwide Association of Non-Public Local Government Hospitals (*Ogólnopolskie Stowarzyszenie Niepublicznych Szpitali Samorządowych, OSNSS*).

In addition, there is an independent "Zielona Góra Agreement" Federation of Health Care Employer Unions (*Federacja Związków Pracodawców Ochrony Zdrowia Porozumienie Zielonogórskie, PZ*), to represent the interests of general practictioners in non-public health care entities.

c) Government authorities, that plays a central role in formulating labor law, regulation and policies that affect care workers and employers in the care sector. Government authorities engage in social dialogue at tripartite level with trade unions and employer's associations to address challenges in the care sector, allocate resources, and develop social and healthcare programs.
d) Professional associations representing specific care professions, such as nursing associations or paramedic associations, that advocate for the interest and professional development of their members, ensuring that care workers adhere to ethical standards and professional guidelines.
e) Patient and service user associations, that represent the interests of the individuals receiving care services, provide platforms for service users to voice their needs, preferences, and concerns, influencing the development and improvement of care services.
f) Academic and research institutions, that provide expertise, conduct research on healthcare and social service matters, and contribute to evidence-based policymaking and best practices in care.

3.3 Collective Bargaining

There are no official data on the coverage rate of collective bargaining in the care sector. According to estimates it might cover not more than 5% of care workers.[33] Collective agreements in the care sector covering care workers are concluded at the company and workplace level. Collective bargaining concentrated mostly on wages and other benefits. Collective agreements at sectoral (multi-employer) level in Poland are very rare. There is no multi-level collective agreement exclusively for a care sector.[34] The annual report from the national

[33] According to data provided for Eurofound <https://www.eurofound.europa.eu/de/publications/report/2011/poland-industrial-relations-in-the-health-care-sector> (Accessed July 10, 2023).

[34] The Ministry of Family and Social Policy: <https://archiwum.mrips.gov.pl/gfx/mpips/userfiles/_public/wykaz_zbiorowe.pdf> (Accessed July 8, 2013).

labor inspectorate PIP shows that in 2021 only 48 new collective agreements were registered at this year, including 1 collective agreement in the health and social security sector. Comparing with 68 new collective agreements in 2019.[35] The low level of low level of collective bargaining coverage is the result of a low rate of unionizing and collective bargaining coverage among workers in general. The care sector is not an exception in this area. The union membership has declined sharply since the early 1990s., and this trend is continuing. According to the dates of Polish national statistical agency GUS, that are collected for every three years, in 2019 only around 1.4 million employees were union members at this date, and with the total number of employees estimated at 13.2 million, while just 15,000 of union members were not employees but working under a so-called "civil contract", a relatively common form of work in care sector in Poland. This produces a union membership figure of 10.6%. The union membership is much higher in public sector than in private and in public-private companies. Most of workers are in one of the free above indicated the nationally representative trade union confederation, and only a small proportion are the members of trade unions not affiliated to the main union confederations.[36]

4. Employment Status, Flexible Forms of Employment, and Employment Protection

4.1 Employment Status

In terms of employment structure in the care sector in Poland, care workers are distributed across formal and informal work arrangements. Informal employment is prevalent in the care provided by family members, but also by migrants. Formal work arrangements in the care sector are allocated to employment or other personal work relations. This can be bipartite work relations or tripartite work relations through temporary work agencies, where the agency is the employer, and the care worker is temporarily assigned to work at various care settings. The employment status under employment relationship is shaped by labour law, in particular by the provisions of Labour Code and alternatively by a specific statues (*pragmatyki pracownicze*) that apply to the particular categories of workers (e.g. teachers, judges, public officers). Regarding the temporary agency workers their employment relationship is at first governed by Act on Employment of Temporary Employees and only subsidiary by the provisions of Labour Code.[37] On the other hand, the status of those who perform their work under other personal work

[35] National Labor Inspectorate: <https://www.pip.gov.pl/pl/f/v/269141/Sprawozdanie%20z%20dzialalnosci%20Panstwowej%20Inspekcji%20Pracy%20-%202021.pdf> (Accessed July 8, 2023).

[36] GUS, "Partnerzy dialogu społecznego - związki zawodowe i organizacje pracodawców," 27 august 2019 <https://stat.gov.pl/obszary-tematyczne/gospodarka-spoleczna-wolontariat/gospodarka-spoleczna-trzeci-sektor/partnerzy-dialogu-spolecznego-zwiazki-zawodowe-i-organizacje-pracodawcow-wyniki-wstepne,16,1.html> (Accessed July 8, 2023).

[37] Act of 9 July 2003, *Journal of Laws* item 1110 (2023).

relations are regulated by the provisions of civil law, that do not give any or give an access to a limited range of labour rights that are allocated in the employment relationship.[38] The exception applies to temporary agency workers who perform work under civil law contracts whose work relation is first and foremost regulated by the provisions of Act on Employment of Temporary Employees that shape their work status a little different. The employment structure in the care sector in Poland, reflects an existing binary division between an employment relationship and all other, different forms of paid and unpaid work relations, around which is build an application of labour law in Poland and the trend of gradual move from traditional forms of employment to those more flexible one. Employment contract is generally a most preferable form of employment, since it guarantees an employment security and the access to various benefits, especially right to paid holiday leave and the protection against overwork.

4.2 Flexible Forms of Employment

In the care sector in Poland, still the prevalent is the employment contract, in particular full-time and permanent employment contract. This, considered as "traditional" form of employment, is mainly found in healthcare professionals, such as doctors, nurses, and medical technicians, that often work in public sector, mainly in hospitals, clinics, and other healthcare facilities, with fixed schedules and regular working hours. Among care workers a common is also part-time employment, allowing for more flexibility in scheduling and potential for multiple part-time positions. Part-time employees are entitled to prorated benefits and rights based on their working hours. Polish regulation on part-time work have largely been adopted in 2003 in line with the process of harmonization of polish legal order with the EU legislation, in particular with the EU Part-Time Work Directive (Council Directive 97/81).[39] In Polish legal order there is no one complex regulation on part-time work. Fragmented provisions that are addressed to part-time work has been incorporated in Labour Code. The relevant requirements laid down in the Part-Time Work Directive were implemented in the Labour Code with regard to: non-discrimination at work and equal treatment, prohibition of discrimination and changing of work time, information on the availability of part-time and full-time positions, establishing of the level of remuneration for part-time work free from deductions, establishing of work time entitling to additional remuneration for overtime work, as well as establishing mandated leave, and employer's obligation to lower work time for an employee entitled to maternity or paternity leave.[40] It is indicated, however, on the lack,

[38] Agata Ludera-Ruszel, "The right to (decent) work. The right to everyone or 'chosen' ones? The situation in Poland," *Ruch Prawniczy Ekonomiczny i Socjologiczny* 1 (2021): 150.

[39] Iwona Jaroszewska-Ignatowska, *Zatrudnienie w niepełnym wymiarze czasu pracy* (Warszawa: Wolters Kluwer, 2018).

[40] Katarzyna Bomba, "Zakaz dyskryminacji ze względu na zatrudnienie w niepełnym wymiarze czasu pracy w świetle Dyrektywy Rady 97/81/WE zawierającej Ramowe Porozumienie

under existing regulations, legal definition of "part-time work" and "part-time worker". As far as the principle of *pro rata temporis* is concerned, as contained in the Part-Time Work Directive, Polish regulation that reflect this principle, is more restrictive, since it does not provide for the possibility to deny access to particular conditions of employment subject to time worked even when there are justified objective reasons.[41] Polish regulation is also more restrictive with regard to the duty of employer to give a consideration to worker's request to change their working time, and the information about the availability of full-time and part-time employment, imposing on an employer relative obligation to consider such a request and to provide such an information in a way adopted in the enterprise.[42] On the other hand, clause 5 point 3 (d) and (e) are not reflected in the Polish legal system, i.e. the employer should perform action in order to facilitate access to part-time employment on all levels of the enterprise, including skilled and managerial positions as well as facilitate access by part-time workers to vocational training in order to enhance career opportunities and occupational mobility. The employer should also provide existing bodies representing workers with information concerning the availability of part-time employment within the enterprise.[43]

Care worker, in both full-time and part-time employment contract, may be organized as a shift work. Shift work is common in care services that require round-the-clock coverage. Shift work is common in healthcare facilities and residential care facilities to provide for a continuous care, thus including day, evening, and night shifts. Therefore, shift work very often involves irregular working hours and varying schedules. It is then reported a negative impact of night shift work on health and wellbeing of employees.[44]

Permanent employment contract still provides for a higher level of employment security. However, the last amendment to Labour Code from 2023 has substantially diminished the gap between permanent employment contract and fixed-term employment contract regarding employment protection and thus it shut down the existing segmentation between permanent and temporary employees. Some care workers may be employed on fixed-term employment contract, which have a defined end date. The current legal regulation on the conclusion and termination of fixed-term employment contract is the effect due to the transposition of the Fixed-Term Directive (Council directive 99/70/EC) to the national law and the adoption of polish law to the jurisdiction of CJEU (in

dotyczące zatrudnienia w niepełnym wymiarze czasu pracy," *Journal of Modern Science* 20, 1 (2014): 221.

41 Bomba, "Zakaz dyskryminacji".

42 Zbigniew Hajn, "Ochrona pracowników niepełnoetatowych 97/81 Wspólnoty Europejskiej a prawo polskie," in *Studia Prawno-Europejskie*, ed. Michał Seweryński (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2008), 89.

43 Bomba, "Zakaz".

44 Agnieszka Dymek-Skoczyńska et al. "The impact of shift work on selected areas of human functioning and health – overview of research," *Polish Nursing* 4, 62 (2016): 592.

particular in *Nierodzik* case)[45] with the aim to protect employees against abuses in the use of fixed-term employment contract and to guarantee that fixed-term employee would not be treated in a less favorable manner without any objective justification.[46] The Polish legislator has based the protection against abuse arising from the use of fixed-term employment contracts on two supplementing protective measures b) and c) from clause 5 of the directive 99/70/EC with are in fact only supplemented by the protective measure a) from this directive. Far beyond the aim of fixed-term employment contract the legislator came to the conclusion that the most effective limiting of fixed-term employment would be achieved only by determine the maximum total duration of fixed-term employment contract, including its renewals and the maximum number of renewals of such contract. As a result in article 25^1 of the Polish Labour Code the period of employment under a fixed-term employment contract and maximum total period of employment under successive fixed-term employment contract between the same parties has been determined as 33 months with total number of three fixed-term employment within this period. The period of 33 months is considered to be as a compromise between expectations of social partners within the Tripartite Committee for Social and Economic Matters.[47] In this way, within the limits set by the law, the conclusion of fixed-term employment contract without any objective reasons, which should be perceived as an exception due to the aim of this contract which is temporary in nature, become considered as a general rule. Moreover, another points of criticism include lack of any guidance with regard to the conditions under which fixed-term employment contracts should be regarded as "successive", including possible intervals between them or different type of work, which seems important functionally. Polish legislator has just only determined the conditions under which fixed-term employment contract shall be determined as indefinite employment contract, which include the exceeding the allowed total duration and number of fixed-term employment contract (article 25^1, par. 3 of the Polish Labour Code). Moreover, with the aim to prevent the practice of so-called "annexing of employment contract" the law provides that the extension of the existing fixed-term employment contract is considered as the conclusion, after the day of termination of the pervious one, the new fixed-term employment contract (article 25^1, par. 2 of the Polish Labour Code). Determined in the article 25^1, par. 4 of the Polish Labour Code the list of cases that

[45] CJUE of 13 march 2014 in the case C-38/13 *Małgorzata Nierodzik v. Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. Dr. Stanislawa Deresza w Choroszczy* (ECLI:EU:C:2014:152).

[46] Agata Ludera-Ruszel "Typical or atypical? Reflections on the atypical forms of employment illustrated with the example of a fixed-term employment contract – a comparative study of selected European countries," *Comparative Labour Law and Policy Journal* 37 (2015–2016): 407.

[47] Justification to the draft to the Act amending the Labour Law Act and amending certain acts, *Journal of Laws* item 1220 (2015). <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=3321 (Accessed October 15, 2023).

justified conclusion and reviewal of fixed-term employment contract beyond the limitations set by the par. 1 of this provision, is open. Apart from the clear and precise "objective" grounds such as: the necessity to replace employees during their justified absence from work (which thus no longer is a separate type of employment contract), the necessity to perform the casual and seasonal work and the necessity to perform work during the period of cadency the law also provide for the "objective grounds" that lie on the employer under which the conclusion of fixed-term employment contract meet the actual and temporary demand for work and is necessary in the light of all circumstances of the conclusion of this contract. In this way the question of what circumstances allow for unlimited in practice conclusion of fixed-term employment contract is open and therefore remain under the gesture of jurisprudence. Workers on fixed-term employment contract are entitled to similar benefits as permanent employees. Fixed-term employment contracts are often used for temporary or project-based positions. Until the amendment to the Labour Code from 2023 that finally has equalized the employment protection offered to fixed-term employees and permanent employees, fixed-term employment contract will not be seen by an employer as an attractive alternative to permanent employment contract and we may expect that it will be no longer be abused instead of permanent employment contract.

Fixed-term employment contract is the only possible form of employment contract in employment through temporary work agency. The possibility of employing a temporary agency worker on the basis of permanent employment contract is excluded. It is indicated that the Polish model of temporary agency work is rather detailed and restrictive.[48] The regulation of temporary agency workers, in contrary to the many other EU countries, is quite new. In Poland, temporary agency work is comprehensively regulated in the Act of 9 July 2003 on the employment of temporary agency workers, that was adopted to implement Temporary Agency Work Directive (Council directive 2008/104/EC). The statutory restriction as to the type of employment contract concluded on this basis, kind of wok that could be performed through temporary agency work and the maximum statutory maximum period of temporary agency work, express the legislator's intention to make temporary agency work as a time-limited and path to permanent employment contract.[49] To the extent not provided for under the Act on the employment of temporary agency workers, temporary agency work is regulated by the provision of labour law. With regard to temporary agency workers, the restriction on the use of fixed-term employment contract and the rules on termination of this type of contract, under Labour Code, does not apply. The labour law provisions will not apply to temporary agency worker who perform its work on the basis of civil law contract, that is also possible under Act on the employment of temporary agency workers.

[48] Anna Reda-Ciszewska, "Protection of temporary agency worker in connection with maternity in Polish law," *Praca i Zabezpieczenie Społeczne* 11 (2021): 13.

[49] *Journal of Laws* item 1563 (2019).

Alternatively, to employment contract, in the care sector is present a self-employment where work is provided on a basis of civil law contract, in particular contract of services (*umowa zlecenia*) or contract for specific task (*umowa o dzieło*) concluded directly with the client (or member of his family) or with healthcare facilities. In the health sector the common is the medical service contract, as a type of contract of services, that defines the terms and conditions under which medical (including care) services will be provided and outlines the rights and responsibilities of the parties.[50] These contracts can be also used in employment through temporary work agency. All these types of contracts are not regulated by Labour Code and are regulated by Civil Code and by the parties to the contract. Therefore, it provides less employment security and do guarantee any—or only to a limited range of—the labour (individual and collective) rights that are allocated in the employment relationship. This include, in particular protection of remuneration (that is not subject to the obligation to ensure the minimum remuneration for work), protection regarding working time (any limits on daily and weekly working time, lack of the right to daily and weekly rest periods and days off from work, and the lack of the right to holiday leave). Self-employed are guaranteed the right to have safe and hygienic working conditions and—as mentioned earlier—benefit from the fundamental trade union rights. Care workers who are self-employed are responsible for their taxes, social security contributions and they bear all the risks that are normally face employer in an employment relationship. Consequently, self-employment is considered as an alternative to employment contract and very often is imposed to care workers and abused. The bogus self-employment—on the one hand, and consideration of all self-employed workers as an independent contractor (Polish law does not provide for third intermediary category of workers)—on the other hand—are problematic issues for Polish labour law regulations.

4.3 Employment Protection

The implementation of dismissal law, under existing regulations of the Polish Labour Code, leads to a strong labour market segmentation between employee, meaning as those, who have an employment contract and the rest workers, who are engaged on different working arrangements, especially self-employed, and those who provide their work under civil law contracts, including temporary agency workers. The first and foremost problematic aspect of the dismissal law in Poland is the fact that it applies only to the employment regulated by the labour law provisions—an employment contract. It does not cover employment arrangements on the basis on self-employment and civil law contracts, as well as temporary agency work, which all are widespread among care workers. These working arrangements are not the subject of dismissal law. The termination of

[50] More on this topic see Dorota Karkowska, Tomasz Karkowski, *Zatrudnianie w podmiotach leczniczych* (Warszawa: Wolters Kluwer, 2018).

the contract is shaped by the principle of the freedom of the parties to the contract. Consequently, the level of employment protection is mainly determined by the parties to the contract. For these reasons, at the time moving towards greater flexibility in the labour market both temporary work arrangements, especially on the civil-law basis and self-employment (that is often bogus), are considered by employers as "attractive" alternatives to regular permanent and full-time employment contracts. On the other spectrum is the employment contract that provides for the employee with the protection against unfair and unjust dismissal by an employer. Due to the last legislative amendment from 2023,[51] there was at least solved one of the factors that was responsible for the abuse relating to the use of fixed-term employment contract. Then have been removed the differences with respect to ordinary termination by an employer of a permanent employment contact and fixed-term employment contract. The transition to a free-market economy was not accompanied by changes in the regulation on protection against dismissal, which became even more flexible with regard to fixed-term employment contract compared to the rules that apply to indefinite-term employment contracts. Under preexisting regulations, which did not properly reflect the nature of temporary employment, a fixed-term employment contract can be terminated by an employer at any time, with no reason, under no control of trade unions, with only limited judicial control, and the right to relatively small compensation in cases of unlawful dismissal. Until 2015, the notice period for the termination of a fixed-term employment contract was fixed at 2 weeks, regardless of the length of the service of the dismissed employee. As a result, fixed-term employment contract appeared excessive in Poland. In recent years, Poland had had the highest share of fixed-term employment in the EU, and one of the highest among OECD countries. In 2015 fixed-term employment covered more than a quarter of all the employed (28.4%), which is characterized by a disproportionately higher proportion of young people (15–29) compared to other EU countries, especially labour market entrants and the low skilled, for whom fixed-term employment is not a voluntary choice. Temporary contracts were thus rarely a step towards permanent employment. The legislative changes were made until 2023 had not addressed this problem. The legislative amendment from 2015 only aligned the notice period for fixed-term and permanent employment contracts, which currently in both cases depend on the length of the service of the employee, but had not put any limitations on the ordinary termination of fixed-term employment contracts, leaving fixed term employees without any, even minimal, stabilization of their employment relationship, and so adding to the risk of the unjustified use of temporary employment.[52] The amendment form

[51] Act of 9 March 2022 amending the Labour Law Act and amending certain acts, *Journal of Laws* item. 641 (2023).

[52] On this topic see: Agata Ludera-Ruszel, "Ocena nowej regulacji umowy o pracę na czas określony – pozytywny kierunek zmian czy utrzymanie status quo?" *Praca i Zabezpieczenie Społeczne* 2 (2016): 25; Ludera-Ruszel, "Typical or atypical".

2023 has finally faced this problem. It has equaled the rules on ordinary termination of fixed-term employment contract with permanent employment contract as regards the need to justify the termination of employment and the necessity to consult the intention of termination with the company trade union organization. If the consultation with trade unions is not so decisive for an employment protection of fixed-term workers—due to the low level of trade union membership of care workers and workers in general—the need to provide for the justification of termination is a key for an employment stabilization of fixed-term employee and the countervailing of abusive use of fixed-term employment contract. Moreover, since 2023 the employee in case of unjustified or unlawful ordinary termination of fixed-term employment contract can, alternatively to compensation, call for the restitution of employment relationship. The exception only applies to fixed-term employment contract that had already expired or if reinstatement to work would be inadvisable due to the short period remaining until the expiry of that period. These rules on ordinary termination of fixed-term employment contract do not apply to the fixed-term employment contract in employment through temporary agency and to employment contract for a probatory period. Parties to the employment contract through temporary agency are free to decide whether this contract can be terminated. Then the termination of the contract by the employer is possible without justified reason and only with a short (2 or 3 days) notice period. The employment contract for a probatory period can be ordinary terminated by employer without the need to provide justified reason and the need to provide for a consultation with the company trade union organization. The employee in case of ordinary termination cannot call for the restitution of employment relationship. Since the temporary limitations on the conclusion of employment contract for a probatory period, these differentiations in the employment protection have no real importance. The employment contract, both permanent, fixed-term and for a probatory period, can also be terminated extraordinary without notice period. The rules for extraordinary termination are the same for permanent employment contract, fixed-term employment contract and the employment contract for a probatory period. It imposes on the employer the duty to provide the justified reason for termination and the duty to consult his intention with the company trade union organization. In case of unjustified or unlawful extraordinary termination of employment contract the employee can generally call alternatively for compensation or restitution of employment relationship. The exception only applies to fixed-term employment contract that had already expired or if reinstatement to work would be inadvisable due to the short period remaining until the expiry of that period.

5. Wages and Benefits

Wages and benefits for care workers in Poland can vary depending on factors such as the form of employment (whether it is employment contract or other work relation), specific occupation, experience, level of qualifications, location, and type of employer (public or private).

Care workers who provide their work through employment contract have the right to the statutory minimum wage and have the access to the widest range of employment benefits on the same basis as to the other employees. The statutory, and considered as mandatory, common benefits, includes, among others, paid annual leave, paid maternity and parental leave, paid sick leave, paid overtime, compensation for night shifts and work on Sunday, old-age pension insurance, disability and survivors' pension insurance, sickness insurance, and work accident insurance, that include occupational disease insurance, and occupational medicine, that include the pre-employment health examination, periodic health examination and of necessary control health examination, workplace risk assessment, prevention and addressing of occupational diseases, workplace injury management, health and safety training.

In January 2024 the statutory minimum wage was 4,242 PLN (around 958 Euro).

Workers who provide their work as self-employed based on civil law contracts are not entitled to such a wide range of benefits as employees. As a service provider, workers are entitled to receive a minimum hourly rate of 27.70 PLN in January 2024 (around 6 Euro). These workers are also entitled to certain statutory, mandatory benefits, that include: maternity and parental benefits at the time of inactivity due to childbirth and bringing up children, old-age pension insurance, disability and survivors' pension insurance, work accident insurance, that include occupational disease insurance. They are not entitled to mandatory occupational medicine that include pre-employment health examination, periodic health examination and of necessary control health examination. However, due to the general duty of employer to provide to health and safety working conditions to every worker, an employer must in every case assess whether such an examination may be necessary. The same apply to health and safety training. A service provider may be—at its request—covered by sickness insurance, and therefore have the right to sickness benefit for the time of inactivity due to disease. However, ss a contractor in the contract for a specific task, worker is not entitled to receive a minimum hourly rate, as well as he is not covered by social insurance nor compulsorily neither voluntarily. Therefore, he has not the right to benefits related to sickness, maternity, parental and occupational accidents.

The minimum wage and the minimum hourly rate are regulated in the Act on minimum remuneration.[53] The gradual increase of statutory minimum wage and minimum hourly rate leads to the full implementation by Poland of the EU Minimum Wage Directive, since the average remuneration for work in Poland in January 2024 was 7,768.35 PLN (around 1,700 Euro).[54]

The statutory minimum wage for employees in the health sector in general, is stipulated in the Act on the method of determining the basic remuneration

[53] Act of 10 October 2022, *Journal of Laws* item 2207 (2020).

[54] Aleksandra Majchrowska and Paweł Strawiński, "The evolution of the minimum wage in Poland and its consequences on labour market," *Bank i Kredyt* 55, 1 (2024): 55.

of certain employees employed in healthcare entities.[55] All other care employees not employed in healthcare entities, are entitled to the general statutory minimum wage.

The minimum wage in care sector in healthcare entities, broken by occupational groups, will be:

1) Physiotherapist and other medical professional with the required higher education at the master's level and specialization, a nurse with the professional title of Master of Nursing or a midwife with the title of Master of Midwifery with the required specialization in the field of nursing or in the field applicable in health care—8,186.53 PLN (around 1,839 Euro).
2) Physiotherapist and other medical professional with the required higher education at the master's level, a nurse or midwife with the required higher education (first degree studies) and specialization or a nurse or midwife with the title of Master of Midwifery with secondary education and specialization—6,473.07 PLN (around 1,454 Euro).
3) Physiotherapist, nurse, midwife, paramedic, other employee performing a medical profession specified in 1–2 point, with the required higher education (first degree studies), physiotherapist, paramedic with the required secondary education, or a nurse or midwife with the required secondary education, who does not have the title of specialist in nursing or in the filed applicable in health care—5,965.38 PLN (around 1,340 Euro).
4) Other employee performing a medical profession specified in points 1–3, with required secondary education and medical caregiver—5,457.69 PLN (1,226 Euro).
5) Employee of basic activity (including hospital orderly and hospital ward) other than an employee performing a medical profession with the required education below secondary—4,125 PLN (around 926 Euro).

The Healthcare Institutions Law contain a provision that provide care workers with a specific benefits. These benefits are given to employees, and only with one exception to persons who provide work under other personal work relations. Under the Health Institutions Law, an employee practicing a medical profession in healthcare entities is entitled to:

- The remuneration for a standby duty outside healthcare facilities that provides a medical activity that require round-the-clock coverage in the amount of 50% of the hourly rate of basic remuneration that is calculated by dividing the amount of the monthly basic salary resulting from the employee's personal classification by the number of working hours to be worked in a given month.
- The compensation to shift work in the amount of at least 65% of the hourly rate basic remuneration, calculated as indicated above, for each hour of night work and at least 45% of the hourly rate of basic remuneration, calculated as

[55] Act of 8 June 2017, *Journal of Laws* item 2139 (2022).

indicated above, for each hour of daytime work on Sundays and public holidays as well as non-working days during an average five-day working week.
- Compensation for a members of an emergency medical teams, as indicated in the provisions of the Act of 8 September 2006 on the National Medical Emergency Service, for every hour of work in the amount of 30% the hourly rate of basic remuneration, calculated as indicated above. Exceptionally the right to this compensation is also guaranteed to the members of an emergency medical teams who provide their work outside the employment relationship, on other personal work relations, in the amount 30% the hourly rate of salary resulting from the contract under which they work.
- Compensation for on-call duty work in the amount of 100% of his normal remuneration for work during night, Sunday and holidays and day off for work during those days and 50% of his regular remuneration for work during any other day.
- Compensation for work exceeding an average of 48 hours per week in the adopted reference period in the amount of 100% of his normal remuneration for work during night, Sunday and holidays and day off for work during those days and 50% of his regular remuneration for work during any other day.
- Compensation for each hour of being on standby in the amount of 50% of the hourly rate of basic remuneration that is calculated by dividing the amount of the monthly basic remuneration resulting from the employee's personal classification by the number of working hours to be worked in a given month.

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

6.1 Working Time

Basically, working time of care workers who provide work based on employment relationship is the subject of the same rules and limitations as applicable for the other employees. In this respect, the important are:

1) Standard working hours, that in Poland is 40 hours, usually spread over five days, with eight hours per day in the primary reference period does not exceed 4 months. In this regard, the Polish legislator goes far beyond the protective measures adopted in directive 2003/88/EC, which do not include the notion of working day and in which working time is only restricted to the maximum average 48-hours weekly working time standard, minimum 11-hours continuous daily rest period and minimum 24-hours weekly rest period.[56] The daily working time can be exceeded to 16 hours in the reference period not exceeding 1 month, when employee is being partly on standby for work. In this case an employee is entitled, immediately after each period

[56] Agata Ludera-Ruszel, "The situation of women in the labour market in Poland in the light of existing labor law provisions concerning the working time," *Przegląd Politologiczny* 4 (2016): 148.

of performing work in an exceeded daily working time, to rest period for a period of time that ensures at least a specified number of hours worked, regardless of the weekly rest period.

2) On-call time that is classed as working time only of employee actually worked. Otherwise, on-call time is not classified as working time. However, an employee who remain on-call time at the workplace, is entitled to an adequate free time. This does not refer to employee being on-call time at home The Polish regulation raises doubts about its conformity with directive 2003/88/EC.[57] According to TSUE on-call time at the workplace should be classified as working time, regardless of whether during this time work has been carried out or not, while an employee remain on disposal of an employer and while directive 2003/88/EC only makes a distinction between working time and rest.[58]
3) Overtime, that is allowed but is the subject to certain limitations. Overtime should not exceed 150 hours per year, and the weekly working time limit, including overtime, should not exceed 48 hours. However, in case of the need to conduct a rescue operation to protect human life or health the limit of 150 hours per year does not apply. For overtime work an employee is entitled to the compensation in the amount of 100% of his normal remuneration for overtime during night, Sunday and holidays and day off for work during those days and 50% of his regular remuneration for overtime during any other day. Exceptionally, instead of compensation an employee will be entitled to a day off on his request or without such a request but in the amount half as high. The legal definition of overtime, meaning as a work performed out of the ordinary working hours, raises doubts about its conformity with directive 2003/88/EC since Polish definition of overtime do not include remaining of employee in disposal of employer, when work is not carried out. It is indicated that directive 2003/88/EC does not make such a difference. It only differentiates between working time, covering remaining at disposal of employee, and rest period.[59]
4) Paid break of at least 15 minutes, if an employee works more than six hours per day. For a workday longer than eight hours, the break should be at least 30 minutes. The right to paid break is in line with directive 2003/88/EC.[60]
5) Rest periods, according to which an employee is entitled to at least 11 hours of uninterrupted rest between two consecutive working days and to at least 35 hours of uninterrupted rest in every week. The week rest period should be

[57] Krzysztof Stefański in *Kodeks pracy. Komentarz*, ed. Krzysztof W. Baran (Warszawa: Wolters Kluwer, 2018).

[58] See rulings: from 9 september 2003 r., C-151/02, Jeager, Zb. Orz. 2003, s. I-8389; from 1st december 2005 r., C-14/04, Dellas, Zb. Orz. 2005, s. I-10253; from 11 january 2007 r., C-437/05, Vorel, Zb. Orz. 2007, s. I-333.

[59] Beata Bury, *Praca w godzinach nadliczbowych jako obowiązek pracownika* (München: C.H. Beck, 2007), 18.

[60] Stefański in *Kodeks*.

normally taken on a Sunday, which is defined as a period covering 24 hours starting from 6:00 am. Polish labour law does not provide for the legal definition of rest period. Therefore, for this aim one must refer to the definition under directive 2003/88/EC.[61]

6) Rules on work by night defined as work performed between 10:00 pm. And 6:00 am, when an employee is entitled to additional right and benefits. The legal definition of "employee working at night" complies with legal definition of directive 2003/88/EC.[62]
7) Maximum working hours, that in general is average 48 hours per week, calculated over a reference period of up to four months. Maximum weekly working hours arise from directive 2003/88/EC.
8) Annual holiday leave that is at least 20 days per year for a full-time employee. After of at least 10 years of employment this entitlement increases to 26 days per year. Polish regulation providing an employee 26 days of holiday leave is more advantageous to directive 2003/88/EC.[63] Depending on the specific collective agreements the amount of holiday leave may further increase. The certain periods of studying are considered as equal to employment for the entitlement to annual holiday leave. During the holiday leave an employee retains the right to remuneration as if he were working.

The Healthcare Institutions Law contain a specific provision on working time that apply to employees practicing a medical profession in healthcare entities. For care workers this includes:

1) Standard working hours that generally may not exceed 7 hours and 35 minutes per day and 37 hours and 55 minutes per week in an average five-day working week in the agreed reference period does not exceed 3 months. Exceptionally, if it is justified by the type of work or its organization, working time may be exceed to 12 hours per day provided that the working hours per week do not exceed 37 hours and 55 minutes in the reference period does not exceed 1 month, or exceptionally not exceed 4 months. However, working time of pregnant employee and employee bringing up child not older than 4 years, in any case may not exceed 8 hours per day. The working time schedule should be applied based on work schedules established for the adopted reference period, specifying working days and hours for individual employee as well as days off.
2) The specific rules of on-call duty that can be imposed on: a) care employees with the higher education (first degree or second degree studies), who practicing a medical profession in healthcare entities that provide stationary and continuous (round-the-clock) care services, b) paramedic who are employed

[61] Marta Derlacz-Wawrowska in *Kodeks pracy. Komentarz w perspektywie europejskiej i międzynarodowej,* ed. Marta Derlacz-Wawrowska and Monika Latos-Miłkowska and Marcin Wujczyk (Warszawa: Wolters Kluwer, 2014).

[62] Krzysztof Rączka in *Kodeks pracy. Komentarz*, ed. Małgorzata Gersdorf, Michał Raczkowski i Krzysztof Rączka (Warszawa: Wolters Kluwer, 2014).

[63] Derlacz-Wawrowska in *Kodeks*.

in hospital emergency ward and in emergency medical teams. Time of on-call duty is covered by working time. Consequently, in this regard this regulation comply with directive 2003/88/EC.[64] Work on-call duty may exceed standard working hour of 37 hours and 55 minutes per week in the adopted reference period. In this case will not apply the general, statutory limit of 150 hours of overtime per year.

3) The rule that apply to a) care employees with the higher education (first degree or second degree studies), who practicing a medical profession in healthcare entities that provide stationary and continuous (round-the-clock) care services, b) paramedic who are employed in hospital emergency ward and in emergency medical teams, that allows to exceed weekly working time limit, including overtime, of 48 hours, provided that such an employee will agree in writing and the reference period will not exceed 1 month. The consent may be withdrawn with a one month's notice. An employee who does not agree on the extension of his weekly working time cannot be discriminated for this reason.
4) The rule that applies to employees on-call duty that the 11 hour's rest period should be given immediately after the end of duty. In the case justified by the work organization a) care employees with the higher education (first degree or second degree studies), who practicing a medical profession in healthcare entities that provide stationary and continuous (round-the-clock) care services, b) paramedic who are employed in hospital emergency ward and in emergency medical teams are entitled to at least 24 hours of uninterrupted rest each week granted in a reference period not longer than 14 days.
5) Rules on being standby for work that apply to care employees with the higher education (first degree or second degree studies), who practicing a medical profession in healthcare entities that provide stationary and continuous (round-the-clock) care services. In the case of the call and the need to provide work the rules of on-call work are applied.

The regulations on working time that apply to care employees are not applicable to care workers who provide their work based on other, than employment relationship, personal work relations. With regard to these workers there are any statutory, mandatory working time regulations. Therefore, any regulations on working time may be only contain in collective agreements or individual contract of service.

6.2 Health and Safety

The right for every worker to have a health and safety work environment has been enshrined in the Polish Constitution (Article 66(1)). This means that the Constitutional right to have health and safety work environmental have a

[64] Tomasz Rek in *Ustawa o działalności leczniczej. Komentarz*, ed. Maciej Dercz i Tomasz Rek (Warszawa: Wolters Kluwer, 2019).

brad personal scope and encompass every work relation.[65] This general right is exercised by the provisions of Labour Code that specifies the obligations of the parties in this regard. According to the Labour Code an employer has a general duty to protect the health and life of employees by ensuring safe and hygienic working conditions. This corresponds with the duty of employee to comply with the regulations and rules on safe and hygienic working conditions. This includes the duty of an employee to refrain from work, without any negative consequences, that does not ensure them with safe and hygienic working environment. It is important to note that the employer's duty to ensure safe and hygienic working conditions apply not only to employees, but also to every worker, including self-employed persons, who provide services at the workplace or at another place indicated by an employer. However, the range of statutory duties of employer are different in relation to employment relationship and other work relations. The difference applies to:

1) Health and safety training before starting work and periodically during employment, that is mandatory only regarding employees. In relation to workers, who are not employees, an employer individually assesses, whether such a training is necessary for the duty to ensure that work is provided in a safe manner and in a working condition that poses no risk to health and life of an employee.
2) Occupational medicine that includes pre-employment health examination, periodic health examination and, if necessary, control health examination, that are mandatory only regarding employees. In relation to workers, who are not employees, an employer can individually assess, whether such medical examinations are necessary for the duty to ensure that work is provided in a safe manner and in a working condition that poses no risk to health and life of an employee.
3) Occupational medicine that provides for diagnosis and treatment of occupational diseases apply equally to employees and other workers, who then have the right to social security benefits. However, the employer duty to transfer an employee to another job with the right to compensatory allowance for a period of 6 months, when the symptoms of a diseases have already appeared or when due to occupational diseases an employee is unable to perform previous work, cover on employees and do not apply to other workers.
4) Employee health and safety bodes with whom employer should consult on health and safety. These bodies consist of only with employee (no other workers) representatives chosen by the company trade union organization. These are: a) health and safety service, in companies with more than 100 employees; b) health and safety committee, in companies with more than 250 employees. In companies employing no more than 100 employees, the performance of tasks of these bodies to an employee employed for other work.

[65] Michał Raczkowski, "Bezpieczne i higieniczne warunki pracy w zatrudnieniu cywilnoprawnym," *Praca i Zabezpieczenie Społeczne* 1 (2019): 66.

Small employers (with up to 10 employees or 50 if the health and safety risks are low) can carry these tasks out themselves, provided they have the appropriate training.

Regarding all care workers, regardless of the form of employment, the duty of employer to protect the health and life of employees may, in particular concern the protection against different physical, biological, chemical and psychophysical dangers that may occur during work is performed. The source of risks can be both working environment and the human behavior (patient). Physical dangers include, in particular: slip, trip or fall of a person, sharp elements, moving means of transport. Biological dangers are, in particular infections, allergies, poisoning, while the bacteria can be transferred through the contact with everyday objects, hands, broken skin, blood and other body fluids. Psychophysical risks include a physical load that led to excessive burden for musculoskeletal system and to excessive stress and professional burnout.[66]

6.3 Implications of the COVID-19 Pandemic

The COVID-19 pandemic had a significant implication for care workers in Poland, as it had for care workers worldwide. These implications encompass various aspects of their work and well-being. The key implications include:

1) Increased workload and stress. Care workers, especially those employed in hospitals, nursing homes and home care settings, have experiences a workload during pandemic. They have been at the front line of providing care for COVID-19 patients and managing the increased demands on healthcare services. The heightened stress levels from working under challenging conditions can have adverse effects on their mental and physical health.[67]
2) Risk of infection. Care workers, by the nature of their job, are at a higher risk of exposure to infectious diseases, including COVID-19. Inadequate availability of personal protective equipment and the other resources early in the pandemic may have put them at even greater risk. While measures have like been implemented to improve safety, the risk of infection remains a concern.[68]
3) Shortages of staff and resources. The pandemic placed significant strain on healthcare systems, leading to shortages of staff and resources. Care workers

[66] Paulina Gołębiowska, "Zagrożenia w pracy z osobami starszymi – wybrane zagadnienia," *Annales Universitatis Mariae Curie-Skłodowska* 30, 4 (2017): 121; Łukasz Cywiński, "Zagrożenia osobistego bezpieczeństwa pracowników socjalnych w globalnych warunkach społeczeństwa polskiego. Teoria i praktyka," *Annales Universitatis Mariae Curie-Skłodowska* 30, 4 (2017): 19.

[67] Hanna Kinowska and Marta Juchnowicz, "Wellbeing of employees in the healthcare industry in Poland under pandemic conditions," *Polityka Społeczna* 586, 1 (2023): 25.

[68] Paweł Przyłęcki, "The Covid-19 pandemic impact on the Polish medical personnel work: a survey and in-depth interviews study," *Front Public Health* 11 (2023). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10293619/> (Accessed April 24, 2024).

may have had to work longer hours, deal with staff shortages, and face challenges in accessing necessary medical supplies and equipment.[69]

4) Impact on mental health. Care workers have faced emotionally challenging situations, dealing with the suffering and loss of patients, as well as potential exposure to the virus themselves. The pandemic has taken a toll on their mental health, leading to increased rates of stress, anxiety, and burnout.[70]
5) Training and education. With the evolving nature of the virus and public health guidelines, care workers needed continuous training and education to stay updated on best practices and safety measures. Keeping up with the rapidly changing information has been a challenge.
6) Support and recognition. While many care workers have been hailed as heroes for their dedication during pandemic, they have also faced challenges in terms of recognition and support. Adequate compensation, access to resources, and appreciation for their efforts are crucial for sustaining a motivated and resilient workforce.
7) Changes in the working practices. The pandemic has led to changes in work practices, such as adoption of telemedicine, increased use of technology for communication and greater emphasis on infection control measures.[71]
8) Vaccine rollout. The vaccination campaign in Poland would have also impacted care workers, with considerations such as prioritization for vaccination based on their roles, vaccine acceptance among workers, and education about the vaccines.

6.4 Training and Competence Development

Training and competence development of care workers in Poland are crucial condition for professionalization of care work, to ensure the delivery of high-quality care and support to those in need. This is also a necessary condition for the increasing of the social value of care work.[72] There are several components involved in training and competence development for care workers in Poland that deserve the attention in this regard.

1) Care workers in Poland, including basic care workers, typically need to have specific educational qualifications (to complete a specific level of general education and specific vocational education that provide a specific theoretical

[69] Klaudyna Grzelakowska, Jacek Kryś, "The impact of Covid-19 on healthcare workers' absenteeism: infections, quarantines, sick leave – a database analysis of the Antoni Jurasz University Hospital No. 1 in Bydgoszcz, Poland," *Medical Research Journal* 6, 1 (2021): 47.

[70] Maria Belcarz, "The impact of the Covid-19 pandemic on the mental health and social functioning of healthcare workers," *Journal of Eductaion Health and Sport* 14, 4 (2023): 319.

[71] Kornelia Kaźmierkiewicz, "Impact of Covid-19 on the functioning of medical facilities in Poland," *Journal of Education Health and Sport* 20, 1 (2023): 140.

[72] Iwona Malinowska-Lipień et al. "Giving Care – Empowering personal caregivers and personal assistants by developing technical, soft and sigital skills," *Nursing Problems* 30, 3 (2022): 83.

knowledge and practical skills) to work in various healthcare entities. Depending on the type of care they provide (e.g., elderly care, disability care), they may also require a specialized training (e.g., training in adaptive techniques for work with people with disabilities or training in geriatric care or wound care for work with elderly) and/or experience meaning as a length of services in care sector. However, in practice, usually any formal (educational) requirement is needed to provide basic care at home of patient when care worker has been involved by a person in need or his family member on their own as well as to informal care work providing by family members and migrants.

2) Care workers in Poland may participate in various forms of continuous professional development that is essential to enhance their skills and competences. Vocational training may keep care workers updated with the latest best practices, regulations, and technological advancements in the field. This, as a result contribute to the professionalization of care workers. Care workers may participate in vocational training on their own in a number of professional development opportunities offered by a training entity (private and public), but also they may participate in training organized by an employer at company or outside the company.

Regarding employees the general regulation on vocational training is contain in Labour Code. This regulation does not apply to other work relations. Labour Code created a general obligation for every employer to facilitate professional employee development. This general obligation does not impose on an employer the duty to organize a specific vocational training as well as to bear the financial burden for vocational training of an employee. This obligation only means that an employer may not prevent an employee in participating in vocational training, that may involve in particular the necessary to agree on changes in working time schedule. When an employer organize a vocational training (that take place on the initiative of an employer) or agree that an employee will participate in training organized on their own, an employee has the right to paid training leave to take final examination (its length is depending on the type of exam and the level of education) and to paid day off from work for the time necessary to arrive on time for compulsory classes and for their duration. In other cases, an employee who participate in vocational training on their own may only apply to unpaid leave and to day off from work for the time necessary to arrive on time for compulsory classes and for their duration, on the free decision of employer.[73]

Some statuses that are addressed to certain categories of care workers contain specific regulations regarding training and competence development of care workers. Such a specific regulations are contained in: Act on

[73] More on this issue see Agata Ludera-Ruszel, *Podnoszenie kwalifikacji zawodowych przez pracowników na gruncie kodeksu pracy oraz wybranych ustaw szczególnych* (Warszawa: Wolters Kluwer, 2015).

the occupations of nurse and midwife; Act on the paramedic and the professional self-government of paramedic; Act on the psychologist profession and the professional self-government of psychologists and in Draft of the Act on medical professions.

Act on the occupations of nurse and midwife provides for a broad regulation on post-graduate education and other forms of development of qualifications of nurses and midwifes. These regulations generally apply to nurses and midwifes who provide their work based on employment contract and to other personal work relations. First and foremost, it imposes on nurses and midwifes the general obligation to constantly updating their knowledge and professional skills, matched by the right to professional development in various forms of post-graduate education. The forms of post-graduate education include specialization training, qualification course, specialist course, training course. The post-graduate education may be undergone at nurse or midwife who is an employee on its own request based on referral issued by the employer to the organizer of the education. This form of professional development does not apply to other work relations. The post-graduate education of an employee and other workers may undergo without such a referral of an employer on the basis on an agreement concluded with the organizer of post-graduate education. When a post-graduate education is provided based on referral issued by the employer an employee is entitled to a paid day off from work for a part of the working day and the paid training leave to take part in the mandatory classes in the amount of up to 28 days and additional maximum 6 days to take part in the national exam after specialization training. In this case, an employer may also on their own decision grant an employee with an additional benefits, such as reimbursement of the costs of travel, accommodation and meals in accordance with the rules applicable to business trips within the country, of the education take place in a location other than the employee's place of residence and place of work; covering tuition fees charged by the education provider; grant an additional training leave. A nurse and midwife who takes a post-graduate education without referral issued by the employer may be granted unpaid leave and day off from work for a part of the working day. This regulation applies to employment and other work relations.

Act on the paramedic and the professional self-government of paramedic also provides for a broad regulation on a continuing professional development of paramedic. These regulations generally apply to paramedics who provide their work based on employment contract and other personal work relations. First and foremost, it imposes on paramedic the general obligation to constantly updating their knowledge and professional skills in the form of post-graduate education or other forms of professional development. This corresponds with the obligation of employer to facilitate professional employee development of paramedic. The forms of post-graduation include: specialization training and qualification courses. The costs of professional development of paramedic are born by paramedic or by healthcare entities where paramedic performs his profession. A paramedic engaged in professional development is entitled at his request to a

paid training leave of up to 6 working days per year. The date of training leave is agreed each time with the employer.

Draft of the Act on medical professions that under parliamentary works and is addressed to occupational therapist and medical caregiver, contains a broad regulation on a continuing professional development of a persons who perform a medical profession. First and foremost, the regulation imposes on the person who perform a medical profession an obligation to professional development in the forms of post-graduate and other forms of professional development. This corresponds with the right of the person who perform a medical profession to professional development in these forms. The costs of professional development are born by a person on its own or by healthcare entities where a performs his medical profession or by educational entity. The forms of post-graduation include specialization training and qualification courses. The form of other professional development includes improvement course and self-education. A paramedic engaged in professional development is entitled at his request to a paid training leave of up to 6 working days per year. The date of training leave is agreed each time with the employer.

7. Social Security Coverage and Benefits

Social security system in Poland aims to provide financial assistance, healthcare, and other benefits to eligible individuals, ensuring a basic standard of living and safeguarding against various risks such as old-age, maternity and parenting, sickness, including occupational sickness, disability, unemployment, work accidents. The financing of the polish social security system relies on social contributions. The organizational structure of the system is characterized by a relatively complexity, since it involves institutions at central and regional level.[74] The main source of financing of social security system in Poland include taxes and social insurance contributions.[75] The right of every citizen to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age is guaranteed by the Polish Constitution. The scope and forms of social security shall be specified by statute (Article 67). Social security system in Poland is in the responsibility of the Ministry of Family and Social Policy and the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*). The social security system in Poland is composed of: the social insurance and welfare system, health insurance system, benefits in respect of unemployment and family benefits. Pursuant to the Polish Constitution, social security system in Poland is governed by a few detailed legal instruments. Among others there are:

[74] Agnieszka Chłoń-Domińczak, "Migrants' Access to Social Protection in Poland," in *Migration and Social Protection in Europe and Beyond*, edited by Jean-Michael Lafleur and Daniela Vintila (Heidelberg: Springer Cham, 2020; IMISCOE Research Series), 328.<https://doi.org/10.1007/978-3-030-51241-5_22>.

[75] Chłoń-Domińczak, "Migrants' Access".

- Act of 13 October 1998 on the social insurance system—the so-called System Act.[76]
- Act of 17 December 1998 on pensions from the Social Insurance Fund—the so-called Pension Act.[77]
- Act of 25 June 1999 on cash social insurance benefits in respect of sickness and maternity—the so-called Sickness and Maternity Act.[78]
- Act of 30 October 2002 on social insurance in respect of accidents at work and occupational diseases—the so-called Accident Insurance Act.[79]
- Act of 27 August 2004 on health care benefits financed by public funds—the so-called Health-Care Act.[80]
- Act of 20 April 2004 on employment promotion and labor market institutions.[81]
- Act of 12 March 2004 on social assistance.[82]
- Act of 11 February 2016 on state aid in raising children.[83]
- Act of 17 November 2021 on family care capital—[84]this Act is the basis for the provision of family care capital and for co-financing of the fee for a child's stay in a nursery, children's club or at a day career in the amount of PLN 400.
- Act of 28 November 2003 on family benefits.[85]
- Act of 4 April 2014 on the establishment and payment of allowances for careers.[86]

7.1 Social Insurance System

The social insurance system consists of: old-age pension insurance (in case of retirement), disability pension insurance (in case of completely or partly incapacity for work), sickness insurance (in case sickness), maternity and parental insurance (in case of give birth children and in case bring up children), work accidents insurance (in case of accidents at work and occupational sickness). The access to the social insurance and the benefits provided from this system, is conditioned on the social security contributions covered by employer and worker on a) old-age and disability insurance; b) sickness insurance, that include maternity and parental insurance; c) work accidents insurance, that in-

[76] *Journal of Laws* item 1009, 1079 and 1115 (2022).
[77] *Journal of Laws* item 504 (2022).
[78] *Journal of Laws* item 1133 (2021), as amended.
[79] *Journal of Laws* item 1205 (2019), item 1621 and 1834 (2021), item 755 (2022).
[80] *Journal of Laws* item 1285 (2021), as amended.
[81] *Journal of Laws* item 690 (2022).
[82] *Journal of Laws* item 2268 (2021), as amended.
[83] *Journal of Laws* item 1577 (2022).
[84] *Journal of Laws* item 2270 (2021).
[85] *Journal of Laws* item 615 (2022), as amended.
[86] *Journal of Laws* item 1297 (2020).

clude occupational sickness insurance. Care workers who provide their work based on employment contract are obligatory covered by all these types of insurance, and the contributions are mandatory paid for employer and employee (deducted from employee's salary) in the rates determined in the System Act. According to the System Act, care workers who are self-employed and provide their work based on contract of services the compulsory are: old-age insurance, disability insurance and work accidents insurance. The sickness insurance and maternity and parental insurance can be obtained voluntarily by a worker. Regarding worker who provide work on the basis of contract for specific task none of these insurances are obligatory, but a worker may obtain old-age insurance and disability insurance voluntarily.[87] The optional character of social insurance in case of contract for specific task would be considered as useful solution when work on this basis remain as an additional source of income. This does not apply, however, when work performed on contract for a specific task remain a main source of workers' income. In case of illness or accident such a worker would not be entitled to benefits from social insurance system. Therefore, it is proposed to amend the rules on the coverage to social insurance for workers who perform their work on the basis of contract for specific task.[88] In the Polish legal scholarship there is an ongoing debate as the whether the model of social insurance system coverage is adequate to the category of self-employed person defined as dependent self-employment—the category that is not identified under existing legislation in Poland.[89]

7.2 Disability Pension Insurance

Disability pension insurance provides for a following benefits: disability pension in case of completely or partly incapacity for work; training pension (for a pension eligible to disability pension, when ZUS certifying doctor or ZUS medical board has stated that he should retrained because he is incapable of work in current occupation); survivor's pension and supplement to the survivor's pension for a complete orphan (granted to eligible family members of a person who, at the time of death, held the established entitlement to the old-age pension or met the requirements to receive it, held the established entitlement to the bridging pension, or held the established entitlement to the disability pension or met the requirements for its award. When the right to the survivors' pension is established by ZUS, it is assumed that the deceased person was completely incapable of work); nursing supplementary allowance (granted to per-

[87] More on this issue see: Antoni Kolek, "Voluntariness of Social Insurance for Entrepreneurs – De Lege Ferenda Postulates," *Economic and Regional Studies* 16, 3 (2023): 399.

[88] Justyna Wiśniewska-Chaszczewska, "Umowa o dzieło a system ubezpieczeń społecznych," *Ubezpieczenia Społeczne. Teoria i Praktyka*, 1 (2021).

[89] On this issue see: Marcin Krajewski, "Economically dependent self-employment – is it time to single out a new title to social security," *Acta Universitatis Lodziensis. Folia Iuridica* 101 (2022): 223.

son who is eligible to old-age pension or disability pension, if such a person has been declared completely incapable of work and independent existence or has reached the age of 75). Sickness insurance, maternity and parental insurance provides for the following benefits: sick pay and sickness allowance; rehabilitation benefit (granted to a person who is covered by sickness insurance and has already used up the entire sickness allowance, but is still incapable of work, provided that further treatment or rehabilitation can help the person restore his/her earning capacity); compensatory allowance (granted to an employee whose remuneration has been reduced because he has undergone vocational rehabilitation aimed at adaptation or training for a specific job); maternity allowance (granted to person that has become a mother or a father or has taken the child to be brought up); care allowance (granted to an insured person for the period of release from work due to the necessity to take personal care of a family member); additional care allowance (granted to an insured person for the period of release from work due to the necessity of taking personal care of the child or a disabled adult in connection with the closure of facilities attended by children or disabled adults due to COVID-19 pandemic). Accident insurance provides for the following benefits: lump-sum compensation in respect of an accident at work (granted to an insured person who has suffered permanent or long-term injury as a result of accident at work or occupational disease); lump-sum compensation in respect of employee's death (granted to family members of an employee who died as a result of an accident at work or an occupational disease); lump-sum compensation for a permanent and long-term damage to health in relation to occupational disease. Additionally, an employee will be eligible to: sick pay and sickness allowance, training allowance, compensation allowance, disability pension in case of completely or partly incapacity for work, nursing supplementary allowance, survivor's pension, and supplement to the survivor's pension for a complete orphan.

7.3 Healthcare Insurance System

Polish healthcare insurance system is organized as an insurance-budgetary system. National Health Fund (*Narodowy Fundusz Zdrowia*) is a public institution responsible for managing and overseeing the public health system in Poland. It operates as main payer for healthcare services and is funded through contributions from employees, employers, and the government. Care workers who provide work based on employment contract and contract of service, including as a self-employed, are obligatory covered by healthcare insurance, as stated in Health-Care Act. Workers who provide work based on the contract for a specific task are not covered by a health insurance, thus they are not eligible to public health care benefits. These workers may be only covered by a private health insurance through insurance company. The public healthcare insurance is responsible for public funding of: preventive services; diagnostic services; medical services; rehabilitation services; provision of medicinal products and medical devices.

7.4 Unemployment Benefit

Unemployment benefit remains a basic social security benefit that is available in the case of unemployment. The key function of unemployment benefit is to provide unemployed person with an adequate income support in the absence of other means of financial resources during unemployment (income function). Unemployment benefit is paid from the Labor Fund that is financed from contributions paid by employer and employee (it is deducted from employee's salary). The obligation to pay these contributions refers to employee and self-employed person who provide work based on contract of service. A contribution for the Labor Fund is not charged from a contract for specific task. Consequently, a care worker employed on a contract for a specific task, who become unemployed, will not be eligible to unemployment benefit. The amount of unemployment benefit is not related to the minimum wage or the past remuneration of individuals. Unemployment benefit at the level of the so-called basic amount depends on the length of time for which the right to unemployment benefit may be exercised. Within the first 90 days a beneficiary is entitled to unemployment benefit in the amount of 1,491.90 PLN per month (around 335 Euro), while in the later days the unemployment benefit is in the amount of 1,171.60 PLN per month (around 263 Euro). The amount of unemployment benefit, depending on the joint period of employment or other paid activity, is calculated at the level of: 80% of basic unemployment benefit in the case of persons with a total period of employment not exceeding 5 years; 100% of basic unemployment benefit in the case of persons with a total period of employment between 5 and 20 years, and 120% of basic unemployment benefit in the case of persons with a total period of employment of at least 20 years. Both the unemployment status and unemployment benefit payments are conditional on some job-seeking behaviour of unemployed person. Among the duties a primary one is a duty to accept a suitable job offer from a labour office. The law provides for a relatively broad definition of "suitable job" that is determined by four conditions: qualification, health, geography, and income. Under these conditions a suitable job is defined as employment or other gainful work, subject to social insurance, and for the performance of which the unemployed person has sufficient qualifications or occupational experience, or which the unemployed person can perform after prior training or apprenticeship for adults; the health condition of the unemployed allows him/her to perform it, and the total time of commuting to the place of work and back by public transport does not exceed 3 hours, and for the performance of which the unemployed person collects monthly gross remuneration in the amount of at least the minimum remuneration for work calculated as the fulltime equivalent.[90]

Unemployment is one of the reasons for social assistance benefits due to the provisions of the Act on social assistance. The key principle of the social assis-

[90] Michał Brodecki, "Wybrane problem interpretacyjne zasiłku dla bezrobotnych," *Zeszyty Naukowe Towarzystwa Doktorantów UJ. Nauki Społeczne* 18, 3 (2017): 67.

tance system in Poland is to provide support to those in a difficult situation in life, and to offer them help in social re-inclusion and in becoming socially independent, also in view of their professional integration and return to the labor market. Therefore, the social assistance benefits are not of a universal character and are limited to persons and families without sufficient income, i.e., lower than the legal income criterion. In principle social assistance benefits are an example of means-tested benefits, that are available only to unemployed person without sufficient income, lower than the legal income threshold. Takin into considerations assistance and motivation aspect of social assistance benefits, it is accepted that income threshold for public assistance must be determined at the level that face the risk of poverty and threat for wellbeing of individual, but not weakening the incentive for re-employment of social assistance recipients.[91] A person who is unemployed is eligible to cash benefits in the form of temporary benefit for a period that in any single case is determined by the social assistance center. The amount of a temporary benefit is stated as up to the difference between the income criterion and the personal income. However, according to the provisions of the Act on social assistance, the level of the single benefit cannot be lower than 50% of the difference between the income criterion and the person's income. The amount of the temporary benefit cannot be lower than 20 PLN [5 Euro] by month. Regarding an unemployed person who is running a household alone, their personal income may not exceed 776 PLN per month (round 174 Euro) per month. For a person in a family the income per person may not exceed 600 PLN (per month around 134 Euro). For these reasons, the role of social assistance benefits as an instrument to combat poverty and social exclusion is called into question.[92] It is emphasized that social assistance does not protect against social exclusion, but rather help its recipients to subsist on a low standard of leaving.[93]

7.5 Family Benefits

Family benefits in Poland are aimed at providing support to families with children. These benefits help alleviate the costs raising children and ensure certain standard of living for families. A key families benefits available in Poland includes:

1) Child-support benefit under the "Family 500+" programme. This benefit is universal. It is granted for every child under 18 years of age, regardless of family income. The concern that rises this cash payment are build around its negative effect on women's professional activity and its non-justification, related to unfair distribution of resources.[94]

[91] Iwona Sierpowska, *Pomoc społeczna. Komentarz* (Warszawa: Wolters Kluwer, 2017), 83.

[92] Witold Klaus, "The Relationship between Poverty, Social Exclusion and Criminality," in Konrad Buczkowski et.al., *Criminality and Criminal Justice in Contemporary Poland. Sociopolitical Perspective* (Farnham: Ashgate, 2015), 56.

[93] Klaus, "The Relationship between Poverty," 56.

[94] Lilia Hrytsai, "Evaluation of the Family 500+ Programme: National and International Perspectives," *Annales Universitatis Mariae Curie-Skłodowska* 28, 2 (2021): Sectio K, 101.

2) "Good Start" benefit offers a support for families with children in incurring expenses related to the start of the school year. This benefit is granted to parents or guardians of school-going children aged between 7 and 20 (up to 24 in the case of children with disabilities). The Good Start benefit is granted regardless of income.[95]
3) Family care capital and subsidy for the child's stay in a childcare institution for children up to 3 years. This benefit is available to parents for the second and subsequent child in the family, from the age of 12 to 35 months. The capital is available regardless of family income.
4) Family allowance and supplements to this allowance. The family allowance is granted if the family income per person in the family or the income of a learner does not exceed PLN 674 net per month. When a disabled child is a family member, the income threshold increases to PLN 764 net. The following supplements may be granted in addition to the family allowance: a) the child-birth supplement; b) the supplement in respect of care of the child during the period of the child care leave; c) the supplement for a single parent bringing up a child; d) the supplement for bringing up a child in a multi-children family; e) the supplement in respect of the education and rehabilitation of a disabled child; f) the supplement for a child starting the school year; g) the supplement for a child starting education at school outside the place of residence.

8. Concluding Discussion

The job quality and inclusive working conditions of care workers in Poland remain critical issues that demand immediate attention from policy makers, stakeholders, and society as a whole. The considerations taken in this chapter have delved the challenges faced by care workers, that play a vital role for ensuring a decent working conditions. The data presented clearly highlights the prevalent concerns regarding low wages, long working conditions, lack of adequate training and insufficient benefits faced by all care workers. The care workers for whom having a decent working condition pose enormous challenges include care workers who provide their work outside employment relationship as a self-employed and domestic care workers who very often work in informal economy. These unfavorable conditions not only impact the well-being and job satisfaction of the workers themselves, but also jeopardize the quality of care provided to those who depend on their services and lead to the outflow of skilled care workers from polish labor market.

To address these challenges and promote positive change, a multi-pronged approach is essential. Firstly, the Polish government should prioritize the im-

[95] On this issue see: Michał Krawczyk, "Family Caring Capital As The Latest Instrument Of National Family Policy," *Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach* 58, 131 (2022): 13.

plementation of robust labor regulations and policies that protect the rights of care workers, ensuring fair wages, reasonable working hours, and access to benefits such as healthcare and paid leave. With this aim, the necessary would be the change in the existing model of application of labor law provision to the personal work relations. Moreover, the appropriate should be inclusion in the labor law the standards tailored to the specifications of the employment of domestic workers, making the protection offered by labor law more effective.

Secondly, investing in comprehensive training programs and continuous profession development for care workers will not only enhance their skills but also elevate the standard of care delivered to those in need. By recognizing their invaluable contribution to society, the creation of an inclusive and supportive environment for these essential workers would be possible. With this aim, the necessary would be inclusion of employers in the professional development of care workers, that will go beyond the duty of "not to disturb" to the duty to active participation in this process.

Furthermore, fostering dialogue between stakeholders, including government agencies, healthcare providers, unions, and non-governmental organizations, is crucial in devising sustainable solutions that address the unique challenges faced by care workers. Regardless of the changes in statutory labor law provisions, trade union organizations may play a vital role in ensuring decent working conditions for care workers. A first step in this direction should be the broader trade union membership of care workers, in particular self-employed care workers and collective barraging coverage of care workers.

Lastly, societal attitudes towards care work must undergo a transformation. As mentioned in the introduction, from a sociological perspective, care work in Poland is considered to be as one of the most socially undervalued kind of work, believed as having no real economic value. This, in particular refer to domestic care work, including that provided by family members and migrants. Therefore, care workers should be appreciated, respected, and valued for their tireless dedication to improving the lives of others.

This change in perception will not only attract more individuals to the profession but also elevate the overall status of care work in society.

In conclusions, the job quality and inclusive working conditions of care workers in Poland are not only a reflection of our social values but also have a direct impact on the well-being of both care providers and recipients. By acknowledging the urgency of this issue and taking concrete steps to improve the situation, we can build a more equitable, compassionate, and sustainable future for care workers and the communities they serve.

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CHAPTER 6

Spanish Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Ferran Camas Roda, Andrea Cano Redondo, Anna Molina García, Marc Saez Zafra, Dolors Juvinyà Canal, Maria Antonia Barceló Rado

1. Introduction

The aim of this national report is to analyse job quality and inclusive working conditions of care workers in Spain. The report will include analysis of law and policy, labour market characteristics, and industrial relations, as well as analysis of the interplay between national law and EU/European and international law.

A socio-legal research methodology will be applied.

The outline of the national report is as follows. Section 2 discusses various aspects of care work and domestic work, including occupations, labour market characteristics, overall regulatory framework, and current debates. Section 3 addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations. Section 4 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 5 presents a discussion on wages and benefits. Section 6 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 7 discusses social security coverage and benefits. Section 8, finally, contains a concluding discussion.

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1.1 Main Characteristics of the Labour Law and Industrial Relations System and Welfare State Model in Spain

Spain is a social, democratic state governed by the rule of law; hence the 1978 Constitution establishes several mandates that reflect its status as a Social State. For example, Article 35 recognises that all Spaniards have a duty to work and the right to work, as well as the right to free choice of profession or trade, to promotion through work and to sufficient remuneration to satisfy their needs and those of their families, with no discrimination on grounds of sex. The same article establishes the need for a workers' statute to be regulated by law. This need has been met with the Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law.[2] This law grants minimum labour rights to employees, i.e. people who work voluntarily and for pay for an employer or company, which directs or organises their work. It applies across the board, in all areas of the public and private sector. Both the Spanish Constitution and Royal Legislative Decree 2/2015 include the right to collective bargaining between employers and workers' representatives to reach collective agreements which, in general, provide for working conditions that enhance those established by labour legislation.

Moreover, Article 41 of the Spanish Constitution[3] also provides that the public authorities shall ensure a public social security system for all citizens, guaranteeing sufficient social assistance and benefits in situations of need (e.g. health care, retirement benefits, sickness benefits, etc.). In accordance with this mandate, the Social Security system is public and universal (providing protection to all citizens). However, one of the foundations of the public social security system is that a person's entitlement to benefits in case of need is largely conditional on that person having previously worked, i.e. having contributed to the payment of the corresponding social security contributions derived from his or her employment. If the person has not worked, the system also provides "welfare" protection, although not to the same extent as other social security benefits.

In addition to the above-mentioned area of protection, the Constitution also establishes specific indications for the protection of persons with disabilities as well as the elderly. In this respect, Spain has created a public system, the System for Autonomy and Care for Dependency (SAAD), to protect, through a range of social benefits, those persons who, for reasons arising from age, illness or disability, and linked to the lack or loss of physical, mental, intellectual or sensory autonomy, require the care of another person or persons or substantial help to carry out basic daily living activities (see Law 39/2006 of December 2006 on the Promotion of Personal Autonomy and Care for Persons in a Situation of

[2] Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law, BOE-A-2015-11430 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (Accessed February 8, 2024).

[3] Spanish Constitution, BOE-A-1978-31229 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229> (Accessed February 8, 2024).

Dependency).[4] Being registered in the SAAD entitles the beneficiary to various protection measures: telecare; home help provided by a carer; financial benefits for family care; financial benefits for the purchase of a service (residential care; day/night centre; or home help service); financial benefits for personal care; or financial benefits for family care.

1.2 Relevant Aspects of Research Methodology and Availability and Selection of Materials

The labour relations and social protection system in Spain has a number of important and easily accessible information sources. These include legislation; court rulings on labour and social security matters which have undergone a fundamental development and have influenced the very content of labour regulations; administrative practice, and academic doctrine which has studied, analysed and provided proposals for improvement to the above sources. However, in terms of care, it was only since the COVID-19 pandemic of 2020 that the debate on the importance of the care system, or more specifically, on its "crisis" began to emerge with force due to the inadequacy of the State to cover all the care needs of working people and the burden that women are taking on as a result through unpaid work. In this regard, the Spanish government has already drawn up a roadmap leading to the adoption of a State Care Strategy, for which it has set up a Care Advisory Board. Since September 2021, this Board has functioned as a space for reflection of governmental agents, public administrations, trade unions and business associations, professional care associations and other entities, on the design of public intervention in the area of care. The first result has been the drafting of a *Basic Document for Care*, published by the Institute for Women in April 2023,[5] the content of which will be dealt with in this report.

2. Care Work and Domestic Work: Occupations, Labour Market Characteristics, Overall Regulatory Framework, and Current Debates

2.1 Main Characteristics of the Care Sector in Spain, and the Role Of Domestic Work in Care Work

2.1.1 Main Characteristics of the Care Sector, Including Public and Private Care Elements

The basic labour legislation is the Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law. This basic

[4] Organic Law 3/2007, of March 22, 2007, for the effective equality of women and men, BOE-A-2007-6116 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2006-21990> (Accessed November 15, 2023).

[5] The Women's Institute, "Women in Today's Society" (Instituto de la Mujer, 1969), <https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1969.pdf> (Accessed September 17, 2023).

regulation grants minimum rights to employees who thereby provide their services to an employer or company. These minimum rights are established by law and therefore cannot be reduced by agreement between employer and employee. Application is general, i.e. the Royal Legislative Decree 2/2015 applies to all areas of the public and private sectors in which employment contracts are agreed upon between the employer and the employee. The establishment of an employment relationship to which the Workers' Statute Law applies activates the entire social security system (payment of contributions by the employer and the employee, and in case of need of the employee, triggers the activation of social security benefits).

This common or standard employment regime is therefore applicable in many of the occupations in the care sector, in particular when carers work for an employer or company. For example, nursing staff in public or private hospitals or nursing homes for the elderly, or also professional carers employed by a care provider or a public authority to look after people in need of care in their own home.

However, this common or standard regime has exceptions in application depending on the characteristics of certain activities, for example, in the area known as "family household services" (generally equivalent to domestic work). This is an employment relationship entered into between the head of a family household and a person working in the household to carry out domestic duties. These tasks include "care or assistance of family members or persons forming part of the domestic or family environment". This type of relationship between the head of the family household and the person who performs domestic tasks is considered to be an employment relationship, i.e. the workers and employees are recognised as having a set of employment rights. However, these rights do not come under the common or standard regime, but under specific regulations for this sector of the domestic service.

These specific regulations typically undercut the minimum rights that apply in the common or standard regime (in fact, in this type of specific regulations such as for domestic work, the power of control and management of the employer is often increased).

Differences between the regulation of the common or standard regime (generally more protective for the worker) and that of the special employment relationship in the domestic sector can be referred to as "protection gaps".[6] In Spain, the regulation governing domestic service is Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship for family household services.[7]

However, it should be recalled that art. 2 of Royal Decree 1620/2021, which regulates the special employment relationship for the provision of services in

[6] Mercader Uguina et al. *Job Quality and Industrial Relations in the Personal and Household Services Sector – Reference: VS/2018/0041 PHS-Quality Project. Country Report of Spain* (VS/2018/0041 PHS-Quality Project, 2018).

[7] Organic Law 3/2011, of January 28, which regulates the use of electronic media in the Public Sector, BOE-A-2011-17975 (Spain), <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-17975> (Accessed November 15, 2023).

the family home, excludes from its application those employment relationships that are arranged by the provider companies or those carried out through temporary employment agencies (to which the common or standard regime would apply); but also the relationships of professional caregivers hired by public institutions or private entities, in accordance with Law 39/2006, December 14, 2006, on the Promotion of Personal Autonomy and Care for Persons in a Situation of Dependency (mentioned above); and finally the relationships of non-professional caregivers consisting of the care provided to dependent persons in their homes, by family members or members of their environment, not linked to a professional care service, in accordance with Law 39/2006, already referred to.

Within this regime of professional or professionalized caregivers, one could also include nursing assistants or auxiliary nursing care technicians, who are hired by companies providing care services to provide their services in homes. In fact, these nursing assistants, who in English would be included in a general notion of "Social and care worker" (in Spain, the translation that we use for this study is equivalent to assistants or nursing assistants), have a secondary education to be able to access the realization of courses or training studies specifically accredited by public agencies. The tasks to which they are qualified include taking care of the hygiene of patients, providing logistical support to the activities of doctors and nurses, supporting patients in the administration of food, etc. and they can work both on a self-employed basis, as well as being employed in nursing homes and hospitals.

The legislation applicable to these groups is not, as a general rule, the specific legislation applicable to people who are hired to work in the family home service (Royal Decree 1620/2011), but they are subject to the common or standard labor regime, or they can also work as self-employed.

In any case, it has been detected that in some cases, the owners of the family home hire people to take care of other dependent persons under the modality of Royal Decree 1620/2011, which has been criticized: the State Association of Directors and Managers in Social Services[8] recognizes that "domestic service" contracts (Royal Decree 1620/2011) are used for personal assistance tasks within the framework of the dependency system, and in the face of this reality it is concluded that the regulation of the most suitable professional profiles to carry out such care tasks cannot be postponed, since the use of "domestic service" contracts (Royal Decree 1620/2011) for this purpose— which do not reflect the work to be carried out nor presuppose professionalization and which obviously clearly do not protect the workers-, is not the right way to go and the managing administrations should not admit these formulas, for which other formulas should be urgently enabled.

[8] State Association of Directors and Managers in Social Services, *XXIII Report of the Observatory of Dependency*, (Asociación Estatal de Directas y Gerentes en Servicios Sociales, 2023), <https://directoressociales.com/xxiii-dictamen-del-observatorio-de-la-dependencia/> (Accessed February 13, 2024).

2.1.2 The Role of Domestic Service in Care Work

Based on the report of the International Labour Organisation published in 2019: *Care work and care jobs for the future of decent work,*[9] Spain is characterised by a medium to high level of employment in the care sectors (20% of total employment counting all care-related occupations), a percentage level reached by the admittedly high proportion of care staff who are employed in domestic service, i.e. employed by households, comprising approximately 3% of total employment.

It should be remembered that the domestic service regulated by Royal Decree 1620/2011 can be contracted by households to carry out functions related to any domestic task, including those corresponding to the care or support provided to family members or persons forming part of the domestic or family environment. This channel can therefore be used by households to hire domestic staff to perform care functions.

Looking more closely at the data available, according to data from the Ministry of Social Security and Migration of the Spanish Government,[10] in August 2022 there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to put the figures into perspective, 16,963 were men and 356,138 were women.

In addition to the above, a review of the statistics corresponding to foreign workers affiliated to the Social Security in the data published in 2021 shows that out of a total of 168,535 foreign workers affiliated to the Special System for Domestic Employees, 9,960 were men and 158,562 were women, most of them from Latin America (90,465).[11]

Consequently, the domestic service sector in Spain is characterised by a high proportion of immigrant women, which, incidentally, results in the fact that domestic service has become more of a labour niche for female foreign workers.

On the other hand, and as has already been shown by studies addressing this issue, family household services are a favourable environment for the informal employment of both Spanish and migrant female workers. In fact, there could be as many as 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with the social security system.

However, one of the problems of this framework of foreign labor in domestic service is that a good part of the personnel is in undocumented status. In fact, it is

[9] ILO, *Global Wage Report 2020-2021* (ILO, 2020), <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_737394.pdf> (Accessed November 20, 2023).

[10] Ministry of Inclusion, Social Security and Migration, "August 2022 Statistics" (Ministry of Inclusion, Social Security and Migration, 2022), <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10> (Accessed November 20, 2023).

[11] Ministry of Inclusion, Social Security and Migration, "August 2022 Statistics".

worth mentioning that although there are no statistics on the presence of foreign workers in an irregular situation in Spain in the care sector in general, according to the 2022 Report of the Forum for the Social Integration of Immigrants on *The situation of migrants and refugees in Spain*, in the field of domestic work it is estimated that more than 600,000 women work in this sector.[12] Among them, the Report states that 70,000 are undocumented migrants.[13] The report goes on to state that some 40,000 women work as interns and 9 out of 10 of them are foreign and concludes that many of the workers in an irregular situation are forced to accept precarious work in order to survive with excessive working hours, even working with few or no days off, and are exposed to violence and abuse by their employers, even more so in the case of intern caregivers.

2.1.3 Existing Practices of Contracting and Subcontracting in the Care Sector, Carried out by Both Private and Public Care Providers

In the care sector, the main actors involved are households, companies providing care services and public administrations with care staff. However, the introduction of budget cuts in the public sphere for care policies, as well as the privatisation of previously public care services, has led to an increase in the individual search for solutions to the need for care, including the outsourcing or contracting out of care services to companies.

One of the areas where this increase in subcontracting or contracting out service provision to companies has occurred most is in the field of care linked to children and also from the System for Autonomy and Care for Dependency (SAAD). Note that other benefits granted by the SAAD include the financial benefit to beneficiaries to hire personal carers; the financial benefit to beneficiaries linked to the purchase of a service (e.g. residential care); or the provision of home help (it must be said, however, that cutback policies have affected the budget allocations for these benefits, which has been one of the factors for people covered by the SAAD to seek more financial support for the care of a relative).

In addition, there has been a consolidation of digital platforms that manage care services, including in the health sector, where problems have been detected in the way the labour relations they provide are qualified.

Nevertheless, as the *Basic Document for Care*, published by the Institute for Women in April 2023, states, an intense debate is taking place in Spain on the

[12] Forum for the Social Integration of Immigrants, *The situation of migrants and refugees in Spain* (Foro para la Integración Social de los Inmigrantes, 2022), <https://www.inclusion.gob.es/documents/1652165/2966006/Situaci%C3%B3n+de+las+personas+migrantes+y+refugiadas+en+Espa%C3%B1a+-+Informe+Anual+2022.pdf/e55230f9-2aa9-3f4e-d64e-002b746e4551?t=1688465906066>, (Accessed November 15, 2023).

[13] Oxfam Intermon, *Essential and disenfranchised* (Oxfam Intermon, 2021), <https://cdn2.hubspot.net/hubfs/426027/Oxfam-Website/oi-informes/esenciales-sin-derechos-informe-completo.pdf> (Accessed April 15, 2024), 47.

participation of for-profit business entities in the field of care. In particular, the position of public administrations in providing services considered fundamental rights (as the right to care is being constructed) is under discussion, in terms of whether they should be provided in their entirety and directly by public administrations or whether they should be outsourced to third parties. Nowadays, the latter dynamic has become a common form of action in the provision of care, and proposals are being made to involve "social economy enterprises" that are both specialised in the field of care and non-profit making.

2.2 The Notion of Care Worker in Spain

The main occupations related to the carer concept in Spain are the following:

1) On the one hand, there are people who "provide services for the family home" (commonly referred to in English as "home caregivers"). They can be hired by the owner of the family home, in which case they have a "special employment relationship" subject to Royal Decree 1620/2011, or they can be hired by a service provider company to work in a family home. In the latter case, they are covered by the ordinary or standard employment regime. These persons are not required to have specific care qualifications.
2) Mention should also be made of services provided by so-called "professional carers":
    a. Care services are provided to any person within the SAAD system referred to above, i.e. carers who carry out their care functions for people in a recognised situation of "dependency" either in a home or in a residential home or centre. As a rule, if they provide services in a home, professional carers are employed by companies providing care services. If they are employed in residential homes, they are employed by the care home or centre itself.
    b. Within this regime of professional, or professionalised, carers, one could also include nursing assistants or auxiliary nursing care technicians, who are employed by care service providers to provide their services in private homes. These may also be care workers who provide their services on a self-employed basis.
3) Health professionals (doctors, nurses, midwives, physiotherapists, etc.) working in public institutions (nursing homes, hospitals), whether public or private. As far as nursing is concerned, it is worth mentioning the statistics of the National Institute of Statistics on registered healthcare professionals, which include the nursing staff, which is the largest group (35.5% of the total), followed by medical staff (30.9%) and pharmaceutical staff (8.4%). Focusing on the former, in the year 2022, a total of 336,321 people are included as nurses, of which 53,023 are men and 283,928 are women (specifically, 656 men and 9,206 women as nurses with the title of midwife). In fact, the National Institute of Statistics confirms that the healthcare function has a majority female presence, since in 2022 there were more women than men registered in 13 of the 15 professions analyzed by this statistic of registered healthcare professionals. It also states that the groups with the highest per-

centage of women were speech therapists (93.1% were women), occupational therapists (90.4%) and nurses (84.2%).[14]

4) Finally, it should be noted that the 2019 Report of the International Labour Organisation entitled "Care Work and Care Jobs. For the Future of Decent Work" also includes as care workers early childhood teachers (up to the age of 3), as well as pre-primary schoolteachers (from the age of 3 up to school age) and basic or compulsory schoolteachers (primary and secondary) from the age of 5 or 6, depending on the country.[15] In any case, we must remember that in the research project that concerns us (Care4Care Project, we care for those who care), the people who care for children, especially teachers, are not part of the object of study of this project.

2.3 The Impact of ILO Convention no. 189 on Domestic Workers in Spain

In Spain, the special employment relationship for the provision of services for the family home (equivalent to domestic work) is regulated by a 2011 government regulation, namely Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship for family household service. Subsequently, this regulation underwent an intense modification in 2022, through a law, specifically Royal Decree Law 16/2022, of 6 September, for the improvement of working conditions and Social Security for domestic workers.[16]

Under this new legislation, the Spanish State moved forward to provide domestic workers with rights before the ratification of the International Labour Organisation's Domestic Workers Convention, 2011 (no. 189) on 28 February 2023. The measures of this Convention shall enter into force for Spain on 29 February 2024 (see the Instrument of Accession to the Convention concerning Decent Work for Domestic Workers, signed in Geneva on 16 June 2011).[17]

Finally, as mentioned above, labour regulations for domestic service in Spain are of a special nature, i.e. they have their own regulations (Royal Decree 1620/2011, amended in 2022), which differ from the standard or common regulations that apply to all other workers in Spain (to which the Workers' Statute Law applies). In general, this has meant that labour rights for domestic workers have been poorer than for workers covered by the standard or common regime.

[14] INE, "Registered Health Professionals. Year 2022" (INE, 2022), <https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176781&menu=ultiDatos&idp=1254735573175> (Accessed June 19, 2024).

[15] ILO, *World Employment and Social Outlook - Trends 2019* (ILO, 2019), <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf> (Accessed June 19, 2024).

[16] Royal Decree-Law 7/2022, of September 20, on urgent measures to alleviate the effects of the economic crisis generated by the COVID-19 pandemic, BOE-A-2022-14680 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2022-14680> (Accessed June 19, 2024).

[17] Law 7/2023, of April 26, on environmental protection, BOE-A-2023-8304 (Spain), <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-8304> (Accessed June 19, 2024).

Main ideas that can be contributed to this question:

1) As mentioned above, domestic work in Spain is highly feminised and composed of an immigrant population. As the International Labour Organization's 2019 Report *Care Work and Care Jobs. For the Future of Decent Work* states, domestic workers account for 6.5 per cent of female employment (and 0.7 per cent of male employment), with 55 per cent being foreign-born.
2) Although the provisions of Convention 189 are not yet in force for Spain, it must be confirmed that with the regulation adopted in 2022 through Royal Decree Law 16/2022, the rights of persons employed in family households have been increased. Thus, for example, their right to health and safety at work is recognised in accordance with the Law on Occupational Health and Safety, which applies to all workers. Household workers are entitled to unemployment benefits at the end of their employment relationship. Domestic workers are also covered by the Wage Guarantee Fund, which will therefore be able to pay outstanding wages in cases of insolvency of the family unit employing the domestic workers. Permanent employment in domestic work is also encouraged and it is ensured that domestic workers are informed of the essential conditions of their employment contract. Finally, the possibility for the owner of the family home to terminate the contract on the sole grounds of his or her decision to withdraw from the contract has been repealed.

These regulatory improvements in domestic work, including the ratification of Convention 189, due to enter into force in 2024, have been positively assessed by the Care Advisory Board, which has drawn up the *Basic Document for Care*, stating that these measures represent an important step forward to dignify care work, an advance in its professionalisation and an improvement in the status of women workers in the sector as a whole.

2.4 The Regulatory Framework in the Care Sector in Spain

With regard to the various issues raised in this question, the following ideas stand out:

1) Care work is carried out in a wide variety of situations which may give rise to the application of different legislation and collective agreements. For example, it should be borne in mind that two different regulations with different degrees of protection apply to domestic care work: if the employer is the owner of the family home, the domestic work regulations apply; if a service provider sends a worker to look after another person in his or her home, the common regulations apply. This is without counting the possibility that other types of care provided by specialised carers may be carried out autonomously.
2) On the other hand, there are sectors where the adoption of collective agreements between workers and companies are well developed, for example in the health sector (e.g. nursing), while there are other sectors that lack this type of collective bargaining, for example domestic work.

a. The *Basic Document for Care* under discussion, published in 2023, also warns that one of the measures to be taken to improve working conditions is the revision of existing collective agreements. According to the Document, the improvement of working conditions is achieved, among other things, by adapting and modernising agreements that have become obsolete due to their age or changes in the sector to which they refer. A review of existing agreements is therefore proposed in order to identify those on which work can be done to improve working conditions.

3) It should also be noted that the work of the Court of Justice of the European Union has been instrumental in improving working conditions in domestic service. In particular, its decision of 24 February 2022 (C-389/20), was decisive in Spain having to recognise the unemployment benefits of domestic workers when their employment is terminated. It was considered that the lack of this entitlement amounted to indirect discrimination on the basis of sex, as it deprived mainly women of this right.

2.5 The Key Current Debates on Working Conditions, Job Quality, Labour Law, and Labour Market Issues in Relation to Care Workers, Care Work, and the Care Sector in Spain

In general, it is worth mentioning a significant precariousness of care labour, which reflects a general undervaluation of this type of work. The cost-cutting policies of service providers, which exacerbate working conditions such as wages, thus widening the gender pay gap, are also being discussed.

In the field of care homes for the elderly, studies have shown that this is a sector made up of workers with a low level of training, since more than half of them (55.5%) have completed only primary education, with or without first-degree vocational training, while the rest are distributed between 20.5% with secondary or post-compulsory education and 24% with higher education. The issue of (little) training in the field of care should be given special attention, since in order to avoid the precarious employment situations that arise in many cases of care work, it is necessary to professionalise care work through the provision of training and professional certification of the experience acquired, which, moreover, should go hand in hand with formulas for formalising employment relationships (especially in the field of care in the home)[18]. In this area, it is interesting to bring up the proposal of the Basic Document for Care published by the Women's Institute in April 2023, which calls for workers in care and health centres (nursing homes, mental health centres, etc.), social and health care assistants, personal assistants and domestic workers to have their professional skills recognised by means of professional certificates. In addition, the document states that each of

[18] María Gema Quintero Lima, "The value of care: the need for professionalization, although not only," in *Economía de la Inclusión, el reto de la desigualdad y la vulnerabilidad social*, 650 ff. (Fundación Mutualidad de la Abogacía, 2023).

the professional categories should have a specific training plan with the aim of improving the conditions of workers and their users.[19]

Another element of interest that has been detected by the studies carried out with respect to the staff of care homes for the elderly is the low average annual remuneration of the staff, since in 2019 it is 20% (18,136 euros) lower than the average for the service sector in Spain (22.723), and if compared to the average annual salary of the whole economy in Spain, the difference reaches 26%, which would explain the difficulty in attracting workers to this sector, as it is expressed that those with social and healthcare credentials prefer to work in hospitals or health centres, where working conditions are better. As to whether or not these salaries are gender-biased, there is an interesting debate as to whether salaries in care homes for the elderly are low because most of the workers are women or because the staff in the "front line of care—three quarters of the total—are in low professional categories of the Social Security, with salaries that are close to the minimum wage" (SMI).[20]

On the other hand, in the field of domestic work, a problem to be addressed in the family household sector is the persistent informality of work carried out regardless of the nationality or migratory status of the carers: although it is not possible to ascertain specific data on informality as this is naturally not recorded by its very nature, it is nevertheless presumed to be high if we compare the data for all persons affiliated to the Special Social Security System published in August 2022: 373,101 persons, with the figures published by the Labour Force Survey for the second quarter of 2022 for the number of persons employed in households employing domestic staff, which is 545,700. Therefore, according to the differential parameters between both latitudes, there could be 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with Social Security. As a result, it should be confirmed that the fact that this is a highly informal sector is also a favourable place for foreign workers in an irregular situation to consider it as a priority entry point to the labour market, which may also allow them to apply for an exceptional residence and work permit in accordance with the legislation on foreigners.

Another thing is that this informal work gives rise to situations of labour exploitation, which has been denounced by social organisations such as Caritas,[21] for which this situation is a breeding ground for the defencelessness of women who are often unaware of suffering exploitation, normalising it and thinking that it is a necessary step to get a better job; Caritas adds that in the case of immigrant

[19] Women's Institute, "Basis for Care Document" (Women's Institute, 2023), <https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1969.pdf> (Accessed June 15, 2023).

[20] Julia Montserrat Codorníu, "The impact of the pandemic on nursing homes for the elderly and the new staffing needs in the post-COVID stage," *Revista Panorama Social* 33 (2023).

[21] Cáritas, "Cáritas denounces that the labor rights of domestic workers are "gravely unprotected"," (2022), <https://www.caritas.es/noticias/caritas-denuncia-que-los-derechos-laborales-de-las-empleadas-de-hogar-estan-gravemente-desprotegidos/> (Accessed July 3, 2023).

women, being outside their country of origin, they assume that they must "put up with" everything; in fact, although many of them are aware of suffering violations, they do not report them for fear of losing their jobs, believing that they are useless or because they do not feel legitimised to do so.

Finally, as an aspect that can be considered as a lowest common denominator to the different care functions, the issue of occupational accidents, or in other words, the high number of occupational accidents reported by the 2022 statistics of the Ministry of Labour[22] in relation to the employment of health and care workers, which include care workers in health services, others providing care services, and also personal service workers, should be highlighted.

The care sector is particularly sensitive to occupational accidents leading to sick leave. The fact that many female care workers do not appreciate the limits of the physical effort they are making or do not know, due to lack of training, how to manage physically or psychologically a person who requires their care may be factors that may increase the accident rate. Other reasons are well known, such as health burnout, for example, of geriatric workers due to the low expectations of recovery of the sick,[23] as well as the stress of care workers in general, but even more so when it is exercised with respect to seriously ill or very disabled people. To this could also be added those related to psychosocial risks at work such as violence or harassment at work, or stress. Furthermore, It should be borne in mind that violence, especially sexual violence, is a widespread situation in the domestic sphere.

In this framework, we offer some considerations on the debates that are taking place, as expressed in the *Basic Document for Care* published by the Institute for Women in 2023 (cited above):

1) A priority debate is how to address the recognition of professional qualifications of carers. This debate arises precisely because these qualifications are so poorly recognised.
2) Another important debate concerns the unfavourable handling of regulations in the care sector due to the diversity of situations that occur. This leads to different regulations or collective agreements and insufficient enforcement of existing legislation.
3) The third issue which, according to the Basic Document under discussion, needs to be reviewed is the systems of control or supervision of working conditions and of the companies or intermediary agencies operating in the care sector.
4) The need to complement the adoption of new legislation to protect care workers with instruments or mechanisms to ensure their implementation is also being discussed.

[22] Ministry of Labor, Bulletin of Statistics on Occupational Accidents: Occupational Accident Statistics: ATR-I.1.8. Incidence rates of occupational accidents with sick leave, by occupation of the injured worker (2022), <https://www.mites.gob.es/es/estadisticas/monograficas_anuales/eat/2022/index.htm> (Accessed February 8, 2024).

[23] María Ángeles Durán, *The invisible wealth of care* (Universitat de València, 2020), 446.

3. Fundamental Trade Union Rights, Social Partners, Collective Bargaining, and Industrial Relations

3.1 The Regulation of Fundamental Trade Union Rights in Spain

The Spanish Constitution recognises as Fundamental Rights the Right to Freedom of Association and the Right to Strike (Art. 28). These fundamental rights have also been recognised by the Constitutional Court for undocumented migrants, i.e. migrants who are in Spain in an irregular situation. Furthermore, Article 37 of the Constitution establishes the duty of the law to guarantee the right to collective bargaining between workers' and employers' representatives, as well as the binding force of agreements (a matter that has been regulated by the Workers' Statute Law).

The same rights are, of course, also recognised for workers in the care sector. However, their effective application depends to a large extent on issues such as the establishment of trade unions in the different occupations that make up the care sector, which may have repercussions on their ability to reach collective agreements with companies; on the presence of Spanish or European women or third-country migrants, the latter being more likely to be unaware of their basic rights; and, among non-EU immigrants, on whether or not they have residence papers.

In this respect, for example in the health care sector, e.g. in hospitals or nursing homes, trade union organisation is adequate, although the precariousness of labour relations is also visible.

As outlined in the document of the Trade Union "CCOO -Comisiones Obreras-: Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions (Propuesta de Comisiones Obreras (CCOO) por un Pacto Integral y Estatal de Cuidados Grupo de Trabajo confederal Secretaría de Mujeres, Igualdad y Condiciones de Trabajo)"[24] there was intense labour unrest among workers in care homes (for the elderly, people with disabilities, etc.) in 2022, mainly to demand wage increases and the improvement of other working conditions, such as favouring full-time over part-time contracting.

This has also been the case for workers assigned by companies to help people at home (home help sector), where there have also been different protests and intense labour unrest.

The document "(CCOO Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions)", adds that in the care sector in general, there has also been industrial action to demand the fulfilment of the wage improvements established in the applicable collective bargaining agreements. Finally, the 8th State Agreement for the Dependency Sector was signed, effective until 31 December 2025. The signing of this agreement, which affects more than 300,000 workers, brings

[24] CCOO, "Proposal of the Trade Union Comisiones Obreras (CCOO) for a Comprehensive and State-wide Care Pact" (Confederal Working Group - Secretariat for Women, Equality and Working Conditions) (CCOO, 2022), <https://www.ccoo.es/8788f3fd0193b984c5ab0ca9773d5930000001.pdf> (Accessed January 13, 2024).

significant wage improvements, now and in the coming years, as well as a significant improvement in work practices.

The situation is different in the domestic work sector, particularly for domestic work under the special labour regime for family household services. Notwithstanding the existence of associations defending the interests of women workers, the lack of social agents with representation to negotiate agreements, as well as the profile of women workers and employers themselves, means that collective bargaining does not take place.

3.2 The Social Partner Relations and the Labour Market Organisation of the Care Sector in Spain

It can be confirmed that social dialogue exists between representatives of the Spanish government and trade unions and the care sector, as well as with associations defending the interests of carers. No representatives of business or employers' associations are present in this dialogue process.

3.2.1 Trade Unions and Employers' Organisations Involved in the Care Sector

Firstly, it should be mentioned that the main representative or majority class organisations, i.e. those defending the interests of all workers in any sector, are Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT). Consequently, these organisations also represent the interests of workers in the care sector.

In addition to these unions, there are the sectoral and minority unions: SINTRAHOCU (Union of Domestic and Care Workers) and SINDICATO S.A.D (Union of professional municipal carers).

With regard to business associations, the CEOE (Spanish Confederation of Business Organisations) and CEPYME (Spanish Confederation of Small and Medium-Sized Enterprises) are particularly noteworthy.

Within the CEOE there is the Asociación de Empresas de Servicios para la Dependencia (AESTE) (Association of Companies for Dependency Services) and the Círculo Empresarial de Atención a las Personas (CEAPs) (Business Circle for the Care of People).

3.2.2 Rates of Union or Business Organisation Membership

In Spain, of interest is a study by the CCOO trade union entitled *Un futuro sombrío: estudio de la afiliación sindical en Europa desde 2000* ("A bleak future: study of trade union membership in Europe since 2000")[25], carried out in 2017, which confirmed that Spain is one of the countries with the lowest trade union density (i.e. the proportion of workers in a country who are members of a trade

[25] CCOO, "CCOO Proposal for a Comprehensive and Statewide Care Pact" (CCOO, 2022), <https://1mayo.ccoo.es/0e68135349e052f223712ced986a93e3000001.pdf> (Accessed March 13, 2024).

union), at around 15%, specifically 17% in Spain. International and comparative statistics and analysis of industrial relations in the ICTWSS database established by the OECD/IASA[26] should also be provided. According to these statistics, trade union density (% of employees) was 12.5% in 2019. A comparison of the two statistics may mean a decrease in union density ratios.

In any case, we should mention that the adjusted bargaining (or union) coverage rate (% of employees with the right to bargain) was 80.1% in 2018; and the density of employer organisations (% of wage earners) was 77% in 2018.

3.2.3 Main Characteristics, Tasks, Strategies and Challenges of These Trade Unions and Employers' Organisations

The CCOO document "Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions" states that the trade union must actively engage in the demand for the improvement of working conditions for the people who provide care, the improvement of the quantity and quality of employment and decent wages, as well as defend the quality of care services provided in all areas to ensure quality care and the right to daily wellbeing. The CCOO adds that in order to address care work to its full extent, it is essential to move towards a socially co-responsible organisation, which means that both men and women take responsibility in the public and private spheres, emphasising men's participation in the private or domestic and care spheres, and not only their co-responsibility, but also that of the State, the market and society in general. In other words, social co-responsibility. For this reason, the trade union advocates the creation of a "State and Comprehensive Care Pact".

According to the CCOO trade union, this State Pact should include the care sector in a broad sense (education, mainly for children from 0 to 2/3 years; long-term care (dependency, disability, chronically ill people, etc.), with a commitment to investment and public services as a guarantee of the right of citizens to receive professional care from the State when they need it, throughout their lives. On the other hand, it must also include an approach to the redistribution of non-professional care, a burden that continues to fall on women, so that the political and social sphere can provide a response based on the shared responsibility of all parties: State, society, citizens (men and women).

The main strategic lines set out by the trade union are:

1) To propose the adoption of this State and Comprehensive Care Pact.
2) The Pact would prioritise childcare (early childhood, vulnerable children and school recreational activities) and long-term care (disability, dependency, incapacitating old age, chronic illnesses, etc.).
3) The Pact would be based on building a public care sector that guarantees coverage and professionalism in the implementation of the different types

[26] OCDE, "The actors and scope of collective bargaining" (OCDE, n.d.), <https://www.oecd.org/employment/collective-bargaining-database-spain.pdf> (Accessed March 13, 2024).

of care within the framework in which they are provided (education, in its different forms, including early childhood education and special education, health and the social and health care sectors, home help, geriatric care, day care centres, social services, etc.).

4) The Pact would contain policies for co-responsible work-life balance and would develop co-responsibility: that of the family, promoting the involvement of men, and that of business and society.
5) The Pact should guarantee full labour rights, with decent conditions and wages, to the different care workers in the different care sectors.

3.2.4 Social Partner Relations in the Care Sector

In general, social partner relations in Spain are going through a phase of social agreements, which led to a major agreement on labour regulations in December 2021 that favoured the implementation of open-ended contracts in Spain. Collective agreements have been reached in the care sector, whenever workers' representatives are present in the companies or trade unions are active in the sector.

3.2.5 Are Carers and/or Employers in the Care Sector Represented by Other Social Actors, Including Ngos?

At the national level, the following associations are in talks with the government on issues affecting the care sector: SEDOAC: Association for the defence of domestic and care workers; Colectivo Territorio Doméstico (Porqué sin nosotros no se mueve el mundo); and finally, Plataforma Unitaria Auxiliares de Ayuda Domicilio (United Platform of Home Helpers). As an example of this dialogue with the government, the Ministry of Labour's website reports that the Ministry of Labour has held meetings with various carers' associations and trade unions to discuss the occupational health and safety protection of carers.[27]

3.3 The Practical Aspects and Regulation of Employee Representation and Employee Influence in Spain

Both the Workers' Statute Law and Organic Law 11/1985 of 2 August 1985 on Trade Union Freedom[28] establish the possibility of a dual channel for worker representation in companies or public administrations. On the one hand, the

[27] Spanish Ministry of Labor and Social Economy, "Díaz announces that the Government will extend the special system for domestic employees to households with minor children" (Spanish Ministry of Labor and Social Economy, May 17, 2023), <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Paginas/2023/170523-diaz-empleadas-hogar.aspx> (Accessed May 3, 2024).

[28] Organic Law 11/1985, of August 2, 1985, on Freedom of Association, BOE-A-1985-16660 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1985-16660> (Accessed May 3, 2024).

so-called unitary representation of workers, i.e. the election of representative bodies representing all workers in a company, irrespective of their trade union membership. This unitary representation can be staff representatives, in companies between 11 and 49 workers (in companies with 6 to 10 workers, a staff representative can be elected by a majority vote); and a Works Council, in companies with 50 or more workers. On the other hand, workers who are members of a trade union are also entitled to have their trade union representative body in the company. Thus, there can be a company "trade union section", which brings together all the workers affiliated to a particular trade union; and in companies with more than 250 workers, a trade union representative can also be elected.

This regime means that domestic workers (or household employees) can join trade unions to look after their interests, but they do not have unitary representation because the entities that employ them are specific households that hire one or several people (without reaching the threshold of six) for domestic work.

Only workers assigned to a household by a company, rather than being employed directly by the owner of the family home, can be represented by staff representatives or a committee, depending on the size of the company.

3.4 The Collective Bargaining System and the Regulation of Collective Bargaining and Social Dialogue in Spain

Article 37.1 of the Spanish Constitution affirms the right to collective bargaining between workers' and employers' representatives and the binding force of collective agreements that shall be guaranteed by law. This means incorporating into Spanish law Conventions Nos. 98 and 154 of the International Labour Organisation on collective bargaining and on the promotion of collective bargaining, acknowledging both the right to collective bargaining and the binding force of agreements, which must be guaranteed by ordinary law. This ordinary law is the current Workers' Statute Law, which regulates the requirements for workers' and employers' representatives to enter into a collective agreement. If such an agreement is reached in accordance with the requirements of the Law, the collective agreement shall have contractual and regulatory effectiveness. Normative effectiveness implies incorporating the collective agreement into the system of labour law sources subject to the principle of normative hierarchy, which simultaneously means that the conditions agreed in the agreement cannot be less favourable than those provided for in the law and that the individual contract cannot contain less favourable conditions than those provided for in the collective agreement. In parallel, normative effectiveness is expressed in general personal effectiveness or *erga omnes*, i.e. the agreement will be automatically applicable to all workers included in its territorial and functional scope, whether or not they are members, without the need for express incorporation into the individual employment contract. The interest of workers in negotiating a collective bargaining agreement in compliance with the requirements of the Workers' Statute Law is thus understood.

In general, in Spain, collective agreements of a sectoral nature, agreed by provinces or territorial departments, predominate.

According to the September 2023 Bulletin of the Spanish Government's National Consultative Commission on Collective Bargaining Agreements,[29] in Spain, more than 1,500 collective agreements are normally signed every year, covering between 3 and 4.6 million workers, which means that at the same time the total number of collective agreements in force has a high coverage rate of more than 80%. As regards the distribution of agreements and employees by operational area, it should be noted that there are a large number of company collective agreements, particularly in large companies. Thus, company-level agreements account for around 75–80%, both in terms of the agreements signed and the agreements in force each year, with the remaining 20–25% corresponding to agreements at a higher level than the company. Even though fewer collective agreements exist at the company level, these agreements affect a larger number of workers. Specifically, they cover more than 90% of the total, with the ratio of workers per supra-company agreement in 2022 standing at 11,117 workers, while the ratio of workers per company agreement stood at 236 workers. Each supra-company agreement covers around 1,100 companies (1,200 according to provisional data for 2022) with an average of 8–9 workers. In a country with a clear predominance of the service sector, most of the agreements and workers potentially affected by the agreements signed are in this sector. But the dynamics of the agreements reached depend, among other factors, on the frequency with which the agreements are renewed, traditionally on an annual or biennial basis in some activities, and also on whether they are drawn up by large companies, since these tend to sign their own agreements to a greater extent.

3.5 The Regulation on Whistleblowing in Spain

In Spain, Law 2/2023 of 20 February 2023, on the protection of persons who report regulatory breaches and the fight against corruption, has been in force since 2023[30] This regulation transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.[31]

[29] Bulletin of the National Advisory Committee on Collective Bargaining Agreements (2023), <https://www.mites.gob.es/ficheros/ministerio/sec_trabajo/ccncc/B_Actuaciones/Boletin/BOLETIN_especial_no_87_CCNCC-CRL_portugues.pdf> (Accessed February 10, 2024).

[30] Law 1/2023, of February 24, on Urgent Measures for the Protection of Labor, BOE-A-2023-4513 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2023-4513> (Accessed February 12, 2024).

[31] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, [2019] OJ L305/17, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1937> (Accessed February 12, 2024).

This law seeks to provide adequate protection against retaliation against individuals who report any of the actions or omissions to be discussed, through the procedures established by the law itself (e.g. internal company reporting systems).

In particular, under its information procedures, the law protects natural persons who report any acts or omissions that may constitute breaches of European Union law. The law also covers actions or omissions that may constitute a serious or very serious criminal or administrative offence ("all serious or very serious criminal or administrative offences involving financial loss to the Treasury and the Social Security"). In addition, the law establishes a specific procedure to protect workers who report breaches of labour law in the field of occupational safety and health.

This law applies to reporting persons working in the private or public sector who have obtained information on infringements in an employment or professional context, including: a) any person having the status of a public employee or employee; b) self-employed persons; c) shareholders, members and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members; d) any person working for or under the supervision and direction of contractors, subcontractors and suppliers.

The law regulates the internal information systems that companies must have, but establishes this obligation only for companies with more than 50 employees. Other companies may have such an internal system, but it is no longer an obligation. Likewise, all political parties, trade unions, business organisations, as well as the foundations that depend on them provided they manage public funds, regardless of the number of employees, are obliged to have an internal reporting system.

To conclude, it must be said that no administrative resolutions applying this regulation have been detected. It is worth mentioning a report by the social organisation Caritas, which denounces that the labour rights of domestic workers are "seriously unprotected".[32]

According to this report, more than 518,800 people are employed as domestic workers in our country, but last January only 378,805 were affiliated to the Social Security Scheme. According to the latest Labour Force Survey (EPA), around 30% have no contract. These low affiliation figures—together with the fact that this is a highly feminised sector (95% are women) and most are of foreign origin—means that they are in a situation of particular vulnerability. The report adds that a sense of helplessness is often felt by women, who are often unaware that they are being exploited and normalise the situation and think it is a necessary step in order to get a better job. Migrant women, outside their country of origin, assume that they have to "put up with" everything. Many are aware that they are being exploited, but do not report it for fear of losing their jobs, believing it is pointless, or because they do not feel they have the right to do so.

[32] Cáritas, "Cáritas denounces".

4. Employment Status, Flexible Forms of Employment, and Employment Protection

4.1 The Employment Status of Care Workers, the Extent to Which Care Workers are Employees or Self-Employed Workers, and the Regulation on Employee Status in Spain

In the case of family workers, the labour regime is applicable, i.e. an employment contract is formalised. There is the possibility, albeit a minority or exceptional one, that these workers may also work as self-employed workers. However, what should be emphasised is that this is an area of informal employment, both for Spanish and migrant women workers. It is not possible to ascertain specific data on informality as naturally by its very nature informal employment is not recorded, but it is presumed to be high if one compares the data for all persons affiliated to the Special Social Security System published in August 2022 (373,101 persons) with the figures published by the Labour Force Survey for the second quarter of 2022 for persons employed in households employing domestic staff, which give a figure of 545,700. Therefore, according to the differential parameters between the two areas, there could be 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with the Social Security system.

As a rule, professional carers who provide care to people who have been recognised as dependent are generally employed under a labour contract if they are contracted through care service providers to provide services in the home of the person to be cared for. In fact, within this regime of professional, or professionalised, carers, one could also include nursing assistants or auxiliary nursing care technicians, who are employed by care service providers to provide their services in the home. They can also be care workers who provide their services on a self-employed basis. Health professionals (doctors, nurses, midwives, physiotherapists, etc.) working in public institutions (nursing homes, hospitals), whether public or private, are employed under contract.

However, in the field of homes for the elderly, it is worth noting the study by Júlia Montserrat Codorníu: "El impacto de la pandemia en las residencias para personas mayores y las nuevas necesidades de personal en la etapa pos-COVID",[33] published in 2023:

- According to this author, the elderly residential care sector has grown considerably in recent years, with a consequent increase in the number of people employed in these facilities, with a high proportion of temporary and/or part-time employment. In fact, having a permanent contract is correlated with having a full-time contract: 79% of men and 82% of women. In contrast, the proportion of temporary full-time contracts drops to 70%. However, the study by J. Montserrat goes on to point out that temporary contracts were in the majority between 2015–2019. The indicator "average number of days

[33] Montserrat Codorníu, "The impact of the pandemic on nursing homes".

contracted per year" for certain types of temporary contracts, with values of around three months or even four months, suggests that the function of these contracts is not "one-off", but that they are signed by workers who complement the permanent staff, carrying out the functions of the latter.

  - As we have just read, the author points out that there would be a decrease in full-time temporary contracts, compared with the period 20152019. The reason for this is that there would possibly have been an increase in permanent contracts due to the adoption at the end of 2021 of Royal Decree-Law 32/2021, of 28 December, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market,[34] which was the result of an agreement with the main trade unions and business associations in Spain. This law amended Royal Legislative Decree 2/2015, which regulates the Workers' Statute. With the new regulations adopted, the indefinite-term contract becomes the reference modality of employment contracts: in fact, according to the reform carried out in art. 15.1 of the Workers' Statute Law, "Employment contracts are presumed to be concluded for an indefinite period of time". Therefore, it must be understood that according to the labour reform embodied in RDL 15/2021, the standard employment contract is the one concluded for an indefinite period of time. Article 15 of the LET no longer gives a legal option, as it did until now, for the employment contract to be either indefinite or fixed-term, subsequently establishing the cases in which the latter could be used; it now begins by including a general recognition that the employment contract is indefinite, and then goes on to say that "only" two types of fixed-term contracts can be entered into.[35] The restriction on the use of temporary contracts would therefore have had a positive impact on permanent employment, also in the care sector.

- Another feature, according to the study under discussion, is the high degree of feminisation: almost 90% (86.9%) of all workers are women. However, there is a growing presence of male workers: in 2019 they accounted for 13.1% of all workers, up from 11.7% in 2015.
- Moreover, according to J. Montserrat, this sector is made up of workers with a low level of education: more than half of them (55.5%) have completed primary education, with or without first-degree vocational training; the rest is distributed between 20.5% with secondary or post-compulsory education and 24% with higher education.
- J. Montserrat's study also detects the participation of self-employed workers in this sector: 1.44% of the contracted staff. In general, these are professionals

[34] Law 8/2021, of June 2, guaranteeing the right to digital disconnection, BOE-A-2021-21788 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2021-21788> (Accessed March 1, 2024).

[35] Ferran Camas Roda, "A labor reform to spread: 15 messages that should be applied in labor relations," *Ferran Camas Digital Diary*, January 20, 2022, <https://www.ferrancamas.com/blog-derecho-laboral-inmigracion/reforma-laboral/ia512> (Accessed March 1, 2024).

who carry out essential functions within the organisation of the care home, but who work less than a full day and/or only a few days a week (occupational therapists, physiotherapists and nursing staff, among others). Hiring a self-employed worker means savings for the company in terms of social security contributions, as the worker is responsible for this, and, if applicable, also in terms of severance pay. Moreover, a self-employed person does not have the same level of social protection as an employee, because in case of illness, the benefit for temporary incapacity (TI) is very low, and in case of an accident at work, the company is not liable for it. One of the most significant consequences of employing self-employed workers during the pandemic was the fact that if they had stopped providing services, either because they had contracted COVID or because of the restrictive isolation measures, they may no longer have received their fees.

Finally, and in conclusion, J. Montserrat considers that dignifying the working conditions of workers in residential services has become an urgent issue. Reducing the temporary nature and instability of contracts is a responsibility of the authorities, which, although provided for in labour agreements, has not been implemented in reality. Increasing the salary levels of frontline staff in recognition of their workload is a pending issue. The employment of low-skilled staff, low salaries and "short-term" contracts does not guarantee a quality service to users, as the companies and organisations providing the services are unable to "retain" their workers. The latter take every opportunity to move to other, better paid workplaces. As for the self-employed who carry out activities directly related to the care of people, their incorporation into the workforce would bring benefits not only for them, but probably also for the staff working in the care homes.

4.2 The Incidence of Fixed-Term Work, on Call-Work, and Zero Hours- Contracts in Spain

In general, the employment contract regime is the same for all workers regardless of their sector.

At this point, it should be said that the Spanish government adopted a regulation in 2021 that has considerably reduced the number of fixed-term contracts in favor of indefinite-term contracts. As we have seen in the previous section, Royal Decree-Law 32/2021, of 28 December, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market, amended the Workers' Statute Law in relation, among other matters, to employment contracts, with the consequence that there was an expansive redefinition of the open-ended contract.[36] The standard employment contract to which the company and the employee must adhere is the per-

[36] Maria Amparo Ballester, *The labor reform of 2021. Beyond the chronicle* (Gobierno de España, 2022).

manent contract, leaving temporary contracts for exceptional cases, as we will see below. In any case, the general rule of taking the permanent contract model as a reference is strengthened, since the new legislation stipulates that companies that do not comply with the exceptional regime of temporary contracts will have the consequence that the temporary workers hired will acquire the status of permanent or permanent.

In any case, certain temporary contracts and part-time contracts are still regulated: two types of temporary contracts are regulated, which must be justified by the special temporary production needs of companies: on the one hand, a fixed-term employment contract concluded due to production circumstances, when there is an "occasional and unforeseeable increase in production, or when there are fluctuations that generate a temporary mismatch between the stable employment available and that which is required, as well as fixed-term employment contracts" to deal with occasional, foreseeable situations of a reduced duration; on the other hand, fixed-term contracts can also be made to replace people in companies.

On the other hand, strictly speaking, zero-hour contracts are not regulated or covered by the law (i.e. the possibility for a worker to be available at all times to perform a specific job). It is quite another matter that, in the labour market, such situations can arise by taking advantage of legal loopholes in the legislation (In section 4.4 some legal initiatives being taken by the Spanish Government to prevent these situations will be discussed).

It must be said, in this sense, that in Spain, part-time contracts are regulated: according to the Workers' Statute Law, a contract is considered to be part-time when it has been agreed to provide services for a number of hours per day, per week, per month or per year that is less than the working hours of a comparable full-time worker. It is also regulated that this contract must necessarily be formalised in writing, and this contract must state "the number of ordinary working hours per day, per week, per month or per year" contracted, as well as the "method of their distribution" according to the provisions of the collective bargaining agreement.

In any case, the law allows for "supplementary hours" in the part-time contract, i.e. hours in addition to the ordinary hours agreed in the part-time contract. In any case, in order to carry out these additional hours, a written agreement must be made between the employer and the worker, in which the number of additional hours that the employer may be required to work must be stated. In any case, the worker must be informed of the day and time of the agreed additional hours with at least three days' notice, unless the agreement establishes a shorter period of notice. Moreover, a supplementary hours agreement may only be concluded in the case of part-time contracts with a working week of no less than ten hours per week on an annual basis.

In the field of homes for the elderly, it is worth noting the study by Júlia Montserrat Codorníu: "El impacto de la pandemia en las residencias para personas mayores y las nuevas necesidades de personal en la etapa pos-COVID" ("The impact of the pandemic on care homes for the elderly and new staffing needs in the post-COVID era"): according to this author, the elderly residential care

sector has grown considerably in recent years, with a consequent increase in the number of people employed in these facilities, with a high proportion of temporary and/or part-time employment. In fact, having a permanent contract is correlated with having a full-time contract: 79% of men and 82% of women. In contrast, the proportion of temporary full-time contracts drops to 70%.

However, the study by J. Montserrat goes on to point out that temporary contracts were in the majority between 2015–2019. The indicator "average number of days contracted per year" for certain types of temporary contracts, with values of around three months or even four months, suggests that the function of these contracts is not "one-off", but that they are signed by workers who complement the permanent staff, carrying out the functions of the latter.

4.3 The of Temporary Agency Work in Care Work in Spain

Temporary Employment Agencies (ETT in Spanish) have the status of a company for labour purposes, i.e. they can legally hire workers in order to transfer them to a third company (called user company). In fact, a temporary employment agency is a company whose main activity consists of providing another user company with workers hired by the ETTs, on a temporary basis. ETTs are therefore the employer of the workers they have hired, both those who provide their services at the ETTs own headquarters and those who are assigned (or posted) to another user company by formalising a commercial contract to provide the services with the user company.

The main regulation of Temporary Employment Agencies is found in Law 14/1994 of 1 June 1994, which regulates temporary employment agencies.[37] This law defines temporary employment agencies as those whose main activity consists of making workers hired by them available to another user company on a temporary basis. In fact, the law establishes that the hiring of workers for temporary assignment to another company may only be carried out through duly authorised temporary employment agencies. In this sense, temporary employment agencies need administrative authorisation to be able to carry out their functions, which means that they must demonstrate that they meet certain financial, human resources, infrastructure and social security requirements. It should also be noted that as workers' rights, Law 14/1994 establishes that workers hired to be transferred to user companies shall be entitled, during the periods of service provision in these companies, to the application of the essential working and employment conditions that would correspond to them if they had been hired directly by the user company to occupy the same post.

The current standard would comply with Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary

[37] Law 31/1994, of July 14, 1994, for the protection of self-employed workers, BOE-A-1994-12554 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554> (Accessed February 15, 2024).

agency work. A current debate in Spain regarding the application of this Directive to Spanish law stems from the fact that, according to the doctrine of the Court of Justice of the European Union, the application of the Directive is not conditional on the transferor company being a temporary employment agency. This doctrine is at the heart of a question referred for a preliminary ruling by the High Court of Justice of Madrid (order of 7 June 2023, rec. 1225/2022) which, in essence, raises the possible application of the Temporary Agency Workers Directive to contractor companies. Basically, it is about a worker who was hired by a contractor company that had an agreement with the main company. The main company did not extend the relationship with the contracting company and the contracting company dismissed the worker. The worker claims that she should be given equal rights with the workers of the main company by reference to Directive 2008/104/EC. The Spanish court asks the European Court of Justice whether Directive 2008/104/EC is applicable to an undertaking which makes a worker available to another undertaking, even if it does so without being recognised under domestic law as a temporary employment agency by means of an administrative authorisation. It also asks the European Court of Justice whether it is accepted that that directive is applicable to such situations, the Madrid Court considers that it must be determined whether the applicant worker is being made available by the contracting undertaking to the main undertaking, so that the worker must be regarded as a "temporary agency worker" under Article 3(1)(c) of Directive 2008/104/EC. 3(1)(c) of Directive 2008/104/EC, the contracting employer as a "temporary agency worker" under Article 3(1)(b) and, finally, the main undertaking as a "user undertaking" under Article 3(1)(d) of Directive 2008/104/EC.[38]

Traditionally, they have been important in the field of temporary recruitment, managing 25% of all temporary recruitment in the last decade. However, in 2021, the Spanish government carried out a labour law reform that restricted the use of temporary contracts and promoted permanent contracts. According to reports prepared by the ETTs, as a result of the reform, the number of temporary work agencies in Spain has decreased (from 364 in 2008 to 240 in May 2023). Similarly, the number of contracts between ETTs and user companies fell from 284,000 in 2020, before the Spanish Government's 2021 labour reform, to 278,224 in 2023, and the number of workers assigned to other companies, from 191,920 in 2022 to 167,165 in May 2023.

It is also worth mentioning that, due to a legal reform in 2021, in which the Government favoured the implementation of permanent contracts, Temporary Employment Agencies (ETTs) in Spain are still in the process of finding out how this will affect them, although everything seems to indicate either the disap-

[38] Ignasi Beltrán, "On the application of the ETT Directive to contractor companies: preliminary ruling question formulated by the TSJ of Madrid (Auto 6/6/23)," *A critical look at labor relations*, June 26, 2023, <https://ignasibeltran.com/2023/06/26/sobre-la-aplicacion-de-la-directiva-de-ett-a-empresas-contratistas-cuestion-prejudicial-formulada-por-el-tsj-de-madrid-auto-6-6-23/> (Accessed February 15, 2024).

pearance of ETTs or their unification. The number of workers they hire is also decreasing, although a Nursing Sector Journal reported that in 2017, i.e. before the reform, there was an increase in the use of ETTs by private health entities (mutual societies, nursing homes, day centres, private hospitals, etc.) to recruit nurses and auxiliary nurses.[39]

4.4 The Incidence of Part-Time Work in Care Work in Spain

As we have seen above, the regulation of part-time contracts is laid down in the Workers' Statute Law, in particular in Art. 12. Its regulation complies with Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by Unice, CEEP and Ces. However, the Council of Ministers of the Spanish Government[40] has approved the "draft law" transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. This draft bill introduces new obligations in the legislation, such as mandatory written information to be provided regardless of the duration of the employment contract, as well as written information on the duration of the contract, the duration of the "working day and its distribution", and the length of the probationary period. In fact, it is interesting to note that in the draft bill, companies will have to record the working hours of part-time workers: they will record their working hours day by day, including the specific starting and finishing times. Also in the case of agreed supplementary hours, the number of hours, the days and the reference hours on which the worker's services may be requested must be stated in the agreement. Finally, it should be mentioned that a minimum notice period of three days is established for the performance of these hours, a period that may not be reduced by agreement. In the event of total or partial cancellation of these hours without respecting this period of notice, the worker shall be entitled to the corresponding remuneration. In fact, during the Council of Ministers' appearance to announce this draft bill, the Minister of Labour, Yolanda Díaz, said that with this regulation, they want to prohibit the use of on-call or zero-hour contracts in Spain.[41]

[39] Enfermería21, "Growth in the number of nursing staff hired through ETT," <https://www.enfermeria21.com/diario-dicen/crece-el-numero-de-personal-enfermero-contratado-mediante-ett-DDIMPORT-> (Accessed April 24, 2024).

[40] Council of Ministers of the Government of Spain, Preliminary Draft Bill amending the consolidated text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, and other provisions on labour matters, for the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council, 20 June 2019 (06-02-2024), <https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2024/recf20240206.aspx#laboral> (Accessed October 18, 2023).

[41] *Newspaper*, "Diaz bans 'on-call contracts' for part-time workers" (February 06, 2024), <https://www.lainformacion.com/economia-negocios-y-finanzas/diaz-prohibe-contratos-llamada-trabajadores-tiempo-parcial/2898511/> (Accessed February 8, 2024).

According to data from the National Statistics Institute (INE)[42] in 2023 (data up to 2022), the share of part-time (male) workers fell from 7.3% in 2017 to 6.6% in 2022, and from 24.2% in 2017 to 21.6% in 2022 for women in total female employment (this figure in 2022 was higher in the EU-27, standing at 29.2%).

By age group, among men, the highest percentages of part-time workers were found among 16-19-year-olds. They were significantly higher among women at all ages, standing at 22.5% (compared to 12.7% for men) in women aged 25–29 in 2022, and decreasing from the age of 30 to 64.

In the period 2017–2022, the share of female temporary employees decreased by 3.9 percentage points, representing 23.6% of women with a temporary contract out of all employees in 2022 (14.9% in the EU-27), while the share of men decreased by 7.1 percentage points.

The share of female employees with temporary contracts in the EU-27 was lower than in Spain, accounting for 14.9% of all employees (men and women) in 2022, while in Spain it was 23.7%.

On the other hand, and as mentioned above, taking as a reference the study by Júlia Montserrat Codorníu in her article: "The impact of the pandemic on cares homes for the elderly and the new staffing needs in the post-COVID era",[43] there is a high proportion of temporary and/or part-time jobs in the sector of residential homes for the elderly.

4.5 The Main Elements of the Regulation of Employment Protection in Spain

Under Spanish law, dismissal of the employee is a ground for termination of the employment contract. In general terms, dismissal is understood as the employer's decision to terminate the employment relationship, which will be valid provided that, as an unavoidable requirement, it is justified on one of the grounds set out in the Workers' Statute Law for dismissal. Basically, for breach of contract by the worker (disciplinary dismissal); for reasons corresponding to the worker's capacity or in specific business cases (dismissal for objective reasons); or finally, as a sub-type of the latter, dismissal for economic, technological, organisational or production reasons of the company affecting a significant number of workers (collective dismissal).

In the case of disciplinary dismissals or also in the case of dismissals for objective reasons, if the worker appeals the company's decision before the Courts of Justice and the dismissal is ruled unfair, within five days of notification of the ruling, the employer, may choose between reinstating the worker or paying compensation equivalent to thirty-three days' salary per year of service, with periods of less than one year being prorated by month, up to a maximum of

[42] National Institute of Statistics (INE), <https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925461713&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout&param3=1259926137287> (Accessed September 2, 2023).

[43] Montserrat Codorníu, "The impact of the pandemic on nursing homes".

twenty-four monthly payments. This compensation is considered to be low for the employer, which according to trade union officials implies a high degree of "exit" flexibility for the employer, i.e. it is "cheap" for the employer to dismiss a worker even if the grounds for dismissal are insufficient.

After dismissal, if the worker registers with the public employment services as a jobseeker, he/she can obtain an unemployment benefit depending on the period previously worked (this benefit is for a minimum of one year and a maximum of two years). In addition, they may receive a range of support measures from the public employment services to help them return to work, although it is generally acknowledged in Spain that the effectiveness of the public employment services in such placements is low, possibly also because their main target group is vulnerable or low-skilled people. Many unemployed workers seek other means to return to work.

To address this issue, an employment law was passed in 2023. This new employment legislation aims to ensure that public or private employment services enhance the role of "labour intermediation", i.e. the matching of job offers from companies with jobseekers, for placement or outplacement. In fact, specialised placement will be considered as a new activity under the law. This placement is defined as the activity aimed at the outplacement of workers or unemployed persons affected by business restructuring processes, when this has been established or agreed with the workers or their representatives in the corresponding social plans or outplacement programmes, or decided by the public employment services, *ex officio*, or at the request of the persons affected by industrial transition or transformations in the production sectors.

Special attention should be paid to the 2022 reform of the family household service (or domestic work), which has eliminated the possibility for the employer (i.e. the owner of the family household who has hired the carer) to dismiss the carer without cause or based solely on his or her unilateral decision. This had been the case in this type of work until that year.

Since this reform, the sole will of the employer after payment of severance pay is no longer active as a cause for termination. Termination is now generally governed by the principle of causality, and therefore, it can only be carried out if a cause is alleged and justified, either one of those provided for in the Workers' Statute Law, or one of those specific to the family household regime now provided for in Royal Decree 1620/2011, which are as follows: a) a decrease in the income of the family unit or an increase in its expenses due to a sudden change in circumstances; b) a substantial change in the needs of the family unit that justifies the household worker being made redundant; and c) the worker's behaviour that reasonably and proportionately justifies the employer's loss of confidence in him or her.

However, the negative aspect is that in the field of domestic work the compensation in case of dismissal of the worker is an amount equivalent to the salary corresponding to twelve days per year of service with a limit of 6 monthly payments (lower than the amount provided for in the Workers' Statute Law). In fact, it is lower than the compensation resulting from dismissals classified as unfair, i.e. in

cases of objective or disciplinary dismissal of workers where the latter claim against the termination and the dismissal is classified as unfair by the courts.

Another issue that is worth noting in this case in the family household sector is that in 2022 domestic workers were recognised as being eligible for unemployment benefits at the end of their employment relationship. This decision had to be taken in accordance with the Judgment of the Court of Justice of the European Union of 24 February 2022 (case 389/2022), which declared that excluding domestic staff from entitlement to these social security benefits entailed indirect discrimination on grounds of sex, since women, as the majority group of domestic staff, were the ones who were truly disadvantaged without there being objective factors, independent of any kind of discrimination on grounds of sex, to justify it.

5. Wages and Benefits

5.1 The Regulation of Wages and Other Benefits, Including Over-Time Pay, Inconvenience Pay, Bonuses etc. in Spain

As stated in Art. 26 of the Workers' Statute Law, all economic payments made to workers, in cash or in kind, for the rendering of labour services as an employee, whether they are paid for actual work, whatever the form of remuneration, or for rest periods that can be counted as work (i.e. wages also cover workers' breaks or justified absences), are considered to be wages. Wages, therefore, include so-called cash pay (in money or legal tender), as well as pay in kind, i.e. that consisting of goods other than money. However, pay in kind cannot exceed 30% of the total salary received by a worker.

On this legal basis, with regard to wage levels among care workers, the study of the Comisiones Obreras trade union of 2023: "Cuidados sin brecha. Por hacer más ganamos menos" ("Care without a pay gap. For doing more we earn less").[44] This study shows that low-wage sectors have a greater weight in female than male employment. In fact, data for 2022 show that women are still more prevalent in lower-wage sectors. The seven sectors cited here with average wages well below the national average employ 41% of female employees compared to 32% of male employees. Thus, assuming that the average wage in primary employment was 2,087 euros gross per month in 2021, the seven sectors with average monthly wages well below the average are: domestic employment (858 euros); hotels and restaurants (1,226 euros); agriculture, livestock and fishing (1,353 euros); other services (personal care, associations, repair of goods) with 1,450 euros; administrative and support services (1,471 euros); artistic and recreational activities (1,655 euros); and commerce (1,670 euros).

[44] CCOO, "Proposal for a Comprehensive and Statewide Care Pact - Confederated Working Group - Secretariat for Women, Equality and Working Conditions (CCOO, n.d.), <https://www.ccoo.es/663143d70d103e43733f2fedd6472ba2000001.pdf> (Accessed September 13, 2023).

Moreover, according to the study by Júlia Montserrat Codorníu: "The impact of the pandemic on homes for the elderly and the new staffing needs in the post-COVID era", mentioned above, the following variables can be observed:

- The estimated average annual wage of workers in residential services for the elderly, at 18,136 euros, was 20% lower in 2019 than the average for the services sector in Spain (22,723 euros), and when compared with the average annual wage for the economy as a whole in Spain, the difference was 26%, highlighting the precariousness of wages for workers in this sector. This may be one of the reasons for the difficulty in attracting workers to this sector; those with social and health care qualifications prefer to work in hospitals or health centres, where working conditions are better.
- According to the estimated results, the net salary of professionals in the lowest categories does not exceed 1,000 euros per month. The gender pay gap is 6.6%, concentrated mainly in the "middle and high" category groups, since there is hardly any difference at the lower end of the scale. The data do not support the argument that wages in homes for the elderly are low because the majority of workers are women. On the contrary, the results show that wages are low because the 10 "frontline" staff—three quarters of the total—are in low Social Security occupational categories, with salaries close to the minimum wage (SMI in Spanish).

5.2 The Incidence and Regulation on Minimum Wages in Spain

It should be noted that Article 27 of the Workers' Statute Law establishes the basic right of all full-time workers to obtain the minimum interprofessional wage. This minimum wage is set by the government each year through a specific regulation after consultation with the most important trade union organisations and employers' associations. This minimum wage can, of course, be increased by collective agreements or individual contracts between employers and employees. Spain has not yet transposed Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union. It should be recalled, in any case, that this Directive obliges Member States to transpose it, i.e. to adopt the necessary measures' to comply with it, by 15 November 2024 at the latest). The legal design in Spain of the minimum wage is reasonably adapted to the framework regulated by the Directive, although initial studies show that some adjustments will be necessary, for example, in the criteria for setting the Spanish minimum wage in accordance with art. 27 of the Workers' Statute Law: In addition, actions to promote collective bargaining and to increase its coverage rate should be implemented, as well as changes in the management of official data and statistics on wage issues and collective agreements.[45]

[45] A. Alvarez Alonso, "The Directive 2022/2041 on adequate minimum wages in the European Union," Brief by Asociación Española de Derecho del Trabajo y de la Seguridad Social (2022), <https://www.aedtss.com/la-directiva-2022-2041-sobre-salarios-minimos-adecuados-en-la-union-europea/> (Accessed March 8, 2024).

For the year 2023, Royal Decree 99/2023, of 14 February, established the minimum interprofessional wage in 1.080 euros per month.[46] Whereas the minimum wage for workers for 2024 is 1.134 euros per month according to Royal Decree 145/2024 of 6 February, which sets the minimum interprofessional wage for 2024.

This law stipulates that the minimum wage for all activities in agriculture, industry and services, regardless of the sex and age of the workers, is fixed at 36 euros/day or 1,080 euros/month, depending on whether the wages of the workers are fixed on a daily or monthly basis.

However, Royal Decree 145/2024 states that, under Royal Decree 1620/2011, of 14 November regulating the special employment relationship for family household services, the minimum wage for domestic workers who work externally on an hourly basis, shall be 8.87 euros per hour actually worked. Under this precept, the minimum daily or hourly wage amounts are calculated solely on the basis of payment in cash, whereas payment in kind may not, under any circumstances, lead to a reduction in the full amount payable in money.

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

6.1 The Regulation of Working Time in Spain

The Workers' Statute Law regulates the working hours of employees. Under this law, working time is understood to be the period of time or number of hours in which the worker performs his or her services. The working day regime is further developed in Article 40.2 of the Spanish Constitution, which assigns public authorities the duty to promote policies that ensure the necessary rest, by limiting the working day or by providing for regular paid holidays. This mandate is fulfilled by Articles 34 et seq. of the Workers' Statute Law which, starting from the premise that the duration of the working day must be that agreed in collective agreements or employment contracts, establishes a series of minimum rules to be respected by the latter. Firstly, that the maximum duration of the ordinary working week shall be 40 hours of actual work per week on average over the year; secondly, that, in general, the number of ordinary hours of actual work may not exceed nine per day. The law has made the application of this system flexible by allowing the company to modify it, either by extending or reducing the working day. Thus, the employer may establish the irregular distribution of the working day by 10% over the course of the year, respecting in all cases the workers' minimum daily and weekly rest periods; namely, that between the end of one working day and the beginning of the next there must be at least twelve hours, and ensuring the one

[46] Law 2/2023, of May 4, on urgent measures for the employment and social protection of self-employed workers and the fight against the irregular economy, BOE-A-2023-3982 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2023-3982> (Accessed April 8, 2024.

and a half days of weekly rest to which the worker is entitled. Hours in excess of the ordinary working hours described above (40 hours per week of actual work on average per year) are considered overtime. The basic regime for these additional hours is found in Article 35 of the Workers' Statute Law, which establishes the need for them to be voluntary for the worker, and for them to be carried out within various limits. First, that they must not exceed 80 hours in a year, although the hours worked by the worker to prevent or repair accidents or exceptional damages in the company will not be factored into this calculation, nor will any overtime hours carried out by the worker compensated in the form of rest breaks within 4 months of their being carried out. However, the revised 2015 Workers' Statute prohibits overtime and night work for minors under the age of eighteen.

This legal regulation is being called into question by the Spanish government, particularly in the area of working hours, where there is evidence of an overrun of the working hours established in the employment contract, i.e. a failure to comply with the hours at which workers leave their jobs. The Spanish government is emphasising the need for a new working time regulation. According to the Minister of Labour, Ms. Yolanda Díaz, "We need a new working time regulation that firmly establishes the insurmountable limits: health, equality and decent work". The aim is to promote the idea that future regulation should guarantee the right to a more balanced use of time, reducing the working time malaise experienced by a large number of workers, improving quality of life and reducing what is known as time poverty (not having time for oneself). See the note from the Ministry of Labour.[47]

In fact, a number of laws focus on respecting the rest periods of workers specifically in the domestic sector. Thus, in the Autonomous Community of Catalonia, Law 18/2003 of 4 July 2003 on Support for Families was adopted,[48] which provides for public administrations in Catalonia to promote measures to support families with dependent persons, making it possible for carers to rest. In the same vein, Law 2/2013, of 15 May, on Equal Opportunities for Persons with Disabilities in the Community of Castile and León.[49]

[47] La Moncloa, Press Release, "The Government approves the preliminary draft bill to regulate the mandatory recording of working hours" (June 16, 2023), <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Paginas/2023/160623-regulacion-horario-laboral.aspx> (Accessed June 17, 2023).

[48] Royal Legislative Decree 1/2003, of October 24, 2003, approving the revised text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, BOE-A-2003-15896-consolidated (Spain), <https://www.boe.es/buscar/pdf/2003/BOE-A-2003-15896-consolidado.pdf> (Accessed July 3, 2023).

[49] Royal Legislative Decree 1/2013, of November 29, 2013, approving the revised text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, BOE-A-2013-5998-consolidated (Spain), <https://www.boe.es/buscar/pdf/2013/BOE-A-2013-5998-consolidado.pdf> (Accessed October 10, 2023).

6.2 The Regulation of Health and Safety in Spain

In Spain, the Spanish Constitution regulates that the public authorities shall ensure health and safety at work and guarantee the necessary rest by limiting the working day, while the Law on Occupational Risk Prevention of 1995[50] recognises the right of workers to effective health and safety protection at work. Under this general law, workers have the right to be directly informed of the risks to their health and safety and of the preventive measures adopted, including those foreseen to deal with emergency situations; to receive sufficient and appropriate theoretical and practical training at the time of recruitment and when the content of the task entrusted to them changes or when new technologies or changes in work equipment are introduced; to interrupt their activity and, if necessary, leave the workplace when they consider that such activity involves a serious and imminent risk to their life or health; to be guaranteed regular monitoring of their state of health, depending on the risks inherent in their job; to have access to specific protective measures when, due to their personal characteristics or known biological condition or physical, mental or psychological incapacity, they are unable to perform their work; to be guaranteed regular monitoring of their state of health, depending on the risks inherent in their job; to have access to specific protective measures when, because of their personal characteristics or known biological condition or physical, mental or sensory incapacity, they are particularly sensitive to certain risks arising from work; and to be consulted and participate in all matters affecting health and safety at work. Workers have the right to make proposals to the employer and to the participation and representation bodies (Prevention Delegates, Health and Safety Committee), through which their right to participate is exercised.

The employer must guarantee the exercise of all these rights as well as comply with the duties imposed by the law on the prevention of occupational hazards, mainly the adoption of any measures necessary for the protection of the worker, measures whose effectiveness must also include any distractions or inadvertent imprudence that may be committed by the worker. The Prevention Law establishes a series of duties that the employer must fulfil (assessing risks, informing the worker of the risks, training the worker on how to avoid occupational risks, monitoring their health, etc.). In all cases, the obligations to assess existing risks in companies and workplaces, the planning of prevention, the requirement to integrate prevention in all business decisions and the adoption of a preventive organisation are key.

This Law is universally applicable, with the exception of certain types of work in the field of policing, civil protection and forensic expertise in cases of serious risk, disasters and public emergencies. Domestic work carried out by staff

[50] Law 26/1995, of January 24, 1995, of partial modification of the legal regime of the Public Administrations and of the common administrative procedure, BOE-A-1995-24292 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-1995-24292> (Accessed April 24, 2024).

employed by a family homeowner (known in Spain as "family household services") was, incidentally, also excluded from the occupational risk prevention regulations until 2023. Finally, in 2023, legislation has been adopted whereby the owner of the family home is obliged to ensure that the work of the domestic employee is carried out under proper health and safety conditions, for which he/she must follow the guidelines imposed by the 1995 Prevention of Occupational Risks Act on all business activities (for example, imposing duties on the employer such as assessing the risks at work, informing the worker, training him/her, monitoring his/her health, etc.). However, the regulations on the prevention of occupational risks will be implemented in the manner determined by a government order. The 2023 reform regulates that domestic workers have the right to effective protection in terms of health and safety at work, especially in the area of prevention of violence against women, taking the specific characteristics of domestic work into account, under the terms and with the guarantees that are provided for in the regulations in order to ensure their health and safety. In other words, it is necessary to wait for the government to adopt a regulation to extend the protection of occupational health and safety regulations to family household services.

It should not be forgotten that violence, especially sexual violence, is a widespread occurrence in the domestic sphere. The aim of Spanish legislation is to combat violence in terms of its effects on a person's health, above all by preventing the risk involved, but also by applying the measures contained in the ILO Convention on Violence and Harassment, No. 190 of 2019, which has been ratified by Spain. Moreover, the law should specifically consider situations of sexual harassment or violence when it comes to immigrant or foreign female employees, who are the main victims of this scourge.

According to a study carried out for Girona City Council by Profs. Pilar Albertín, Pakita Victòria and Mar Sibila "Women in care and domestic work. Inequalities and violence"),[51] in relation to situations of violence suffered by women carers, a series of variables must be considered:

1) On many occasions, women carers are victims of cross-cutting or intersectional violence, i.e. violence experienced in the workplace, racist or sexist violence in the social and family spheres, as well as, in the case of foreigners, situations of violence they may have suffered in the migratory process together with the violence they experience on arrival in the host country.
2) In cases where the caregivers are women, the care recipients, or even their spouses or families, may harass them, or turn their violence against them, e.g. situations of domestic abuse due to gender-based violence. In some cases, care companies have an alarm activated in case the man being cared for approaches or acts violently towards the woman worker.

[51] P. Albertín, P. Victòria, and M. Sibila, "Women doing care and household work. Inequalities and violence," <https://web.girona.cat/enscuidem/estudi> (Accessed April 13, 2024).

3) Cases of care workers acting violently towards elderly people in nursing homes have also been detected.
4) However, verbal violence, insults, the use of violent language and physical violence are also common forms of violence experienced by women workers in the sector, as observed in their experiences with the people they care for or their family members.

6.3 The Short-Term, Long-Term, and Post-Pandemic Implications of the COVID-19 Pandemic for the Working Situation, Job Quality, and Working Conditions of Care Workers in Spain

The discussion in the group on this issue revolved around whether or not the pandemic has led to a greater appreciation of the work provided by carers and whether or not this has translated into the legislative, administrative or employment sphere.

The starting point is the report presented by the Economic and Social Council of Spain: *Women, work and care: proposals and prospects for the future* of 2022:[52] we support the claim made in the report that the pandemic has increased "familiarisation" with care, historically present in societies such as Spain's, due to the difficulty of accessing care services that were already insufficient to meet the growing demand. The report further noted that this has exposed carers (mostly women) to work overload and physical and mental fatigue, in turn limiting their possibilities to participate in the labour market.

On the one hand, we have considered that, as the baseline document states, the COVID-19 pandemic highlighted the so-called "care paradox". While carers are essential to the collective well-being of our societies, their work is undervalued and precarious. The Report further noted that the pandemic brought the narrative of "essential" care work into the public debate, but that this recognition was not accompanied by improved working conditions, better pay or greater stability.

In this sense, we do believe that the social perception resulting from the COVID-19 pandemic and the post-pandemic evolution has led to an appreciation of the value of care. We can see how this increased recognition has placed the problems affecting this sector (jobs in the care sector, services, etc.) at the centre of the political agenda (as expressed by Carolina Vidal in her article: "CCOO por un Pacto Integral y Estatal de Cuidados: ahora es el momento" ("CCOO for a Comprehensive and Statewide Care Pact: Now is the Time")[53]. This author argues that now is also the time to address the issue of care because of the demographic crisis resulting from the increasingly ageing population, especially the

[52] Economic and Social Council of Spain, *Women, work and care: proposals and prospects for the future*. Report no. 1, 2022, <https://www.ces.es/documents/10180/5282746/Inf0122.pdf> (Accessed June 9, 2023).

[53] Carolina Vidal, "CCOO for a Comprehensive and Statewide Care Pact: Now is the Time," *Gaceta Sindical* 40 (2023): 291 ff.

Baby Boomer generation, which is expected to increase the need for care of the disabled elderly population, in many cases becoming a chronic problem that can be anticipated, considering the impact of ageing in rural areas and the lack of territorial balance in terms of service accessibility.

6.4 The Regulation of Training and Competence Development in Spain

Vocational training in Spain has historically been divided between the educational system on the one hand, which led to the student obtaining a technical qualification in a given profession, and on the other hand, the training provided by public labour authorities or companies, under which the worker could obtain a professional certification in order to carry out a job. In 2023, Spain underwent a major reform of the vocational training system. One of its main objectives has been to unify the dual system in force until now into a single training system, and the other objective has been to promote dual training, generally understood as training of a person in coordination between an educational institution and a company.

The legal starting point for this training is Organic Law 3/2022 of 31 March on the organisation and integration of vocational training.[54] In an entirely innovative manner, the Law modifies the vocational training programmes that can be undertaken by any person, blurring the current system between the training provided in the education system and that provided in the workplace, to create a system of sequential and ascending training programmes (structured in five Grades A, B, C, D and E), which in each case give rise to different types of accreditations or professional qualifications. This means that a student or a worker can follow training in educational centres and in companies, or courses run by labour authorities, and obtain each type of qualification. What is important to keep in mind, however, is that the completion of all these training programmes entails a period of in-company training. In fact, the regulations now require that this period of in-company training is compulsory when training at Grade C (which leads to the award of a Professional Certificate) and D (the completion of which, through vocational training cycles, leads to the qualifications of Basic Technician, Technician and Higher Technician).

In order to carry out this training period in the company, Organic Law 3/2022 provides for collaboration between the company and the educational centre under one of the following two options: either the student's training period must be of a general nature, in which case there is no employment relationship between the student and the company, or the training period must be intensive, in which case an employment contract must be concluded with the student in training. The choice of one or the other regime will lead to less (general regime) or more (intensive regime) company involvement in the

[54] Law 7/2022, of April 28, on gender equality in the workplace, BOE-A-2022-5139 (Spain), <https://www.boe.es/buscar/act.php?id=BOE-A-2022-5139> (Accessed November 18, 2024).

length of the training period or the participation of the company in the learning outcomes of the trainee.

In addition to the above, the new legislation also regulates other issues of interest involving companies. First, the training modality which consists of the company carrying out a specific training programme aimed directly at meeting the training needs of the company and its employees, with priority for those who have left the education system and do not have a professional qualification. Secondly, the promotion of dual vocational training by means of an alternating training contract with a worker, as regulated in article 11.2 of the Workers' Statute Law. The purpose of the alternating training contract carried out by the companies is to enable the persons hired to combine the work activity in which they are hired with training courses in the field of vocational training, university studies or from the Catalogue of training specialities of the National Employment System. In my opinion, the main objective of these regulations is to try to ensure that companies give priority to alternating training work contracts to those students from the education system who undertake training periods in the company under a scholarship scheme. I believe that this is the only way to increase the number of work-linked training contracts, which is still marginal at present.

This regime is applicable to all production sectors. However, the issue of training in the care sector is becoming increasingly important:

1) On the one hand, mention should be made of the *Basic Document for Care*, published by the Institute for Women in April 2023, which contains various proposals for different occupations in the care sector in relation to training.
    a. Generally speaking, as far as care and health care workers (nursing homes, mental health care centres, etc.), social and health care assistants, personal assistants or domestic workers are concerned, the Document calls for professional skills to be recognised through professional certificates.
2) In addition, the Document notes that each of the professional categories should have a specific training plan with the aim of improving the conditions of workers and their users. Training, in addition to providing good care, should focus on specific technical issues that support and facilitate carrying out care tasks, which are by definition physically and psychologically extremely demanding. Some of the occupational illnesses that occur in the sector could probably be minimised with training schemes that inform about the limits of one's own body and appropriate techniques for different care requirements. Beyond this type of specific training, the Document underlines the usefulness of comprehensive training on care in order to understand its social relevance and dynamics in a holistic manner and beyond the specific characteristics of each activity. This issue is related to considering care as the backbone of social functioning.

The following proposals are also made with regard to care workers working in the long-term care system:

a) Ensure that long-term care workers are able to receive high quality initial and continuing training, with access to continuing professional development programmes throughout their working lives.
b) Provide workers with training and psychological support to cope with end-of-life care and challenging behaviour management situations.
c) Develop training, collaboration and exchange initiatives between academia and long-term care professionals.

7. Social Security Coverage and Benefits

7.1 The Regulation of Social Security in Spain

Article 41 of the Spanish Constitution requires the government authorities to maintain a "public" social security system for all citizens, guaranteeing sufficient social assistance and benefits in situations of need, especially in the event of unemployment. Moreover, assistance and supplementary benefits shall be freely available.

Under this provision, coverage by the Spanish social security system is based on a comprehensive and universalised protection module comprising health and pharmaceutical care, family protection, social services and, in certain cases, unemployment benefit. This protection is available to all citizens, under the same conditions, regardless of whether or not they have contributed to the social security system. On the one hand, the system is complemented by a contributory economic benefit scheme: i.e. the social security system provides income to replace the wages received while working (that is, if the worker in need has previously worked and contributed to the social security system); and on the other hand, by a non-contributory economic benefit scheme, aimed at providing income to offset the basic needs of those citizens who are in a situation of need but unable to make contributions to the system.

In relation to "contribution-based" economic benefits, the benefits included as part of social protection are those linked to situations of temporary incapacity (i.e. common or occupational illness that makes it temporarily impossible to work); birth and care of a child; risk during pregnancy; risk during breastfeeding; shared responsibility for infant care; care of children affected by cancer or another serious illness; contribution-based permanent incapacity and non-contributory disability; retirement, in its contributary and non-contributory modalities; unemployment, at both contributory and non-contributory levels; protection due to cessation of activity; widow's/widower's pension; temporary widow's/widower's pension; orphan's pension; orphan's benefit; pension for family members; allowance for family members; funeral allowance; compensation in the event of death due to an accident at work or occupational disease, minimum income for living, as well as benefits granted for special contingencies and situations determined by regulation by royal decree, at the proposal of the head of the competent Ministry, and, when necessary, Social Security family benefits.

"Non-contributory" benefits are those provided to citizens who are in need, even if they have never contributed or have not contributed for the time required to qualify for contributory benefits. In contrast to contribution-based benefits, which are awarded on the basis of period of contribution, non-contributory economic benefits are awarded to those citizens who, needing protection, lack sufficient resources to subsist under the legally established terms, even if they have never paid contributions or have not paid contributions for long enough to qualify for contribution-based benefits. Included in this category are the following pensions: a disability pension (a 65% degree of disability is one of the requirements for obtaining this pension), and the retirement pension.

In addition to financial benefits, some benefits in kind are included as part of social protection, namely health care, pharmaceuticals and social services. The purpose of social security health care is to provide the medical and pharmaceutical services necessary to preserve or restore the health of its beneficiaries and their fitness for work. It also provides the appropriate services to complete medical and pharmaceutical benefits, paying special attention to the physical rehabilitation necessary to achieve the complete recovery of the worker. Article 42 of the aforementioned LGSS/2015 also states that, in addition to the benefits included in the previous section, social welfare benefits may also be granted.

Furthermore, to these two public and compulsory levels, there is a third, complementary, voluntary level (to which citizens are entitled to contribute voluntarily, within the framework of the private sector), made up mainly of Social Welfare Institutions and Pension Funds.

Moreover, to the public social security system, mention should be made of the social welfare system. It can be defined as a form of social protection different from social security—while social security is largely financed by contributions from workers and companies, social welfare is financed through general taxes. It has its own characteristics and can be provided by both public and private bodies (often by non-governmental organisations—NGOs) and its main objective is to meet the needs of vulnerable people or groups or those with special social integration problems.

Social welfare needs to be differentiated between "internal" and "external" social welfare. "Internal" social welfare is within the scope of social security protection: in particular, it complements the financial benefits provided by social security and is intended for persons covered by the social security system—both contributory and non-contributory—and is conditioned by proof of the claimant's "financial need". "External" social welfare, on the other hand, lies outside the social security system and constitutes a heterogeneous set of benefits, also financed by public funds, which are subsidiary to social security benefits and which guarantee a minimum income to groups of the population who lack subsistence resources. These benefits are subsidiary and individual.

Finally, apart from the social security system, State unemployment benefit is provided by the State (in particular by the public employment services). Unemployment benefit is paid following involuntary loss of employment. To be entitled to this benefit, you must have worked and paid unemployment contributions for

at least 360 days in the 6 years prior to becoming legally unemployed. The duration of the benefit depends on the number of unemployment contributions you have made in the last 6 years, although the minimum period of entitlement is 6 months and the maximum is 2 years.

7.2 The Social Security Coverage and Benefits for Care Workers in Spain

In general, care workers are covered by the social security system, as well as by unemployment benefits.

Historically, an exception was made for domestic workers employed by the family household owner, i.e. people who provide services for the family household, as they are subject to a special employment regime which until 2023 excluded them from unemployment benefits.

The reform of the legislation on family household services in 2023 has meant that domestic workers are now recognised as eligible for unemployment benefits at the end of their employment relationship, if they meet the corresponding requirements. The Spanish State had to make this modification in accordance with the Judgment of the Court of Justice of the European Union of 24 February 2022 (Case 389/2022), stipulating that the exclusion of domestic staff from Social Security benefits was actually indirect discrimination on grounds of sex, since women, as the majority group of domestic workers, were the ones to be most adversely affected. No objective factors, unrelated to any kind of discrimination on the basis of sex, could justify this.

Changing the subject, it is interesting to note the studies that are being carried out on the recognition of illnesses or ailments that can affect women workers in the care sector so that they can be considered as occupational illnesses for the purposes of Social Security, and so that the workers who suffer from them can be specially protected.

In this regard, it is worth mentioning here the study carried out by the Instituto de las Mujeres (Women's Institute) "Revisión jurisprudencial de dolencias y patologías de las camareras de piso" ("Jurisprudential review of ailments and pathologies of chambermaids"), prepared in collaboration with the Asociación Española del Derecho del Trabajo y de la Seguridad Social (Spanish Association of Labour and Social Security Law), of 2023.[55]

The report finds that women occupy almost 80% of unskilled jobs in the service sector—excluding transport—with a higher concentration in certain particularly feminised and precarious occupations, such as care-related sectors.

In fact, the report detects that groups such as hotel maids and chambermaids are not included in any of the pathologies contained in Royal Decree 1299/2006, of 10 November, approving the list of occupational diseases in the Social Security system and establishing criteria for their notification and registration

[55] Women's Institute, "Jurisprudential review of ailments and pathologies of housekeepers" (2023), <https://www.igualdadenlaempresa.es/recursos/estudiosMonografia/docs/Jurisprudencia_EP_CamarerasPiso2023.pdf> (Accessed April 1, 2024).

when, in fact, the research shows that this group of workers is subjected to a great physical burden (repetitive movements, in addition to the handling of loads, the adoption of forced working postures and prolonged standing during the performance of tasks), to which is added the mental burden derived from the organisation and accelerated rhythms of their work and the lack, on many occasions, of adequate occupational preventive measures.

For this reason, there is an "urgent" call for a review of the treatment of occupational illnesses, which still revolve around masculinised work, and in which women end up as almost anecdotal mentions, poorly focused and not very comprehensive. In fact, this report seeks to

> provide the legislative body with a technical-legal document in which arguments are given, backed up by the contrast of existing case law on the subject, to demonstrate the need to update the list of occupational illnesses.

In this sense, the analysis of almost 150 rulings of the Supreme Court or of the High Courts of Justice of the Autonomous Communities has made it possible to point out the "internal contradiction" in the approach and consideration of the same illness or pathology. Faced with these discrepancies, the changes sought in this table of occupational illnesses seek to offer more legal certainty and make it easier for it to function as a protective mechanism, Henar Álvarez Cuesta pointed out, "bearing in mind, moreover, that occupational illness refers to the usual profession, not necessarily the one being carried out at the time".

8. Concluding Discussion

In the preparation of this report, the various members of the research group, the researchers Andrea Cano and Anna Molina, and the teaching staff formed by Dolors Juvinyà, Antonia Barceló, Marc Sáez and the head of the group, Professor Ferran Camas, have worked in coordination to compile materials of interest, talk to agents (organisations, trade unions, etc.) related to the field of care (contacts which will be followed up in the drafting of the final comparative report), and to analyse data and statistics on the care sector.

The main conclusions are as follows:

1) The variety of situations that can be defined as care jobs (i.e. "paid" jobs) with no common legal standard to cover them. The regime that is most regulated is the common labour regime, i.e. for persons who are employed by companies, hospitals, nursing homes, etc. to provide care services (such as nurses, nursing assistants, or carers hired by a company to provide services in a home, etc.), or also the so-called special labour regime, i.e. for persons who are hired by the owner of a household to take care of a member of his or her family.
    a) Broadly speaking, in the first case, wages tend to be low given the rising cost of living and the lack of measures to balance work and family life, while in the second case, more precarious conditions have been highlighted, since in many cases undocumented migrants are involved.

2) Specifically in relation to care work, both from the point of view of the carer and the person being cared for, the following have been discussed:
   a) We have found in some cases that cared-for persons want to be cared for in their own language (i.e. Catalan), when the carer is not Catalan or Spanish (in many cases, Latin American people who speak Spanish, but not Catalan).

      The lack of care training of many workers, whether they are employed by a company to provide home care services or directly by the head of the household, has also been a subject of debate.
   b) In relation to carers, the debate has centred on the salaries they receive and the excessive number of hours they work, which could be causing a possible exodus of staff from the nursing sector to other EU countries with higher salaries. In the case of people who provide care services in the home, we have detected situations of harassment, especially sexual harassment, and, above all, informality in the employment relationship, which means that they do not enjoy the labour rights to which they are entitled.

      The informality of employment in family households when the person is employed by the head of the family household is a major obstacle to the full application of labour rights. Moreover, this sector has begun to be occupied mainly by foreign women who lack residence permits. Gaining access to this sector is in fact the first necessary step so that, under Spanish law, after three years these workers will be able to obtain residence permits for exceptional circumstances.
3) In general, care workers are covered by the social security system, as well as by unemployment benefits. In any case, it is considered important to take into account, in terms of social benefits and social security protection, the illnesses that may result from the specific functions performed by care workers

The convenience of opening legal channels for foreigners to come to Spain to work in the care sector is considered, especially in view of the demographic change that Spain is undergoing. Indeed, Spain will become one of the countries with the highest life expectancy (83.5 years in 2070) and the lowest fertility rate (approximately 1.25 children per woman), below the fertility threshold of 2.1 considered necessary to maintain a constant population size in the absence of migration.

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CHAPTER 7

Swedish Report on Care Workers' Job Quality and Inclusive Working Conditions[1]

Mia Rönnmar, Jenny Julén Votinius

1. Introduction[2]

The aim of this national report is to analyse job quality and inclusive working conditions of care workers in Sweden. The report focuses on labour law analysis, but also includes analysis of law and policy, industrial relations, and labour market characteristics, as well as analysis of the interplay between national law and EU/European and international law.[3]

[1] The contents of this report were finalized on December 31, 2023.

[2] This study has received ethical approval by the Swedish Ethical Review Authority (project title: "CARE4CARE: en studie av arbetsvillkoren och arbetssituationen för care workers", dnr 2023-04438-01).

[3] See also the Swedish national report written within the framework of CARE4CARE WP3, Jenny Julén Votinius, *'Discrimination map' and inequalities in the care sector. Swedish Report.* The Swedish national reports within CARE4CARE WP2 and WP3 were drafted in a coordinated way and partly overlap as regards topics and content. This report also draws on previous research on EU law and on collective bargaining and decentralisation in Sweden, including in the public health care sector, see Mia Rönnmar, "Labour and equality law," in *European Union Law*, edited by Catherine Barnard and Steve Peers, 4th edn (Oxford: Oxford University Press, 2023), 630–61 and Mia Rönnmar and Andrea Iossa, *CODEBAR. Comparisons on Decentralised Bargaining: Towards New Relations between Trade Unions and Works Councils? Swedish Country Report* (open access, 2022). Furthermore, we would like to express our thanks to the participants at the Swedish national stakeholder meetings for generously sharing their time and providing us with rich materials and important comments and perspectives.

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The content and outline of the national report is as follows. Section 2 discusses various aspects of care work and domestic care work, including labour market characteristics, and current debates. Section 3 addresses social partners and industrial relations, fundamental trade union rights and collective bargaining, and employee influence. Section 4 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 5 presents a discussion on wages and benefits. Section 6 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 7 discusses social security coverage and benefits. Section 8, finally, provides some concluding remarks.

The CARE4CARE project studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance to elderly persons, sick persons, and persons with a disability. Focus is on care workers who have at most a Bachelor's degree.

This national report is drafted on the basis of a common WP2-questionnaire. The report combines a legal-analytical method, i.e. an analysis of legal sources in order to clarify, systematise, and evaluate the content of labour law, with a socio-legal approach and an integration of labour law and industrial relations perspectives.[4] The materials subjected to study are legislation and preparatory works at Swedish, EU/European, and international level, collective agreements, case law from the Swedish Labour Court and the Court of Justice of the European Union, legal doctrine and industrial relations research, and reports, statistics, and policy documents at Swedish, EU/European, and international level.

Sweden is a member of the EU since 1995. The Swedish labour law and industrial relations system is built on self-regulation, autonomous collective bargaining, a tradition of collaboration and social partnership, and strong legal rights and industrial relations practices of employee influence and information, consultation, and co-determination through a single-channel trade union system. There is no statutory minimum wage or system for extension of collective agreements. Collective bargaining regulates wages and other working conditions and is characterised by "organised decentralisation" and an emphasis on local and individual bargaining within a framework of national, sectoral, and multi-employer collective bargaining.[5] The trade unionisation rate is about 70 per cent, the employers' organisation rate is about 90 per cent, and the collective bargaining coverage rate is about 90 per cent.[6] Swedish labour law legislation is often semi-compelling and

[4] See e.g. Mark Van Hoecke, edited by, *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011) and Amy Ludlow and Alysia Blackham, edited by, *New Frontiers in Empirical Labour Law Research* (Oxford: Hart Publishing, 2015).

[5] See Rönnmar and Iossa, *CODEBAR*.

[6] See Medlingsinstitutet, *Avtalsrörelsen och lönebildningen 2022. Medlingsinstitutets årsrapport* (Medlingsinstitutet 2023), 148 ff. and Medlingsinstitutet, *Avtalsrörelsen och lönebildningen 2023. Medlingsinstitutets årsrapport* (Medlingsinstitutet, 2024).

provides scope for deviations by way of collective agreements, also to the detriment of individual employees. If the legislation in question implements EU law, there is a limited scope for collective bargaining through a ban against collective agreements deviating from rights afforded by EU law (the so-called "EU ban", *EU-spärr*). Thus, there is a crucial interplay between legislation and collective bargaining. It is the role of the social partners to safeguard a general level of pay and employment conditions. Supervision and enforcement of terms and conditions of employment are carried out to a large extent by the trade unions or the social partners in cooperation. Effective enforcement depends to a large degree on the workplace being covered by a collective agreement.[7]

The Swedish labour law and industrial relations system is a representative of the Nordic labour law and industrial relations system and shares some common features with the systems in the other Nordic countries, such as a tradition built on voluntarism, statutory non-intervention, and importance of social partners and collective bargaining.

Sweden, and the Swedish welfare state and social security system, have been described in terms of a coordinated market economy (Hall and Soskice), a social democratic welfare state (Esping-Andersen) and a Scandinavian social security system. The Swedish welfare state is publicly funded and comprehensive. At the same time, it is oriented towards the individual. Every adult person should be able to support themselves and live independently according to their own choices taking into account the services, benefits, and, if needed, additional support provided by the public system (Section 7).[8]

The overall regulatory framework of the care sector in Sweden is characterised by uniformity. This is in line with Swedish labour law in general, which has a uniform and extensive scope and a high degree of equal treatment of different categories of employees. Normally the same legislation applies to all employees irrespective of labour market sector, trade union organisation, form of employment, and position, There are minor differences as regards labour law regulation in the public and private sector, although the (1994:260) Public Employment Act provides some specific rules for public sector employment, for example, as regards recruitment, employment protection, collective action, secondary employment, and disciplinary sanction, especially for employees in the state sector,

[7] See e.g. Niklas Bruun and Jonas Malmberg, "*Lex Laval* – Collective Actions and Posted Work in Sweden," in *Labour Law between Change and Tradition. Liber Amicorum Antoine Jacobs*, edited by Roger Blanpain and Frank Hendrickx (Alphen aan den Rijn: Kluwer Law International, 2011).

[8] See Gøsta Esping-Andersen, *The three worlds of welfare capitalism* (Cambridge: Polity Press, 1990),;Peter A. Hall and David Soskice, edited by, *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001); Henrik Berggren and Lars Trägårdh, *The Swedish Theory of Love – Individualism and Social Trust in Modern Sweden* (Seattle: University of Washington Press, 2022); Martina Axmin, "Access to Cross-Border Healthcare for Older Persons in the European Union: the Interplay between EU Law and Swedish Law," Ph.D. diss. (Lund University, 2020).

but to some extent also for employees in the regional and municipal sector, including the care sector.[9] Furthermore, the constitutional framework, including the (1974:152) Instrument of Government (*Regeringsformen*) applies differently in the public and private sector, respectively. The Instrument of Government, and its declaratory provision on social rights and catalogue of fundamental rights and freedoms, apply, in principle, only between individuals and the public. The provisions on fundamental rights in the Instrument of Government, are thus applicable to public employers, but not to employers and employment relationships in the private sector of the labour market. Furthermore, in relation to a number of fundamental rights of importance to labour law a certain overlap exists between the (1974:152) Instrument of Government and the European Convention of Human Rights, applied as domestic Swedish law since 1995.[10] The European Convention of Human Rights gives rise to both negative and positive obligations for States. The individual is protected from interference from the State. However, the State may also have a positive obligation to adopt measures to secure fundamental rights protection in relationships between individuals, i.e. in employment relationships and in relations between trade unions and employers, both in the public and private sector. Such a positive obligation exists, for example, in relation to the right to respect for private and family, freedom of association and freedom of expression. Thus, this is a difference in relation to the (1974:152) Instrument of Government and its catalogue of fundamental rights, which applies only to public employers.[11]

The ILO, the Council of Europe, and the EU provide a fundamental rights framework of relevance for working conditions of care workers in Sweden, including ILO Fundamental Conventions on fundamental rights, such as freedom of association and occupational safety and health,[12] and ILO Conventions and Recommendations on other aspects, such as, domestic work, flexible forms of employment, employment protection, wages, working time, health and safety, violence and harassment at work, and social security and social protection. The fundamental rights framework of the Council of Europe entails the European Convention of Human Rights (discussed above) and the revised European Social Charter, including a recognition of fundamental rights, such as the freedom of association, right to collective bargaining, and right to collective action, and several other rights linked to aspects of job quality and working conditions. In

[9] See Kent Källström and Jonas Malmberg, *Anställningsförhållandet. Inledning till den individuella arbetsrätten*, 6th edn (Uppsala: Iustus, 2022), 35 f., Karl Pfeifer, *Lagen om offentlig anställning. En kommentar* (Stockholm: Norstedts Juridik, 2019), and Anderz Andersson et al., *Kommunal arbetsrätt*, 4th edn (Lund: Studentlitteratur, 2014).

[10] See further, Mia Rönnmar, "Fundamental Rights and Swedish Labour Law," in Janice R. Bellace and Beryl ter Haar, edited by, *Research Handbook on Labour, Business and Human Rights Law* (Cheltenham: Edward Elgar, 2019), 84–100.

[11] See further, for example, Petra Herzfeld-Olsson, "Folkrätten i arbetsrätten," in *Folkrätten i svensk rätt*, eds. Rebecca Stern and Inger Österdahl (Stockholm: Liber, 2012), 217 f.

[12] See ILO Conventions no. 87, 98, 155, and 187.

the EU, the EU Charter of Fundamental Rights encompasses rights, freedoms and principles of importance to EU labour law and the regulation of job quality and working conditions, including, for example, the respect for private and family life (Article 7), the freedom of expression and information (Article 11), the right to information and consultation (Article 27), the right to collective bargaining and collective action (Article 28), the protection against unjustified dismissals (Article 30), and the right to fair and just working conditions (Article 31), including aspects of working time, annual leave, and health and safety.[13]

EU labour law is an area of shared competence and interplays with Swedish law, in complex, and sometimes conflictual ways. EU law is regulated by a mix of Treaty provisions, fundamental rights and general principles of EU law, secondary law, collective agreements at EU level, case law from the Court of Justice, and various policies and soft law measures. Several EU Directives have throughout the years been adopted on topics related to job quality and working conditions, and subsequently implemented in Swedish law: in the area of employee influence, the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation,[14] and the Whistleblowing Directive;[15] in the area of flexible forms of employment and employment protection, the Part-Time Work Directive, the Fixed-Term Work Directive, and the Temporary Agency Work Directive,[16] the Directive on Transparent and Predictable Working Conditions,[17] the Directives on Transfers of Undertakings and Collective Redundancies, and several Directives on non-discrimination; in the area of health and safety, working time, and leave, the Framework Directive on Health and Safety,[18] the Working Time Directive,[19] and the Work-Life Balance Directive;[20] and in the area of minimum wage, the Directive on adequate minimum wages in the EU.[21] In the EU, the substantive

[13] See, for example, Jean-Michel Servais, *International Labour Law*, 7th edn (Alphen aan den Rijn: Kluwer Law International, 2022), Edoardo Ales et al., edited by, *International and European Labour Law. Article-by-Article Commentary* (Baden-Baden: Nomos, 2018), Matti Mikkola, *Social Human Rights of Europe* (Karelactio, 2010); Niklas Bruun et al., edited by, *The European Social Charter and the Employment Relation* (Oxford: Hart Publishing, 2017); Filip Dorssemont, Klaus Lörcher and Isabelle Schömann, edited by, *The European Convention on Human Rights and the Employment Relations* (Oxford: Hart Publishing, 2013), and Steve Peers et al., edited by, *The EU Charter of Fundamental Rights: A Commentary*, 2nd edn (Oxford: Hart Publishing, 2021).

[14] Directives 2001/23/EC, 98/59/EC, 2009/38/EC, and 2002/14/EC.

[15] Directive 2019/1937/EU.

[16] Directives 97/81/EC, 1999/70/EC, and 2008/104/EC.

[17] Directive 2019/1152/EU.

[18] Directive 89/391/EEC.

[19] Directive 2003/88/EC.

[20] Directive 2019/1158/EU.

[21] Directive 2022/2041/EU. For a discussion on the international and EU/European legal framework related to care workers and aspects of gender equality, non-discrimination, and labour migration, see CARE4CARE WP3 reports in this volume.

content of social security is, in principle, a matter for the respective Member States and national legislation. However, the coordination of social security in the EU and between the Member States was implemented early on to facilitate the free movement of workers.[22]

2. Care Work and Domestic Care Work

2.1 The Care Sector, Care Workers, and Domestic Care Work

The public sector in Sweden is large and includes a broad range of publicly funded government and welfare-state activities. This sector is divided into a state sector and a local government sector, where local government in turn is divided into regions and municipalities. The state sector covers government, parliament, and state agencies, and the regional and municipal sector covers core care work activities such as health care, elder care, care for persons with a disability, and childcare, but also primary and secondary education. Around 270,000 employees work in the state sector, while around 1.2 million employees work in the regional and municipal sector; about 75 percent of these employees work in the municipal sector. There are twenty-one regions and 290 municipalities in Sweden. In 2020, regions across Sweden employed around 285,000 employees. Seventy-nine per cent of all regional employees are engaged in a healthcare branch or profession.[23]

The care sector in Sweden is mainly public with a relatively small but growing private care sector, i.e. care services are mainly provided by public entities but also by private entities. Around 80 percent of care services in Sweden are provided by regions and municipalities.[24] In the private care sector, care services are provided by private commercial companies, including temporary work agencies, and by private non-profit organisations. In addition, private care services are, to a very small extent, offered by individual care workers who are personal assistants and provide care services directly to the care recipient, who is a person with a disability. In general, in care services, an important distinction is made between residential care services, where care is provided in establishments to a group of care recipients, and home care services, where care is provided in the individual home of the care recipient. In Europe, two different models of employment are commonly used in home care services: either care work is carried out by domestic care workers who are employed directly by the care recipient or his or her family, this is common, for example, in Italy and Spain, or care work is carried out by domestic care workers who are employed by public or private entities, which is the dominant model of employment used in Sweden in elder

[22] See Regulation 883/2004 (OJ [2004] L 166/1). See also Frans Pennings, *European Social Security Law*, 7th edn (Antwerp: Larcier Intersentia, 2022).

[23] SKR, *Personalen i välfärden. Personalstatistik för kommuner och regioner 2020* (SKR, 2021).

[24] Statistics Sweden, *Finances and providers within education, health care and social services* (Statistics Sweden, 2021).

care and also as regards personal assistants. In the public sector, health care is primarily organised by the regions, while the municipalities organise elder care, care for persons with a disability, and some health care.

Swedish elder care policy is based on the principle of ageing in place, encouraging elderly to remain in their homes for as long as possible with various forms of support.[25] The great majority of elderly persons live in their homes with or without care services. In 2020, only 4 percent of the age group 65–79 and 11 percent of persons above 80 lived in residence homes for elderly.[26]

Likewise, in disability policy, the promotion of individual support and solutions for individual independence is a cornerstone in all parts of life including housing.[27] Around 14 000 persons with a disability are entitled to personal assistance.[28] There are around 100 000 personal assistants, 22 percent of whom are relatives to the assistance users. In the majority of cases these relatives are parents caring for a child with a disability.[29] Many personal assistants work fixed-term, by the hour, and part-time, with one in five working less than four hours a week. Personal assistants normally work in the home of the care recipient.[30] Following a number of different reports on abuses of the labour immigration system involving fraudulent use of work permits for personal assistants, a Government Inquiry Report has proposed that from June 2025 it shall no longer be possible to obtain a work permit to work as a personal assistant.[31]

In health care, Sweden is the country in the EU which, together with the Netherlands, has the highest proportion of home care beds (and the lowest number of hospital beds). In addition, patients can receive highly specialized medical healthcare at home.[32]

There is a major element of domestic care work in Sweden. A large part of the public care sector is carried out in the form of domestic care work. This is the

[25] Government Inquiry Report, SOU 2017:21, *En nationell kvalitetsplan för vård och omsorg om äldre personer*, 83.

[26] Swedish National Board of Health and Welfare, *Behov av och tillgång till särskilda boendeformer för äldre* (Swedish National Board of Health and Welfare, 2021) and Swedish National Board of Health and Welfare, *Statistik om socialtjänstinsatser till äldre, April 2023* (Swedish National Board of Health and Welfare, 2023).

[27] Government Bill, Prop. 2016/17:188 *Nationellt mål och inriktning för funktionshinderspolitiken*.

[28] Swedish Social Insurance Agency, *Användning av assistansersättningen. Hur assistansanvändarna förlägger sin assistansersättning. Socialförsäkringsrapport 2022:3* (Swedish Social Insurance Agency, 2022), 5.

[29] Swedish Social Insurance Agency, *Assistansersättning*, Korta analyser 2018:2 (Swedish Social Insurance Agency, 2018). Swedish Social Insurance Agency, *Anhöriga till personer med statlig assistansersättning En beskrivning av anhöriga som personliga assistenter, mottagare av personlig assistans och assistansersättningen*, Socialförsäkringsrapport 2018:5 (Swedish Social Insurance Agency, 2018). See also Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent. Ett viktigt yrke som förtjänar bra villkor*.

[30] See Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent.*

[31] See Government Inquiry Report, SOU 2024:15, *Nya regler för arbetskraftsinvandring.*

[32] SKR, *Fakta om vårdplatser* (SKR 2022), 8, 10 and 23.

case in elder care, personal assistance to persons with a disability, and in health care. In 2021, the most common occupation in Sweden was assistant nurse in domestic care and in-residence homes for elderly persons.[33] Only a smaller portion of assistant nurses work in residence homes, whereas most of these employees carry out their work in private homes, as do approximately 6000 nurses.[34]

The situation for domestic workers, the care economy, and global care chains have been highlighted in international scholarship and in research, legislation, and policy at ILO level.[35] At Swedish national level, the matter has drawn less attention. This has been explained by the fact that for a long time, paid domestic work—apart from domestic care work in the often publicly-organised form described above—was very rare in Sweden. However, for the last two decades, the demand for household services has increased, and as noted by Calleman, at the same time, globalisation has led to increased access to labour from countries with considerably lower wages than Sweden.[36] The Government dealt with the topic in the preparatory works preceding the Swedish ratification in 2019 of the ILO Domestic Workers Convention No 189. Before the ratification Sweden adopted necessary legislative changes in the (1970:943) Act on Working Time etc. in Domestic Work.[37] This Act constitutes a rare exception to the basically uniform scope of Swedish labour law and applies to domestic workers, i.e. employees who carry out their work in their employer's home and are employed directly by the employer. In practice, most persons belonging to this very small group of employees are persons employed directly by the care recipient and private households to provide care for persons with a disability, as personal assistants for persons with a disability, or for elderly persons. The (1970:943) Act on Working Time etc. in Domestic Work contains specific provisions on working hours, overtime, and limited employment protection (with no requirement for

[33] Swedish Occupational Register 2021, <https://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__AM__AM0208/> (June 1, 2024).

[34] A recent study on nurses in home elder care is Maria Claesson, "Sjuksköterskans ledarskap i det patientnära vårdandet av äldre personer i kommunens hemsjukvård Att leda i ett mellanrum av närhet och distans", diss. (University of Borås, 2022).

[35] See, for example, Adelle Blackett, *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Ithaca: Cornell University Press, 2019); Virginia Mantouvalou, "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor," *Comparative labor law & policy journal* 34 (2012): 133; Vera Pavlou, *Migrant Domestic Workers in Europe. Law and the Construction of Vulnerability* (Oxford: Hart Publishing, 2021); Judy Fudge, "Global Care Chains: Transnational Migrant Care Workers," in *When Care Work Goes Global Locating the Social Relations of Domestic Work*, edited by M., Romero, V. Preston, and W. Giles (London: Routledge, 2016).

[36] See Catharina Calleman, "Clean Homes on Dirty Conditions? — Regulation and Working Conditions in the Domestic Work Sector in Sweden," in *The Political Economy of Household Services in Europe*, edited by C. Carbonnier, and N. Morel (London: Palgrave, 2015) and Catharina Calleman, "Domestic services in a "land of equality": the case of Sweden," *Canadian Journal of Women and the Law* 23, 1 (2011): 121–39.

[37] Government Bill, Prop. 2017/18:272 *ILO:s konvention om anständiga arbetsvillkor för hushållsarbetare*.

objective grounds for dismissal and a shorter notice period). In all other matters, including health and safety, this group of employees is covered by general labour legislation.

There is a minor element of undeclared work in the Swedish care sector. Generally, Sweden is estimated to be one of the countries in the EU with the lowest share of undeclared work.[38] However, at the same time, the topic of undeclared work is high on the political agenda in Sweden, where it constitutes an important element of the wider range of abusive practices in working life that are referred to as working life crime.[39] The sectors most likely to report competition from undeclared work are construction, restaurants and transportation.[40] There are no estimates on the incidence of undeclared work in the care sector.

CARE4CARE studies a selected group of care workers, namely home caregivers, basic care workers, health professionals in nursing with a Bachelor's degree, and health professionals in nursing with a Master's degree.[41] The definitions and demarcations of specific categories of care workers or care occupations are linked to actual care work tasks, professional occupational licenses and protected titles, and trade union and labour market organisation.

Home care givers are persons who provide personal assistance and domestic care for persons with a disability in their homes. There are no specific requirements as regards education or qualifications for this care occupation of personal assistant for persons with a disability (*personlig assistent*).

Basic care and nursing workers are persons who perform low-complexity and varied care and nursing tasks, and who are involved in personal care, domestic help, and hygiene and health services. These persons work e.g. in hospitals, residences for the elderly, day care centers, and in the care recipients' homes. There are two care occupations: care assistant (*vårdbiträde*) and assistant nurse (*undersköterska*). For care assistants, there is no standardised requirement as regards education or qualification, however, in practice, many employers require upper secondary school (*gymnasium*). For assistant nurses, an upper secondary school diploma from a health and care programme is required. Since 1 July 2023, assistant nurse is a protected professional title, requiring a license from the National

[38] See European Labour Authority, *Tackling undeclared work in the personal and household services sector September 2021* (European Labour Authority, 2021) and European Labour Authority, *Extent of undeclared work in the European Union February 2023* (European Labour Authority, 2023).

[39] Government Inquiry Report, SOU 2023:8, *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland*. Delbetänkande av Delegationen mot arbetslivskriminalitet and Carin Håkansta et al., "Power resources and the battle against precarious employment: Trade union activities within a tripartite initiative tackling undeclared work in Sweden," *Economic and Industrial Democracy* (2022): 1–28.

[40] Confederation of Swedish Enterprise, *Konkurrensen med den svarta sektorn – ett stort problem för företagen och samhällsekonomin* (Confederation of Swedish Enterprise, 2021).

[41] In this Swedish national report, the focus is on care and health care in the area of nursing. Categories of care workers and care occupations, such as s au pair, physiotherapist, audiologist, ambulance paramedic, speech therapist, occupational therapist, and physician are excluded.

Board of Health and Welfare (*skyddad yrkestitel*). Anyone who had a permanent position as an assistant nurse when the requirement entered into force is able to continue to use the title until 30 June 2033 without a certificate.

Health professionals in nursing with a Bachelor's degree are persons who work e.g. in hospitals, residences for the elderly, day care centers, or in home care. The care occupation of nurse (*sjuksköterska*) requires a Bachelor's degree in nursing. Nurse is a protected professional title, requiring a license from the National Board of Health and Welfare (*legitimation*).

Health professionals in nursing with a Master's degree are persons who normally work in hospitals, but also can be employed in residences for the elderly or in advanced health care in homes. The care occupation of specialized nurse (*specialistsjuksköterska*) requires a Master's degree in nursing. Some specialist nurse professions, such as midwife and radiographer, are protected professional titles which require a licence from the National Board of Health and Welfare (*legitimation*). Other specialist nurse professions may apply for a recognition of a specialist qualification from the National Board of Health and Welfare.[42]

2.2 Labour Market Characteristics

The Swedish labour market features high employment rates, high employment continuity over the life course, and relatively low gender disparities in labour market integration. From the 1970s, the female participation in employment has increased significantly from an already high level, and since the mid-1980s the difference in employment rates between men and women has been very small, with 77 percent for women and 80.5 percent for men in 2023.[43] This

[42] In the joint wage statistics of the social partners, each employers' organisation applies their own classification system. Municipalities and regions use the Labour Identification System (*Arbetsidentifikation*, AID) with about 225 occupational codes for different areas of work. Companies in the private sector use various systems, most frequently the Business Sector Occupational Classification (*Näringslivets yrkesklassifikation*, NYK14), with around 1,000 occupational codes. It is based on Statistics Sweden's SSYK codes, with some additions determined by the Confederation of Swedish Enterprise together with the employers' organisations. Other private employers use for instance IPE (Internal Position Evaluation) and BAS (Befattnings- och arbetsvärderingssystem / Position and work evaluation system). There are also many other systems in place, which have been developed by the social parties together or by one of them, or by external consultants. Some occupations in the care sector are clearly distinguished from others in that they require a license from the National Board of Health and Welfare, which also functions to classify these occupations (see above). See Government Inquiry Report, SOU 2022:4, *Minska gapet. Åtgärder för jämställda livsinkomster*, 241, Confederation of Swedish Enterprise, *Näringslivets Yrkesklassifikation 2021 – NYK. Beskrivning av klassifikationen – Systematisk beskrivning* (Confederation of Swedish Enterprise 2021), and Johanna Kumlin, *Sakligt motiverad eller koppling till kön? En analys av arbetsgivares arbete med att motverka osakliga löneskillnader mellan kvinnor och män. Report 2016:1* (Equality Ombudsman, 2016), 52.

[43] See Statistics Sweden, *Labour Force Surveys* (Statistics Sweden, 2021) and Dominique Anxo, "Towards an Active and Integrated Life Course Policy: the Swedish Experience," in *The wel-*

development corresponded to the gradual introduction of reforms to increase women's participation in the labour market, including gender neutral parental leave and comprehensive public child care.[44] While Sweden is often referred to as a model for gender equality, the labour market is one of the most gender segregated across Europe, although slowly becoming less so.[45] The pronounced gender segregation has been attributed to the rapid increase in women's labour force participation between the 1970s and 1990s, when a large proportion of Swedish women entered the labour market in already female-dominated occupations, including in care work occupations.[46] Thus, with respect to care workers, the gender segregation is very pronounced. In 2021, the most common occupation in Sweden was "assistant nurse in home care, home health care and residence homes for the elderly".[47] The gender composition of this group was 89 percent women and 11 percent men. This is similar to what applies for nurses, where women accounted for 88 percent, as well as for assistant nurses generally, and home care assistants for elderly. Moreover, women account for around 70 percent of care assistants and personal assistants for persons with a disability.[48] This is in contrast to the entire workforce, where the shares of men and women are virtually equal with women making up over 48 percent.[49]

Most employees have a permanent and full-time employment.[50] In the care sector, however, the percentage of fixed-term employment and part-time employment are both above average. This applies not least to the groups of care workers studied in CARE4CARE, all of whom work, as we have seen, in occupations that are clearly female-dominated. In the care sector the share of fixed term employment is between 20 and 25 percent, depending on care, occupation, and branch. There are however important differences between both occupations

fare state and life transitions: a European perspective, edited by Dominique Anxo, Gerhard Bosch and Jill Rubery (Cheltenham: Edward Elgar Publishing, 2010), 113.

44 See Christina Bergqvist, "The Welfare State and Gender Equality," in *The Oxford Handbook of Swedish Politics*, edited by Jon Pierre (Oxford: Oxford University Press, 2016) and Jonas Hinnfors, "Swedish Parties and Family Policies 1960–1980: Stability Through Change," in *State Policy and Gender System in the Two German States and Sweden 1945–1989*, edited by Rolf Torstendahl (Uppsala universitet, 1999).

45 See Ingvill Bagøien Hustad et al., "Occupational Attributes and Occupational Gender Segregation in Sweden: Does It Change Over Time?," *Frontiers in Psychology* 11 (2020); Anne Lise Ellingsæter, "Scandinavian welfare states and gender (de)segregation: recent trends and processes," *Economic and Industrial Democracy* 34 (2013): 501–18.

46 See Helinä Melkas and Richard Anker, "Occupational segregation by sex in nordic countries: an empirical investigation," *International Labor Review* 136 (1997): 341–64.

47 See Swedish Occupational Register 2021.

48 See Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 237.

49 See Swedish Occupational Register 2021.

50 Fixed-term employment contracts make up around 14 percent and part-time employment contracts around 20 percent of all employment contracts, see Statistics Sweden, Labour Force Surveys, 2021.

and areas where care work is carried out.[51] Thus, while only around 10 percent of the nurses in municipalities and regions are employed on fixed-term employment contracts, the opposite applies for care assistants: 66 percent of those employed in the municipalities have a fixed term employment contract. Assistant nurses can be found somewhere in between these two extremes.[52]

Fixed-term employment contracts are more common in elder care and among personal assistants for persons with a disability than in other parts of the care sector. In elder care, where the great majority of the care workers are employed by regions or municipalities and work in special housing or in domestic care for the elderly,[53] many employees have fixed-term employment contracts: most notably care assistants, of whom 60 percent has a fixed-term employment contract, while the corresponding figure for assistant nurses is 16 percent.[54] Fixed-term employment contracts are even more common for personal assistants for persons with a disability. Here, the majority or 64 percent are employed by a private care company, and only around 25 percent work for municipalities. There is also a small number of personal assistants who are employed by private non-profit organisations, such as cooperatives, and an even smaller number of four percent, are employed directly by the care recipient.[55] For most personal assistants for persons with a disability, the collective agreement allows exceptions to the Employment Protection Act (1982:80). As a result, eight out of ten personal assistants are employed on a fixed-term for the duration of the assignment (Section 5).[56]

A particular form of fixed-term employment is when the employee is paid per hour (sometimes also called on call work). Hourly employees are common for care assistants and assistant nurses particularly in elder care. In 2021, more than half of all hourly paid employees in municipalities worked in elder care and the care of persons with a disability, with care assistants accounting for around one quarter (around 27 000 employees). In total, 42 percent of the care assistants employed in municipalities were paid by the hour. In the regions, assistant nurses account for almost 40 percent of the hourly paid employees. In total, 18 percent of the assistant nurses, and 9 percent of the nurses in regions were paid by the hour.[57]

While the prevalence of fixed-term employment displays considerable variation across occupational groups and areas of care in, part-time employment remains generally common across the entire care sector. More than half of care

[51] See Mats Larsson, *Anställningsformer år 2022. Fast och tidsbegränsat anställda efter klass och kön år 1990–2022* (LO, 2022), 11.

[52] See SKR, staff statistics <https://skr.se/skr/arbetsgivarekollektivavtal/uppfoljninganalys/personalstatistik.46484.html> (June 1, 2024).

[53] 85% work for region or municipality, assistant nurses amount to 45% and 24% are care assistants.

[54] See Swedish National Board of Health and Welfare, *Vård och omsorg för äldre. Lägesrapport 2023* (Swedish National Board of Health and Welfare, 2023), 55.

[55] See Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 86.

[56] See Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 65.

[57] See SKR, *Personalen i välfärden. Personalstatistik för kommuner och regioner 2022* (SKR 2023), 36 ff.

workers work part-time, making them one of the groups in the labour market with the highest proportion of part-time employees.[58] In health care, part-time employments accounts for just over 30 percent in municipalities and regions and just under 40 percent in the private sector. For assistant nurses and care assistants in elder care, and personal assistants for persons with a disability, the proportion of part-time employment is higher, around 50 percent for those employed in private companies and slightly lower for employees in municipalities and regions.[59] There are significant differences in terms of working hours among part-time employees. Among nurses, it is unusual to work less than 70 percent of a full-time job, and a large proportion of part-time nurses work more than 81 percent of a full-time job.[60] The situation is quite different for personal assistants for persons with a disability, where 20 percent work less than four hours a week and many combine their work with studies or other work.[61]

In 2022, the average retirement age for the entire Swedish labour market was 64.8 years (64.8 for women and 64.9 for men). The care sector shows a very similar picture, with an average retirement age of 65 for nurses, 64.4 years for assistant nurses, 64.2 years for care assistants, 64.5 years for home carers, and 64.7 years for personal assistants for persons with a disability.[62] In 2023, following an increase in the statutory pension-related age limits, that entered into force at the turn of 2022/2023, the general average retirement age rose sharply to 66 years. This sharp increase is likely to moderate in the short term, as the marginal effect of the legislative change fades.[63]

Labour market statistics relating to origin of employees alternately covers the two categories "persons with a foreign background", and "foreign-born persons", where the former refers to the larger groups of persons born abroad, as well as persons born in Sweden with two foreign-born parents. In the care sector, the occupational groups with the highest share of employees with foreign background are assistant nurses and care assistants; in elder care, one in three in these occupational groups have a foreign background.[64] This is even more evident among young workers, those under the age of 30; for instance, 41 percent of the young care as-

[58] See SKR, *Personalen i välfärden. Personalstatistik för kommuner och regioner 2022* (SKR 2022), 24.

[59] See Swedish National Board of Health and Welfare, *Vård och omsorg för äldre*, 55. See also Swedish Gender Equality Agency, *Analys av den könssegregerade arbetsmarknaden. Förutsättningar för en bredare rekryteringsbas till välfärden. Underlagsrapport 2023:8* (Swedish Gender Equality Agency 2023), 27.

[60] See Vårdförbundet, *"Jag orkar inte jobba mer än deltid". Så kan hållbara heltider ge fler kollegor i vården* (Vårdförbundet, 2023).

[61] See Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 1.

[62] See Pensionsmyndigheten, statistics 2023-04-25: <https://www.pensionsmyndigheten.se/nyheter-och-press/pressrum/da-gar-olika-yrkesgrupper-i-pension> (June 1, 2024).

[63] See Pensionsmyndigheten, *Pensionsåldrar och arbetslivets längd – svar på regeringsuppdrag 2024* (Pensionsmyndigheten, 2024).

[64] See Vårdföretagarna, *Vårdfakta 2022. Fakta och statistik om den privat drivna vård- och omsorgsbranschen* (Vårdföretagarna, 2022).

sistants have a foreign background, the majority of whom are men.[65] Narrowing the focus to only those born abroad, this category too makes up a larger share in the care sector than in other sectors, and particularly so for those born outside Europe. In the entire labour market, this group represents 9 percent, in the public care sector 12.5 percent and in the private care sector they represent just over 20 percent. One explanation mentioned in this context is that many private care companies are run by people born in non-European countries; around 12 percent of operational managers in the private care sector are born outside Europe. In care companies, some of which have a specific language or cultural profile, managers with a foreign background are much more likely to employ people with a foreign background.[66] Among personal assistants for a person with a disability, 28 percent are born outside Sweden.[67] The majority of these, 36 percent, work directly for the care recipient. This figure, which contrasts to what applies for total number of personal assistants, where only 4 percent work directly for care recipient, is related to the fact that persons with a disability born abroad are more likely to have personal assistants who are also their relatives.[68] Among those born abroad who work in the care sector, only very few are labour immigrants, i.e. people whose right to reside in Sweden is based on a work permit. Between 2019 and 2023, the yearly average of work permits issued by Swedish Migration Agency was 29 permits for nurses, 63 permits for assistant nurses, 43 permits for care assistants and 103 permits for carers including personal assistants for disabled persons.[69]

2.3 Current Debates

Several of the current debates on care work and the care sector in Sweden relate to ongoing international and European debates and policy discussion in this area.[70] In Sweden, the two main current debates are the debate on the skills and staff shortage and challenges of recruitment and talent management in the

[65] See SKR, *Unga och välfärdsjobben. Intresse, attityder och tankar kring jobben i kommuner och regioner* (SKR, 2022).

[66] In companies where the managers have a non-European background, 37 percent of the employees have a foreign background. The same group represent 27 percent in companies where the managers have a Swedish background, see Vårdföretagarna, *Privat vård och omsorg. En integrationsmotor i vår tid* (Vårdföretagarna, 2018).

[67] Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 95.

[68] Government Inquiry Report, SOU 2020:1, *Översyn av yrket personlig assistent*, 96.

[69] Swedish Migration Agency, statistics on work permits, <https://www.migrationsverket.se/English/About-the-Migration-Agency/Statistics/Work.html> (June 1, 2024).

[70] See e.g. for example, ILO, *Care Work and Care Jobs for the Future of Decent Work* (ILO, 2018); ILO, *Decent work and the care economy*, Report VI, International Labour Conference, 112th Session, 2024 (ILO, 2024); ILO, *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery* (ILO, 2022), and European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European care strategy*, COM/2022/440 final.

care sector, and the debate on the low level of wages and poor quality of working conditions, including health and safety concerns, especially stress, workload, and the promotion of a sustainable and healthy working environment, and flexible forms of employment. These two debates are closely interrelated.[71]

Sweden's municipalities and regions estimate that by 2031, due to retirements within the public care sector and a general increased need of staff, they will need to recruit more than 30 000 new nurses, 93 000 assistant nurses, and 20 000 new care assistants.[72]

The debate highlights the problem of work force turnover and the fact that care workers leave their professions. Thus, it is emphasised that future talent management in the care sector depends not only on recruitment and training of new employees, but also crucially on retainment of employees, extended working lives for older employees, and shifts from part-time to full time employment in the care sector. The debate points to the fact that these developments in turn require investments and improvements in wage levels, sustainable working lives, health and safety, and professional development and training. Employers' organisations in the private sector emphasise that private care services successfully promote labour market inclusion of new groups of workers, including immigrants.

In the public sector, and in care work, both which are female dominated, the pay levels are typically lower than in the private sector and in occupations where most employees are men (Section 5).

Previous research on decentralised collective bargaining in the Swedish public health care sector, based *inter alia* on interviews with the social partners, also emphasise these two main debates. In relation to wage-setting, representatives of the Swedish Association of Health Professionals at national, sectoral and local level highlight the problem of small pay rises and limited wage development for nurses in the course of their professional careers. Thus, in recent years, it has been a trade union strategy to work to achieve specific recognition and wage increases for experienced, skilled nurses and to engage in a joint social partner project on career development for nurses. Furthermore, these trade union representatives point to the shortage of general and specialised nurses, and the fact that many nurses leave the public health care sector or the profession altogether. Thus, a key trade union priority, apart from increasing wages, is to promote healthy working hours and recovery as well as competence development.[73]

[71] For a social scientific analysis of the working situation of Swedish care workers, especially nurses in the public sector, see Paula Mulinari and Rebecca Selberg, "Real utopias at work: conflicts and dreams among nurses in the public sector," in *Handbook of Gender and Public Sector Employment*, edited by Hazel Conley and Paula Koskinen Sandberg, (Cheltenham: Edward Elgar Publishing, 2023), 22–36 and Rebecca Selberg and Paula Mulinari, "Exit spirals in hospital clinics: Conceptualizing turnover contagion among nursing staff," *Scandinavian Journal of Public Administration* 21, 1 (2022): 87–107.

[72] See SKR, *Välfärdens kompetensförsörjning. Personalprognos 2021–2031 och hr välfärden kan möta kompetensutmaningen* (SKR, 2022).

[73] See Rönnmar and Iossa, *CODEBAR*.

The collective bargaining round and industrial conflict in the public care sector in the spring and summer of 2024 related to aspects of health and safety, including stress and workload, and demands for a sustainable working environment and working time reduction (Section 3). Ongoing debate on temporary agency work in the care sector concerns *inter alia* aspects of talent management and health and safety (Section 4.1). Furthermore, in recent years, increasing attention has been paid to quality deficiencies in the care sector, particularly in elder care, due to insufficient knowledge of the Swedish language among employees.[74] Some municipalities have introduced language tests in recruitment to certain parts of the care sector, including elder care and personal assistance for persons with a disability. This development has been received positively by the Municipal Workers Union, although at the same time the trade union cautions against the risk of ethnic discrimination in connection with the tests. Statutory language tests are required for certain care occupations.[75]

3. Fundamental Trade Union Rights, Social Partners and Industrial Relations, Collective Bargaining, and Employee Influence[76]

3.1 Social Partners and Industrial Relations

The Swedish labour law and industrial relations system is characterised by an emphasis on self-regulation, autonomous collective bargaining, and a tradition of collaboration and social partnership. The trade unionisation rate is about 70 per cent (although, there are important differences between various labour market sectors, between blue-collar and white-collar employees, and between younger and older workers), the employers' organisation rate is about 90 per cent, and the collective bargaining coverage rate is about 90 per cent. The overall trade union organisation rate in the public sector, where most care work is carried out, is about 80 per cent.[77] Thus, there is a major influence of the social partners in the labour market in general, including in the care sector.

[74] The matter has for instance been addressed in several Government Inquiry Reports, it has been the subject of a comprehensive report from the Municipal Workers' Union, and in their yearly reports, the Health and Social Care Inspectorate (IVO) has repeatedly highlighted serious negative effects of language shortcomings, see Government Inquiry Report, SOU 2019:20, *Stärkt kompetens i vård och omsorg*, 118, Government Inquiry Report, SOU 2020:80, *Äldreomsorgen under pandemin – Delbetänkande av Coronakommissionen*, 107, Government Inquiry Report, SOU 2021:52, *Vilja välja vård och omsorg – En hållbar kompetensförsörjning inom vård och omsorg om äldre*, 145, and Kommunal, *Svenska språket – A och O inom äldreomsorgen* (Kommunal, 2019).

[75] See Johan Erlandsson, "Så många kommuner har språktest i äldreomsorgen," *Kommunalarbetaren* 2022-12-14. See Votinius, *'Discrimination map'*, for further discussion on measures taken in Sweden to facilitate access for labour migrants and immigrants in various care occupations.

[76] This Section draws on previous research on industrial relations and collective bargaining in the Swedish labour market, including the public health care sector, see Rönnmar and Iossa, *CODEBAR*.

[77] See Medlingsinstitutet, *Avtalsrörelsen och lönebildningen 2022*, 148 ff. and *Avtalsrörelsen och lönebildningen 2023*.

The Confederation of Swedish Enterprise (*Svenskt Näringsliv, SN*) organises the majority of private-sector employers. The Swedish Agency for Government Employers (*Arbetsgivarverket*) is the employers' organisation for government agencies. The Swedish Association of Local Authorities and Regions (*Sveriges Kommuner och Regioner, SKR*) is the employers' organisation for local governments, i.e. for regions and municipalities, and Sobona is the employers' organisation for local government companies. Thus, SKR and Sobona are employers' organisations in the public care sector. To a large extent the social partners and the collective bargaining framework are the same for the regional and municipal sectors. Due to the constitutional and public-law principle of local self-government, the collective agreements concluded by SKR and Sobona are so-called "recommendation agreements", which every region and municipality then puts into force by signing collective agreements.[78]

In the private care sector, one large employers' organisation, representing private commercial care companies, is the Association of Private Care Providers (*Vårdföretagarna*), which is a member of the Confederation of Swedish Enterprise and a part of the Employers' Organisation for the Swedish Service Sector (*Almega*), a grouping of service sector employers' organisations. The Competence Agencies of Sweden (*Kompetensföretagen*), representing temporary work agencies and other staffing, outplacement, and recruitment companies, is also a member of the Confederation of Swedish Enterprise, and part of the Employers' Organisation for the Swedish Service Sector (*Almega*). Furthermore, two independent employers' organisations in the care sector are Fremia and the Employer Alliance (*Arbetsgivaralliansen*), both representing private non-profit and values-based organisations, including civil society organisations and cooperative enterprises.

Industry-wide industrial unions dominate in Sweden, and the trade union movement is centralised, with three top trade-union confederations: the Swedish Confederation of Trade Unions (LO), organising blue-collar employees; the Swedish Confederation for Professional Employees (TCO), organising white-collar employees; and the Swedish Confederation of Professional Associations (SACO), organising professionals with qualifications from higher education/university graduates (in SACO, the organisation in craft unions is important).

PTK, the Council for Negotiation and Cooperation, is a cross-sectoral council for negotiation and cooperation for 25 private-sector, white-collar and university graduates/professional trade unions, and OFR, the Public Employees' Negotiation Council (*Offentliganställdas förhandlingsråd*) is a cross-sectoral council for negotiation and cooperation for 14 public-sector, white-collar and university graduates/professional trade unions. Professional Alliance (*Akade-*

[78] See Vilhelm Persson, "Sweden – Local Government in Sweden: Flexibility and independence in a unitary state," in *Local Government in Europe. The 'fourth' level in the EU multilayered system of governance*, edited by C. Panara and M. Varney (London: Routledge, 2013), 305–29; Andersson et al., *Kommunal arbetsrätt*, 28 ff., and Kent Källström, Jonas Malmberg, and Sören Öman, *Den kollektiva arbetsrätten. En lärobok*, 3rd edn (Uppsala: Iustus, 2022), 85.

mikeralliansen) is a collaboration among SACO-affiliated trade union federations in the public sector.

In the public and private care sector, employees are organised in the following way: the LO-affiliated blue-collar trade union, the Swedish Municipal Workers' Union organises assistant nurses, care assistants, and personal assistants for persons with a disability, and the TCO-affiliated white-collar trade union, the Swedish Association of Health Professionals, affiliated with TCO, organises general and specialised nurses.[79]

Swedish trade unions are voluntary, non-profit organisations. There is no specific legislation for such organisations or labour market organisations in general. A trade union is an association of employees, and under its by-laws, the union is charged with safeguarding the interests of the employees in relation to the employer (Section 6 of the (1976:580) Co-determination Act (*Medbestämmandelagen*, MBL)). There are minimal formal requirements for forming a trade union, and recognition of trade unions is automatic. As regards their internal affairs, trade unions enjoy extensive freedom of self-regulation. There are no statutory or common-law procedures or criteria for determining the representativity of trade unions. All trade unions enjoy the same basic statutory rights to freedom of association, general negotiation, collective bargaining, and collective action (Section 3.2). Instead of establishing certain procedures or criteria for representativity, Swedish law affords privileges to so-called *established trade unions*, i.e. trade unions that are currently or customarily bound by a collective agreement with the employer (or the employers' organisation). Established trade unions organise the majority of employees in the Swedish labour market. In practice, owing to the principles of labour market organisation, the dominance of nationwide industrial unions, and the policies and practices of the central trade-union confederations and the Confederation of Swedish Enterprise, there are only a few so-called minority trade unions, with a nationwide syndicalist trade-union movement represented by the SAC confederation and the Swedish Dockworkers Union as two exceptions.[80]

Social partner relations are generally cooperative, in the Swedish labour market overall and in the care sector. Previous research on decentralised collective bargaining in the Swedish public health care sector, based *inter alia* on interviews with the social partners, highlights that social partner relations at cross-sectoral, sectoral, and local level are generally good and built on dialogue, trust, and respect. Representatives of both employers and trade unions emphasise the importance of continuous social partner collaboration, as well as work at various levels and on various issues, separate from actual collective bargaining ne-

[79] Medical doctors are organised by the Swedish Medical Association (*Sveriges Läkarförbund*), affiliated with SACO.

[80] See also Mia Rönnmar, "Autonomous Collective Bargaining in Sweden under Pressure," in *Collective Bargaining and Collective Action. Labour Agency and Governance in the 21st Century*, edited by Julia López López (Oxford: Hart Publishing, 2019), 189–212.

gotiations; examples include the project on "full-time employment as a norm" together with the Swedish Municipal Workers' Union and the project on career development together with the Swedish Association of Health Professionals.[81] However, in the spring and summer of 2024, the difficult collective bargaining round between SKR and Sobona and the Swedish Municipal Workers' Union, and the industrial conflict between SKR and Sobona and the Swedish Association of Health Professionals, respectively, have caused strain on these relations (Section 3.2).

3.2 Fundamental Trade Union Rights and Collective Bargaining

3.2.1 Freedom of Association and Right to Collective Action

In Sweden, there is constitutional, statutory, and collective bargaining regulation on fundamental trade union rights and the freedom of association, the right to collective bargaining, and the right to collective action, which interplays with international and EU/European law. The (1976:580) Co-determination Act is a key statute in this area.[82]

The positive side of the freedom of association is protected by the (1974:152) Instrument of Government and the (1976:580) Co-determination Act.[83] Freedom of association is defined as a right of the employer and the employee to belong to an employers' organisation or a trade union, to exercise the rights of membership, and to participate in such an organisation and the establishment thereof (Section 7 MBL). A violation of the freedom of association is deemed to have occurred where an employer or employee, or the representative of either, engages in such conduct detrimental to the other party as a consequence of such party's exercise of his or her freedom of association, or where an employer or employee, or the representative of either, engages in conduct towards the other party for the purpose of inducing that party not to exercise his or her right to freedom of association (Section 8 MBL). The violation of the freedom of association of an individual member also constitutes a violation of the activities of the employers' organisation or the trade union.[84]

[81] See Rönnmar and Iossa, *CODEBAR*.

[82] See Government Bill, Prop. 1975/76:105: Bilaga 1, *Arbetsrättsreform: Lag om medbestämmande i arbetslivet*, Örjan Edström, *Medbestämmandelagen. En kommentar* (Karnov Group, 2020), and Jonas Malmberg et al., *Medbestämmandelagen. En kommentar. Del I 1–32 §§* (Stockholm: Norstedts Juridik, 2018).

[83] The negative side of the freedom of association is protected by Article 11 of the European Convention on Human Rights, and the Convention was incorporated into Swedish law in 1995. See also *Gustafsson v Sweden*, judgment of the European Court of Human Rights of 25 April 1996.

[84] See further Petra Herzfeld Olsson, *Facklig föreningsfrihet som mänsklig rättighet* (Uppsala: Iustus, 2003). Folke Schmidt et al., *Facklig arbetsrätt*, rev. edn (Stockholm: Juristförlaget, 1997), 108 ff.

There is a wide scope for collective action. The mutual right to take collective action is protected by the (1974:152) Instrument of Government, and more specifically regulated in the (1976:580) Co-determination Act (Sections 41 to 45 MBL). The right to take collective action can be further specified or limited by way of legislation or collective agreement. A peace obligation, and social truce, follows from the collective agreement and is strictly upheld by the Swedish Labour Court; during the period of validity of a specific collective agreement, collective action must not be taken. Furthermore, collective action may not contravene peace obligation provisions in collective agreements. Basic agreements on collective action and social truce cover large parts of the Swedish labour market, including the care sector (see further below). Sympathy action is allowed, and the right to take sympathy action is vast and applies even during the peace obligation as long as the primary collective action is permitted. There is no general principle of proportionality in Swedish law on collective action. If no peace obligation prevails, collective action is permitted. A measure of collective action, however, must always be decided by the relevant organisation in due order. The (1976:580) Co-determination Act and basic agreements provide for rules on notice, mediation, postponement of collective action, and other measures to favour a responsible bargaining process. The National Mediation Office (*Medlingsinstitutet*) plays a central role in mediation. In addition, the Labour Court can make interim decisions on the lawfulness of collective actions.[85] [86]

In the public sector, the (1994:260) Public Employment Act entails some restrictions on the right to collective action. Section 23 of the Act states that in work that comprises the exercise of official power or which is unavoidably necessary in order to ensure the exercise of official power, collective action may only be implemented in the form of lockout, strike, refusal of overtime or blockade of new employment. In addition, collective action aimed at influencing domestic political circumstances is not allowed in the public sector.

The basic agreement for regions and municipalities,[87] which applies in the public care sector, regulates collective action. Employees are, despite ongoing collective action, obliged to carry out so-called protective work (*skyddsarbete*), i.e. work which is necessary to prevent danger for human beings or damage on property (Section 27). If a party to an industrial conflict makes the assessment

[85] See Källström, Malmberg, and Öman, *Den kollektiva arbetsrätten*, 49 ff., Schmidt et al., *Facklig arbetsrätt*, 97 ff., and e.g. Labour Court judgment AD 1998:17.

[86] On EU law, freedom to provide services, and the "Laval case" (Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet*, EU:C:2007:809) in relation to Swedish law, collective action, and collective bargaining, see e.g. Andrea Iossa, "Collective Autonomy in the European Union. Theoretical, Comparative and Cross-border Perspectives on the Legal Regulation of Collective Bargaining," PhD. diss. (Lund University, 2017); Mia Rönnmar, "The Impact of Viking and Laval in Swedish Labour Law and Industrial Relations," in *EU Law in the Member States. Viking and Laval and Beyond*, edited by Mark Freedland and Jeremias Prassl (Oxford: Hart Publishing, 2015), and Rönnmar, "Autonomous Collective Bargaining".

[87] See *Kommunalt Huvudavtal, KHA 94*, i lydelse fr.o.m. 2022-10-01.

that a collective action measure is threatening public interest (*samhällsfarlig stridsåtgärd*), it should initiate negotiations with the other party aimed at avoiding, limiting, or terminating the collective action measure. Negotiations should first be conducted at local level, and in case of a refusal to negotiate from one of the parties or if the parties cannot agree, the issue is to be sent to a central committee (with members appointed by the social partners), which will assess the collective action measure. If the committee finds that the measure threatens public interest it has the power to request the parties to avoid, limit, or terminate the collective action measure.[88]

The social partners strive for consensus and compromises, and the level of industrial conflict, in the labour market in general and in the care sector is very low.[89]

In the spring and summer of 2024, the collective bargaining round in the public care sector has been particularly challenging. A new collective agreement between SKR and Sobona and the Swedish Municipal Workers' Union could only be reached after difficult negotiations, mediation, and notices of collective action from the trade union. Similarly, a new collective agreement between SKR and Sobona and the Swedish Association of Health Professionals could only be reached after difficult negotiations, mediations, and two months of collective action from the trade union, by way of refusal of overtime, blockade of new employment, and strike action.

The industrial conflict between SKR and Sobona and the Swedish Association of Health Professionals was not primarily related to the level of wages, but to trade union concerns as regards health and safety, including stress and workload, and demands for a sustainable working environment. The social partners have partly different perspectives and proposed solutions on how to address these issues and the skills and staff shortage, future recruitment and talent management in the care sector. The main conflicting issue in the industrial conflict was the trade union's claim for general working time reduction for all members. The new collective agreement comprises new provisions on working time reduction for some categories of members, including some nurses who work night, shift, and inconvenient hours. The collective agreement also includes joint intentions to continue social partner dialogue and work aimed at improving health and safety, promoting a sustainable working life, and future talent management (Section 2.3).

In this industrial conflict, protective work was ordered by the employers at numerous occasions with reference to the provision in the basic agreement. The trade union legally challenged the employers' decisions and action in several instances, resulting in ongoing disputes on the correct interpretation and

[88] See Birgitta Nyström, "Regulating Strikes in Essential Services – Sweden," in *Regulating Strikes in Essential Services. A Comparative "Law in Action" Perspective,* edited by Moti Mironi and Monika Schlachter (Alphen aan den Rijn: Kluwer Law International, 2019; Studies in Employment and Social Policy 52), 409–39. See also Källström, Malmberg, and Öman, *Den kollektiva arbetsrätten*, 49 ff.

[89] See e.g. Medlingsinstitutet, *Avtalsrörelsen och lönebildningen 2023*, 30 ff.

application of the basic agreement. Furthermore, following local negotiations between employers and trade union representatives, agreements were made in several instances on the avoidance or limitation of collective action with reference to the threatening of public interest.

3.2.2 Right to Collective Bargaining and the Collective Bargaining System

Collective agreements constitute an important legal source in Swedish labour law. The majority of an employee's terms and conditions of employment, including wages, are regulated by collective agreements. There is no minimum-wage legislation or system for extension of collective agreements. In principle, this means that in workplaces not covered by a collective agreement, no minimum wage applies. However, in practice, almost complete coverage of collective bargaining has been achieved, as the collective bargaining coverage rate is about 90 percent. An important characteristic of the (1976:580) Co-determination Act, and Swedish labour law legislation in general, is its so-called "semi-compelling" nature, which allows for deviations by way of collective agreement, both to the advantage and detriment of individual employees. The employer may also apply such collective agreements to employees who are not members of the contracting trade union, as long as they are engaged in work to which the collective agreement refers. Thus, collective agreements can be used to adapt the legislation to the circumstances of a certain sector or company.[90]

A collective agreement is statutorily defined as

> an agreement in writing between an organisation of employers or an employer and an organisation of employees about conditions of employment or otherwise about the relationship between employers and employees (Section 23 MBL).[91]

Within its area of application, a collective agreement is legally binding, not only for the contracting parties to the agreement but also for their members (Section 26 MBL). In addition, an employer bound by a collective agreement is obligated to apply this agreement to all employees, irrespective of trade union membership.[92]

[90] For influential labour law scholarship on collective bargaining in the Swedish and Nordic context, see e.g. Axel Adlercreutz, *Kollektivavtalet. Studier över dess tillkomsthistoria* (CWK Gleerup, 1954); Niklas Bruun, *Kollektivavtal och rättsideologi. En rättsvetenskaplig studie av de rättsideologiska premisserna för inlemmandet av kollektivavtalet och kollektiva kampåtgärder i finsk rättsordning efter år 1924* (Stockholm: Juridica, 1979; Juridiska föreningens i Finland publikationsserie 46), and Mikael Hansson, *Kollektivavtalsrätten. En rättsvetenskaplig berättelse* (Uppsala: Iustus, 2010).

[91] According to Section 23 para. 2 MBL an agreement shall be deemed to be in writing also when its contents have been recorded in approved minutes or where a proposal for an agreement and acceptance thereof have been recorded in separate documents.

[92] See Kent Källström and Jonas Malmberg, *Anställningsförhållandet. Inledning till den individuella arbetsrätten*, 6th edn (Uppsala: Iustus, 2022), 192, Anna Christensen, "Den eta-

A collective agreement has both a normative and mandatory effect (Section 27 MBL). Unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement may not deviate from it by way of an individual employment contract. Such a contract is null and void, and breaches of the collective agreement are sanctioned by the payment of economic and punitive damages (Sections 54 and 55 MBL).

Since the 1990s, a clear trend has emerged towards individualisation and decentralisation of industrial relations and wage-setting in Sweden. Thus, collective bargaining is characterised by "organised decentralisation", and an emphasis on local and individual bargaining within a stable framework of national sectoral and multi-employer collective bargaining.[93] Collective agreements are entered into at different levels. There are three main categories of collective agreements: *national cross-sectoral collective agreements* (also referred to as basic, main, or master agreements), regulating aspects such as pensions, collective action and industrial peace, cooperation and co-determination, and employment protection, transitions, and restructuring; *national sectoral collective agreements*, forming the core of the collective bargaining system and regulating wages and terms and conditions of employment; and *local collective agreements*.[94] A local collective agreement may not deviate from collective agreements at a higher level (cf. Section 27 MBL). In most cases, sectoral collective agreements set only minimum standards, allowing employers, trade unions, and employees to agree on better terms and conditions of employment by way of a local collective agreement or individual employment contracts.[95]

Local collective agreements are used to implement and operationalise the national sectoral collective agreements, for example, as regards wage negotiations and wage setting. Local collective agreements can also regulate other terms and conditions of employment, such as working time and working-time allocation,

blerade fackföreningen och minoritetsorganisationen," in *Perspektiv på arbetsrätten. Vänbok till Axel Adlercreutz*, eds. Reinhold Fahlbeck and Carl Martin Roos (Lund: Juridiska Föreningen i Lund, 1983), 9–35, and Swedish Labour Court judgements AD 1977:49 and AD 2014:31.

93 See Franz Traxler, "Farewell to labour market associations? Organized versus disorganized decentralization as a map for industrial relations," in *Organized Industrial Relations in Europe: What Future?*, edited by Colin Crouch and Franz Traxler (Aldershot: Avebury, 1995), 3–19; Christian Lyhne Ibsen and Maarten Keune, "Organised Decentralisation of Collective Bargaining: Case studies of Germany, Netherlands and Denmark," *OECD Social, Employment and Migration Working Papers* 217 (2018), and Christer Thörnqvist, "The decentralization of industrial relations: The Swedish case in comparative perspective," *European Journal of Industrial Relations* (1995): 71–87.

94 See Källström, Malmberg, and Öman, *Den kollektiva arbetsrätten*, 84 ff. and Medlingsinstitutet, *Avtalsrörelsen och lönebildningen 2023*.

95 See Malmberg et al., *Medbestämmandelagen*, 245 f.; Jonas Malmberg, *Anställningsavtalet. Om anställningsförhållandets individuella reglering* (Uppsala: Iustus, 1997), and Swedish Labour Court judgement AD 1997:45.

selection of employees to be dismissed in redundancy situations,[96] and cooperation and co-determination issues.[97] Local collective bargaining within the framework of national cross-sectoral or sectoral collective bargaining is conducted under a peace obligation. Local collective bargaining negotiations, i.e. negotiations at company/organisation level, are commonly carried out by the employer and the local club of a sectoral trade union (in the absence of a local trade union club, a district (a regional section of the trade union, serving members at various companies/organisations) can participate in negotiations).[98]

There is an elaborate framework of collective agreements in the care sector.[99]

In *the public care sector*, the employers' organisations SKR and Sobona have concluded a number of collective agreements with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals (and numerous other trade unions, beyond the care sector). At the national, sectoral level, collective agreements on wages and terms and conditions of employment are concluded with the Swedish Municipal Workers' Union (*HÖK 24 Kommunal* and *PAN 24* on personal assistance) and with the Swedish Association of Health Professionals (*HÖK 24 OFR Hälso- och sjukvård*). These national, sectoral collective agreements contain the same appendix, General provisions 24, *Allmänna bestämmelser 24, AB 24*, with regulation on general terms and conditions of employment throughout the regional and municipal sector and for all employees.[100]

The collective bargaining round in the spring and summer of 2024 resulted, despite challenging negotiations, mediation, notices of collective action, and collective action, in the conclusion of new national, cross-sectoral and sectoral collective agreements between SKR and Sobona and the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals, respectively, i.e. in *HÖK 24 Kommunal*, *PAN* 24, *HÖK 24 OFR Hälso- and sjukvård*, and *Allmänna bestämmelser 24*, *AB 24*. The sectoral agreements with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals (*HÖK 24* and *PAN 24*) were only concluded for a one-year-period. It is common for national sectoral agreements to be concluded for a period of two

[96] Thereby deviating from statutory rules on employment protection and principles of seniority, a so-called *avtalsturlista* (Section 4.2). Another type of local collective agreement is an application agreement (a so-called *hängavtal*), i.e. a collective agreement concluded between a local trade union and an employer who is not a member of an employers" organisation, thus obliging the employer to apply the provisions of the relevant national, sectoral collective agreement. The resort to application agreements is also a tool for extending minimum wage protection to workplaces not covered by national, sectoral collective bargaining. Furthermore, an unorganised employer can conclude "independent" company agreements (*företagsavtal*) with a local trade union.

[97] See Malmberg et al., *Medbestämmandelagen*, 186 f.

[98] For more information and analysis of local collective bargaining in Sweden and decentralisation developments, see Rönnmar and Iossa, *CODEBAR*.

[99] The following presentation and discussion of collective agreements in the care sector is not exhaustive but focuses on a selection of key collective agreements.

[100] See Section 9.2.1 for full references to the collective agreements.

or three years. Thus, the one-year-period, together with statements made by the employers' organisations and trade unions after the conclusion of the collective agreements, indicate that difficult issues remain to be discussed and resolved between the social partners in the collective bargaining round of 2025. The wage increase was set in line with the "industry mark" (see Section 5 for a further discussion on wages and wage formation), and new provisions on, for example, working time reduction and allocation, was introduced.

In addition, there are other important national, "cross-sectoral" collective agreements concluded by SKR and Sobona and numerous trade unions for the overall regional and municipal sector. One such collective agreement is the transition agreement, renegotiated in late 2021 in light of the content of the new main, national cross-sectoral collective agreement on security, transition, and employment protection,[101] concluded in the private sector, and forming the basis for a major legislative and collective bargaining reform of Swedish employment protection (Section 4.2) (*Överenskommelse om Kompetens- och omställningsavtal, KOM-KR,* this agreement was concluded with a large number of trade unions and covers all employees). Other such important collective agreements are the agreement on cooperation and co-determination (*Samverkansavtalet*) and the basic agreement for regions and municipalities (*Kommunalt huvudavtal*), both concluded with a large number of trade unions (Section 3.3). Furthermore, a collective agreement for the overall regional and municipal sector relates to the management of crisis situations (*Krislägesavtal*, this agreement was concluded with a large number of trade unions and covers large groups of employees) and was important in handling the COVID-19 pandemic (Section 7.2).[102]

In relation to local collective bargaining in the public health care sector, previous research on decentralised collective bargaining, based *inter alia* on interviews with the social partners, highlights that the legal scope for local collective bargaining is perceived as clear and broad. Provisions in the national, sectoral collective agreements for blue-collar, white-collar, and professional/university graduate employees, respectively, clarify areas in which there is scope for local collective bargaining, for example in relation to wages and wage-setting processes, and working time and working-time allocation. This research also discusses the collective-bargaining structure as such in the regional and municipal sector, and in the public health care sector, with separate, sectoral collective agreements for various trade unions/groups of trade unions (*HÖK*s) with a focus on wages, and one common "cross-sectoral" collective agreement with general provisions and regulation of other terms and conditions of employment, covering all employees (*Allmänna bestämmelser 20, AB 20,* now *Allmänna bestämmelser, AB 24,* constituting an appendix to all HÖKs). In the interviews, the Head of Negotiations of SKR describes *AB 20* as a "co-worker agreement" (*medarbetaravtal*), as

[101] See Svenskt Näringsliv samt PTK, *Huvudavtal om trygghet, omställning och anställningsskydd,* and Svenskt Näringsliv samt LO, *Huvudavtal om trygghet, omställning och anställningsskydd*.

[102] See Section 9.2.1 for full references to the collective agreements.

it applies to the whole sector and all employees. The trade unions do not fully share this view; for example, the General Counsel of the Swedish Municipal Workers' Union opposes the view that *AB 20* creates one common collective-agreement area of application. The employer representatives at national and local level highlight the value of setting (at least) some common rules and standards for the entire sector, not least to counteract "competition for staff" due to differences in wages and terms and conditions of employment between the public and private health-care sectors, and between different regions, respectively. The trade-union representatives at sectoral level point to the problem that one common collective agreement, AB 20, cannot adequately regulate the complex regional and municipal sector, with its wide variety of activities and operation under varying practical conditions (including the "24/7-scheduling" in parts of public health care).[103]

In the private commercial care sector, the employers' organisation the Association of Private Care Providers has concluded collective agreements with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals. At the national, sectoral level, the Association of Private Care Providers has concluded collective agreements on wages and terms and conditions of employment with the Swedish Municipal Workers' Union in relation to the elder care sector,[104] in relation to the health care/care sector,[105] and in relation to personal assistance.[106] Furthermore, at the national, sectoral level, the Association of Private Care Providers has concluded a collective agreement on wages and terms and conditions of employment with the Swedish Association of Health Professionals in relation to the care sector.[107]

The employers' organisation the Competence Agencies of Sweden (*Kompetensföretagen*) has concluded a collective agreement on wages and terms and conditions of employment with the Swedish Association of Health Professionals in relation to the health care/care sector.[108] Furthermore, as members of the Confederation of Swedish Enterprise, both the Association of Private Care Providers and the Competence Agencies have adopted the new main agreement on secu-

[103] See Rönnmar and Iossa, *CODEBAR*. See further Sections 4 to 7 for a discussion on collectively-bargained working conditions in areas, such as flexible forms of employment, employment protection, wages and benefits, and working time.

[104] Vårdföretagarna samt Kommunal, *Kollektivavtal, Allmänna villkor och löner, Bransch äldreomsorg (F)*, 2023–2025, giltighetstid 2023-06-01–2025-05-31.

[105] Vårdföretagarna samt Kommunal, *Kollektivavtal, Allmänna villkor och löner, Bransch vård och behandlingsverksamhet samt omsorgsverksamhet (E)*, 2023–2025, giltighetstid 2023-06-01–2025-05-31.

[106] Vårdföretagarna samt Kommunal, *Kollektivavtal, Personlig assistans*, 2023–2025, giltighetstid 2023-07-01–2025-09-30.

[107] Vårdföretagarna samt Vårdförbundet, *Kollektivavtal, Allmänna villkor och löner, Bransch Vård och behandlingsverksamhet samt omsorgsverksamhet*, giltighetstid 2023-06-01–tillsvidare.

[108] Kompetensföretagen samt Vårdförbundet, *Villkor för vissa anställda vid bemanningsföretagen, Vård- och behandlingsverksamhet, Övrig omsorgsverksamhet*, 2016, giltighetstid 2016-01-01–tillsvidare.

rity, transition, and employment protection concluded by the Confederation of Swedish Enterprise, PTK, and the Swedish Confederation of Trade Unions (LO).

In the private non-profit care sector, the employers' organisation Fremia has concluded collective agreements with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals. At the national, sectoral level, a joint collective agreement on wages and terms and conditions of employment has been concluded with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals (and with the white-collar and professional trade unions *Vision* and *Akademikerförbunden*).[109] At the national, sectoral level, Fremia has also concluded a collective agreement with the Swedish Municipal Workers' Union on wages and terms and conditions of employment for personal assistants.[110] In the context of personal assistance, it is interesting to note that membership in Fremia is open both to various private entities, who are employers and offer personal assistance services, as well as to the very small group of individual care recipients, who directly employ their own personal assistants. In addition, Fremia and the Swedish Confederation of Trade Unions (LO) and PTK, the Council for Negotiation and Cooperation, respectively, have adopted a new national main collective agreement on security, transition, and employment protection, based on the main agreement on security, transition, and employment protection concluded by the Confederation of Swedish Enterprise, PTK, and the Swedish Confederation of Trade Unions (LO).[111]

The employers' organisation the Employer Alliance (*Arbetsgivaralliansen*) has concluded collective agreements with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals. At the national, sectoral level, a joint collective agreement on wages and term and conditions of employment has been concluded with the Swedish Municipal Workers' Union and the Swedish Association of Health Professionals (and with the white-collar and professional trade unions *Akademikerförbunden*, *Sveriges läkarförbund*, *Vision*, and *Ledarna*).[112] In addition, the Employer Alliance and PTK, the Council for Negotiation and Cooperation have adopted a new national main collective agreement on security, transition, and employment protection, based on the main agreement on security, transition, and employment protection concluded by the Confed-

[109] Fremia samt Kommunal, Vision, Vårdförbundet och Akademikerförbunden, *Hälsa, vård, och övrig omsorg, Allmänna anställningsvillkor och löneavtal med mera*, gäller fr.om. 2023-10-01–2025-09-30 (Kommunal) och 2023-06-01–2025-05-31 (Akademikerförbunden, Vision och Vårdförbundet).

[110] Fremia samt Kommunal, *Personlig assistans*, 2023-10-01–2025-10-31.

[111] Fremia samt LO, *Antagande av Huvudavtal om trygghet, omställning och anställningsskydd*, antaget 5 oktober 2022, and Fremia samt PTK, *Antagande av Huvudavtal om trygghet, omställning och anställningsskydd*, antaget 31 oktober 2022.

[112] Arbetsgivaralliansen Branschkommitté Vård och Omsorg (Kommittén) samt Akademikerförbunden, Svenska Kommunalarbetarförbundet (Kommunal), Sveriges läkarförbund (Läkarförbundet), Vision, Vårdförbundet, Ledarna, *Bransch- och löneavtal Vård och Omsorg perioden 2023-05-01–2025-09-30*.

eration of Swedish Enterprise, PTK, and the Swedish Confederation of Trade Unions (LO).[113] The Employer Alliance and PTK and LO have also concluded a national main collective agreement on cooperation and co-determination.[114]

3.3 Employee Influence and Whistleblowing

In Sweden, there are strong legal rights and industrial relations practices of employee influence and information, consultation, and co-determination. Employee influence is channelled through trade unions and their representatives, at local and national levels, in a single-channel system. Trade unions both negotiate and conclude collective agreements on wages and other terms and conditions of employment, and take part in information, consultation, and co-determination at workplace level. There are no works councils (except for health and safety committees at large workplaces, complementing the working environment activities of so-called safety officers (*skyddsombud*), appointed by the local trade unions that are bound by a collective agreement with the employer or the employers' organisation (Section 6)).[115] In general, the assignment of employee representatives has no link to a staff threshold. If at least one of the employees (or a former employee) at the workplace is a member of a trade union, rights to negotiation and collective bargaining will be put in place. However, in principle, rights of information, consultation, and co-determination are provided only to trade unions as employee representatives, and not to individual employees. There are only limited rights of information and consultation for individual employees, such as rights regarding written information on terms and conditions of employment, and dismissal or summary dismissal for personal reasons.[116] The traditional organisational structure of Swedish trade unions, their large membership and strength, and the evolving relationship between industrial relations and the labour-law system have prevented an emergence of non-unionised bodies of employee representation at local company level. The result is the establishment of a strict, single-channel system of employee representation.[117]

An employer is often bound by collective agreements in relation to an LO-affiliated, TCO-affiliated, and SACO-affiliated trade union, respectively. As these collective agreements cover different work and groups of employees, they are not

[113] Arbetsgivaralliansen samt PTK, *Antagande av Huvudavtal om trygghet, omställning och anställningsskydd*, antaget 1 oktober 2022.

[114] Arbetsgivaralliansen samt PTK och LO, *Samverkansavtal*, antaget 1999-11-30.

[115] See Chapter 6 of the (1977:1160) Work Environment Act.

[116] See Mia Rönnmar, "Information, Consultation and Worker Participation – An Aspect of EU Industrial Relations from the Swedish Point of View," in *EU Industrial Relations v. National Industrial Relations. Comparative and Interdisciplinary Perspectives*, edited by Mia Rönnmar, (Alphen aan den Rijn: Kluwer Law International, 2008), 15–39.

[117] See Vincenzo Pietrogiovanni and Andrea Iossa, ""Workers" representation and labour conflict at company level: The Italian binary star in the prism of the Swedish ternary system," *European Labour Law Journal* 8, 1 (2017): 45–66.

seen as competing collective agreements. Consequently, employee representation is normally performed separately by several trade unions at the workplace.

There is an elaborate regulation of employee representation and information, consultation, and co-determination in the (1976:580) Co-determination Act (MBL) and complementary collective agreements. One aim of the (1976:580) Co-determination Act is to enable an increased element of cooperation and co-determination for employees and trade unions in the area of the managerial prerogative. The employer is obliged to keep the established trade union continuously informed of the manner in which the business is developing with respect to production and finance, and as to the guidelines for personnel policy (Sections 18–22 MBL). The right of information is vital to the trade union's possibilities to influence the employer's decision-making.

Within the framework of the (1976:580) Co-determination Act, one can distinguish among three different types of bargaining and negotiations: collective bargaining intended to regulate matters concerning the relationship between the negotiating parties by means of collective agreement (Section 10 MBL, disputes of interest), negotiations in legal disputes (Section 10 MBL, disputes of rights), and cooperation negotiations aiming at giving employees and trade unions information about and influence over the employer's managerial decisions (Sections 11–13 MBL). The workplace level plays a central role. Negotiation starts first at the local level. If agreement cannot be reached, negotiation continues at the national level. Before the tripartite and specialised Labour Court (*Arbetsdomstolen*) can deal with a legal dispute, local and central negotiations must have been conducted and must have failed. As a result of this rule, an overwhelming number of disputes are resolved through negotiation between the parties.[118]

All trade unions (with at least one member, or prior member, at the workplace) enjoy a statutory right of general negotiation with the employer on any matter relating to the relationship between the employer and a member of the trade union (Section 10 MBL). Established trade unions enjoy far-reaching rights of information, primary negotiation, and co-determination. According to Section 11 MBL on primary negotiations, the employer is obliged to initiate negotiations with the trade union before making decisions regarding important alterations in the employer's activities and business, such as restructuring, redundancies, work organisation changes and appointments of new managers, or the employment conditions or employment relationship of a member of the trade union, such as transfers and working-time changes. In addition, when the established trade union requests it, the employer is obliged to negotiate with the trade union before making other decisions regarding a member of the trade union (Section 12 MBL). According to the legislative preparatory works, the employer is obliged to negotiate with the trade union in this way, whenever the decision at hand is

[118] See Jenny Julén Votinius, "Sweden," in *Resolving Labour Disputes. A comparative overview*, edited by M. Ebisui, S. Cooney and C. Fenwick (International Labour Office, 2016), 235–67.

such that the trade union would likely be interested in negotiating. In addition, the employer is obliged to negotiate in this way with a trade union to which the employer is not bound by a collective agreement, before making decisions dealing with important alterations in the employment conditions or relationships primarily affecting one or more of the trade union's members (Section 13 MBL). As for the timing, negotiation must take place before the employer makes a decision. The negotiation initiative must be taken at such a time as to ensure that the negotiation becomes a natural and effective part of the employer's decision-making process. When it comes to the form and performance of the negotiation, the parties must attend the negotiation, state and motivate their position, and listen to the other party's information and arguments supporting their position. Even if the aim of the negotiation is to reach an agreement, the parties are under no obligation to compromise. There is no "duty to bargain in good faith" or to conclude a collective agreement (even if the parties actually agree on an issue). A violation of these obligations is sanctioned with economic and punitive damages (Sections 54 and 55 MBL). The right to general and primary negotiations is complemented by other provisions in the area of co-determination, such as provisions on priority of interpretation (a right to decide ad interim, for example, in disputes on the employee's obligation to work, Section 34 MBL) and a limited trade-union right of negotiation and veto in cases where the employer wants to engage a particular person to perform certain work on her behalf, without such a person becoming an employee of the employer (this includes engaging temporary agency workers, Sections 38 and 39 MBL).[119]

Representatives of established trade unions are given paid time off for their assignment, and enjoy a far-reaching protection against dismissal, deteriorated terms and conditions of employment, and harassment from the employer according to the (1974:358) Act on Trade Union Representatives (*Förtroendemannalagen*). This protection extends to a period of time after the employee has stopped acting as a trade union representative (so-called *efterskydd*).[120]

EU Directives in the area of employee influence, e.g. the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation, have been relatively easily implemented into Swedish law and integrated with Swedish industrial relations. Compared to EU law provisions, rights to information, consultation, and employee participation in Swedish law are generally stronger and more extensive, for example as regards the degree of influence, the subject matter, and the timing.[121]

In addition, important regulation on cooperation and co-determination is found in collective agreements at cross-sectoral, sectoral, and local levels, in the

[119] See Rönnmar, "Information, Consultation and Worker Participation, 15–39; Government Bill, Prop. 1975/76:105: Bilaga 1, *Arbetsrättsreform: Lag om medbestämmande i arbetslivet.*

[120] See Government Bill, Prop. 1975/76:105: Bilaga 1, *Arbetsrättsreform: Lag om medbestämmande i arbetslivet*, 219 f.

[121] See further Erik Sjödin, *Ett europeiserat arbetstagarinflytande. En rättslig studie av inflytandedirektivens genomförande i Sverige* (Uppsala: Iustus, 2015).

labour market in general and in the public and private care sector. Collective agreements on cooperation and co-determination often put in place a comprehensive system of cooperation, which integrates statutory obligations on information, consultation, and co-determination in various areas. This is, for example, the case in the public care sector. Previous research on decentralised collective bargaining in the public health care sector, integrating case studies, discusses a local collective agreement on cooperation and co-determination, which was concluded within the framework of the national "cross-sectoral" collective agreement on cooperation and co-determination (*Samverkansavtalet*), between SKR, Sobona, and a number of public-sector trade unions for blue-collar, white-collar, and professional employees. This local collective agreement sets out general responsibilities and goals of cooperation as well as a coherent and comprehensive system of cooperation between the employer and local trade-union representatives. The system of cooperation integrates information, consultation, and co-determination, according to the (1976:580) Co-determination Act, with cooperation and employer responsibilities according to statutory regulation on working environment and non-discrimination, and includes social-partner collaboration as well as human-resource management practices, such as regular workplace meetings between employers and employees, and individual performance management and development talks between employer and employee.[122]

In addition to employee influence through trade unions, whistleblowing can fill an important function in the care sector to bring attention to problems, risks, and signs of corruption and breaches of the law, which in turn may impact negatively on the quality of care and on the protection and quality of working conditions of care workers and on the rights of care recipients and care workers.[123]

The fundamental right of freedom of expression is protected by international and EU/European law, for example, Article 10 of the European Convention of Human Rights, which entails a positive obligation on the state to protect freedom of expression, and Article 11 of EU Charter of Fundamental Rights. In Sweden, there is constitutional protection of the freedom of expression through the (1974:152) Instrument of Government (*Regeringsformen*), Chapter 2 Section 1(1), the (1991:1469) Fundamental Law on the Freedom of Expression (*Yttrandefrihetsgrundlagen*), and the (1949:105) Freedom of the Press Act (*Tryckfrihetsförordningen*). Due to the varying impact of Swedish constitutional law in the public and private sector, respectively, (Section 1), public sector employees can be said to enjoy stronger protection of freedom of expression than private sector employees, both in principle and in practice.

According to basic principles of the employment contract, statutory employment protection, and settled case law from the Swedish Labour Court, all employees, both in the public and private sector, have a right to criticise their

[122] See Rönnmar and Iossa, *CODEBAR*.

[123] See e.g. *Heinisch v. Germany*, judgment from 21 July 2011, the European Court of Human Rights.

employer (*kritikrätt*), to engage in public debate, and to whistle blow and bring problems in the workplace to the attention of public authorities. However, the employee's exercise of the right to criticise must not contravene the principle of loyalty and the contract of employment. The Swedish Labour Court has set out the criteria for this assessment in case law.[124]

In addition to this regulation and case law on freedom of expression, right to criticise, and employment protection, a specific Act on Whistleblowing was introduced in 2016. In order to implement the EU Whistleblowing Directive,[125] this Act was replaced by a new Act, the (2021:890) Act on Whistleblowing (or Act on the Protection of Persons Reporting Irregularities, *visselblåsarlagen*).[126] This new Act applies to persons who, in a work-related context, report information concerning irregularities in the public interest or irregularities in relation to violations of EU law (Section 2). The Act clarifies that it does not limit protection that apply under other acts or on other grounds (Section 4) and offers protection by way of exemption from liability and against obstructive measures and retaliation.

4. Employment Status, Flexible Forms of Employment, and Employment Protection[127]

4.1 Employment Status and Flexible Forms of Employment

The Swedish notion of employee (*det civilrättsliga arbetstagarbegreppet*) is not statutorily defined, but its content and meaning have been described and developed by the courts in case law and the legislator in preparatory works.[128] To determine whether an individual is an employee, the court conducts an overall assessment of the situation, taking all relevant factors of each individ-

[124] See e.g. Swedish Labour Court judgement AD 1994:79. See further Källström and Malmberg, *Anställningsförhållandet*, 279 ff.; Per Larsson, *Skyddet för visselblåsare i arbetslivet – en konstitutionell och arbetsrättslig studie* (Stockholm: Jure, 2015); Susanne Fransson, *Yttrandefrihet och whistleblowing. Om gränserna för anställdas kritikrätt* (Stockholm: Premiss förlag, 2018).

[125] Directive 2019/1937/EU.

[126] Government Bill, Prop. 2020/21:193, *Genomförande av visselblåsardirektivet*. See also See Sören Öman, *Visselblåsarlagen. En kommentar till lagen om skydd för personer som rapporter om missförhållanden* (Stockholm: Norstedts Juridik, 2021).

[127] This Section partly draws on previous research on flexible forms of employment and employment protection, see e.g. Mia Rönnmar, "Fixed-term and zero-hours contracts," in *Oxford Handbook of the Law of Work*, edited by Guy Davidov, Brian Langille, and Gillian Lester (Oxford: Oxford University Press, forthcoming).

[128] For a comprehensive study on the employee notion in Swedish law, see Axel Adlercreutz, *Arbetstagarbegreppet: Om arbetstagarförhållandet och därtill hörande gränsdragningsfrågor i svensk civil- och socialrätt*, (Stockholm: P.A. Norstedts & Söners Förlag, 1964). The (1976:580) Co-determination Act, which regulates aspects of collective labour law, including freedom of association, collective bargaining, collective action, and employee influence (Section 3), applies not only to employees, but also to the "quasi-employee" category of so-called *jämstallda uppdragstagare*, i.e. persons who occupy a position of essentially the same nature as that of an employee.

ual case into consideration. The multi-factor test applied by the courts focuses on the respective individual and on whether his/her overall situation is similar to that of an ordinary employee or an ordinary self-employed worker. The courts take a number of factors into consideration, such as personal duty to perform work in accordance with the contract, actual personal performance of work, whether any predetermined work tasks exist, the existence of a lasting relationship between the parties, whether the worker is subject to the instructions and control of the principal/employer as regards the content, time and place of work, whether remuneration is paid, at least in part, as a guaranteed salary, and whether the economic and social situation of the worker is equal to that of an ordinary employee. The notion of employee is a binding mandatory concept. To prevent the contracting parties from circumventing labour law legislation and depriving the employee of protection, the courts are not bound by the description or definition of the relationship given by the parties themselves, for example, in a written contract. The court conducts an independent assessment of the legal nature of the relationship on the basis of the actual situation at hand. However, the parties to the contract are, in principle, free to organise their relationship and the manner in which the work will be carried out, at least in practical terms. A court may find that these practical arrangements and the worker's overall situation best match the description of an ordinary self-employed worker. The development has gone towards a uniform and comprehensive notion of employee, and the extent of the notion of employee has continuously expanded, aiming at providing additional groups of workers the protection afforded by labour law and labour law legislation.[129] In Sweden, care workers are generally employees.

The Part-Time Work Directive, Fixed-Term Work Directive, and Temporary Agency Work Directive, and the Directive on Transparent and Predictable Working Conditions have been implemented into Swedish law, by way of legislation and collective bargaining. The Part-Time Work Directive, Fixed-Term Work Directive, and Temporary Agency Work Directive are all linked to the EU flexicurity discourse and combine the promotion of flexible employment with protection of flexible employees in various ways. The Part-Time, Fixed-Term, and Temporary Agency Work Directives afford protection to employees by way of a principle of non-discrimination or a principle of equal treatment, which, however, has not been given a coherent design in the Directives. Part-time, fixed-term, and temporary agency work, are frequent forms of flexible employment in the Swedish labour market. We have also seen that there is a high incidence of fixed-term employment and part-time employment in the care sector, well above average (Section 2.1).

[129] See e.g. Swedish Labour Court judgements AD 2013:32, AD 2013:92, and AD 2021:13. See also Mia Rönnmar, "New Forms of Employment in Sweden," in *New Forms of Employment in Europe*, edited by Bernd Waas (Alphen aan den Rijn: Kluwer Law International, 2016; Bulletin of Comparative Labour Relations 94), 355–60.

Fixed-term contracts are regulated in the (1982:80) Employment Protection Act. Permanent employment is the main rule and fixed-term contracts are permitted only when specifically agreed upon in individual employment contracts. In addition, for a fixed-term contract to be legal, the detailed rules in Sections 4–6 of the (1982:80) Employment Protection Act must be adhered to. These provisions are semi-compelling, and collective agreements regulating fixed-term contracts are permitted and frequent, resulting in both a more restrictive and extensive scope for fixed-term contracts.[130]

Fixed-term regulation was importantly reformed in 2007, when a list of fixed-term contracts was replaced by one new form of fixed-term contract, general fixed-term employment (*allmän visstidsanställning*), supplemented by temporary substitute employment, seasonal employment, and probationary employment.[131] This reform broadened the scope for fixed-term contracts and removed the requirement for objective reasons for the conclusion of a fixed-term contract. However, when an employee had been employed under a general fixed-term employment contract or as a temporary substitute by one employer for a total of two years during the last five years, the contract was automatically converted into an indefinite permanent employment contract. After a certain period of employment fixed-term employees also qualified for a priority right to re-employment.[132] A major reform of Swedish employment protection in 2022 also included the regulation of fixed-term employment (Section 4.2). The reform entailed quicker conversion from fixed-term to permanent employment and quicker qualification for a priority right to re-employment in redundancy situations for fixed-term employees. General fixed-term employment was replaced by specific fixed-term employment (*särskild visstidsanställning*, Section 5a LAS), and a specific fixed-term employment contract is converted into a permanent employment contract after a total period of employment of 12 months within a 5-year-period.[133]

[130] Additional scope for fixed-term contracts can be provided by other legislation (this is, for example, the case in the higher education sector.

[131] See Government Bill, Prop. 2006/07:111, *Bättre möjligheter till tidsbegränsad anställning, m.m.*

[132] This reform was challenged from the perspective of EU law. The Swedish Confederation for Professional Employees (TCO) made a complaint to the European Commission regarding Sweden's failure to correctly implement Clause 5 of the (99/70/EC) Fixed-term Work Directive on abuse of successive fixed-term employment. The European Commission issued two reasoned opinions (in 2013 and 2014), and subsequently the Swedish regulation of fixed-term contracts was reformed and a new provision by which general fixed-term employments would be converted into indefinite employments in more cases was introduced, see Samuel Engblom, "Fixed-Term-at-Will: The new regulation on fixed-term work in Sweden," *International Journal of Comparative Labour Law and Industrial Relations* 24, 1 (2008): 133–49.

[133] A new rule on the calculation of the total period of employment has been introduced according to which an employee who has had three or more (short) specific fixed-term employ-

On-call work, on-demand work, or work paid by the hour (*behovsanställning* or *timanställning*), also sometimes referred to as zero hours contracts, are used in the Swedish care sector (Section 2.1). On-call work does not constitute a separate form of employment in Sweden. An on-call employee is employed either on a permanent contract for an indefinite period or on a fixed-term contract for a definite period (and then often on a separate fixed-term contract for each working day/working period). The specific arrangements as regards the workload, the length and allocation of working time, and the employee's obligation to be "on call" and accept the work offered are explicitly or implicitly agreed between the parties in the individual employment contract, within the limits set by working time and health and safety legislation. In addition, in some sectors there is collective bargaining regulation on on-call and on-demand work.[134] There is limited case law from the Swedish Labour Court in this area, and legal uncertainty as regards some substantive aspects and the contractual limits for these contracts.[135]

Collective agreements in both the public and private care sector comprise specific regulation of fixed-term employment. In the private care sector, the collective agreement between Fremia and the Swedish Municipal Workers' Union on personal assistance for persons with a disability provides a large scope for fixed-term employment, linked to the specific characteristics of personal assistance and the relation between the personal assistant and the care recipient.[136] According to the collective agreement, a fixed-term employment contract can be concluded "for a fixed-term as long as the assignment lasts" (*'på viss tid så längre uppdraget varar, SLUV*, par. 2 Mom 5). There is no stipulated time-limit for this type of fixed-term employment contract, no provision for conversion of the fixed-term employment contract into a permanent employment contract, and the fixed-term employment contract can be terminated on short notice. The Swedish Municipal Workers' Union legally challenged this provision of the collective agreement (despite the fact that the trade union was a contract-

ments during one month may include also the time spent in between employments during that month in the calculation of the total period of employment, Section 3(2) LAS.

[134] See Annamaria Westregård, "Precarity of new forms of employment under Swedish labour law," in *Precarious Work: The Challenge for Labour Law in Europe*, edited by Jeff Kenner, Izabela Florczak and Marta Otto (Cheltenham: Edward Elgar Publishing, 2019), 99–113.

[135] Despite increased attention to problems related to on-call work and zero hours contracts, the Directive on Transparent and Predictable Working Conditions was implemented in Sweden in a rather "minimalistic" way as regards on-call work and zero hours contracts. No new provisions or measures were proposed in relation to implementation of Articles 10 and 11 regarding minimum predictability for workers with unpredictable work patterns and measures to prevent abusive practices. The conclusion of the Government Bill was that existing legislation in areas, such as fixed-term contracts, employment protection, working time, and health and safety, together with the Swedish collective bargaining system and its ability to regulate aspects of working time and wages, met the requirements of the Directive and EU law, see Goverment Inquiry Report, Ds 2020:14, *Genomförande av arbetsvillkorsdirektivet*, and Government Bill Prop. 2021/22:151, *Genomförande av arbetsvillkorsdirektivet*.

[136] See Fremia samt Kommunal, *Personlig assistans*, 2023-10-01–2025-10-31.

ing party) on grounds of both Swedish and EU law in a dispute in the Swedish Labour Court relating to an employee, who had been employed on this type of fixed-term contract since 2008. The Labour Court found in a judgement from 2023 that the collective bargaining provision was valid and did not contravene the Fixed-Term Work Directive or the (1982:80) Employment Protection Act.[137]

Part-time work, in Sweden as well as in other countries, is also closely connected to the gendered governance of labour markets and gendered care work practices. In EU gender equality law, these gendered patterns of part-time work have over the years, and in landmark judgments from the Court of Justice of the European Union, successfully been legally challenged as indirect sex discrimination.[138] Part-time work is regulated by legislation and collective bargaining on working time and by employment contracts (Section 6).[139]

In the Swedish context, a part-time employee has a right to request more working time. Section 25a of the (1982:80) Employment Protection Act states that a part-time employee who has notified his or her employer that he or she desires to have employment at a higher level of occupation, though at most full-time, has a priority right to such employment. This right is contingent upon the employer's need of labour being satisfied by the part-time employee being employed at a higher level of occupation and that the part-time employee is adequately qualified for the new work tasks. If an employer has several production units, the priority right applies to employment at the unit where the employee is engaged part-time.

The reform of employment protection in 2022 also included strengthened protection for part-time employees and the introduction of a new main rule on full-time employment (Section 4.2). According to Section 4a of the (1982:80) Employment Protection Act, employment contracts refer to full-time employment, unless otherwise agreed. If an employment contract does not refer to full-time employment, the employer must indicate the reason for this in writing at the employee's request. The information must be provided within three weeks of the request being presented.

The non-discrimination principle in the Part-Time and Fixed-Term Work Directive has been implemented through the creation of a new Act, the (2002:293) Prohibition of Discrimination of Employees Working Part-Time and Employees with Fixed-Term Employment Act. This Act was aligned with other Swedish non-discrimination legislation and contains prohibitions on direct and indirect discrimination.[140]

[137] See Swedish Labour Court judgement AD 2023:33.

[138] See e.g. Case C-96/80 *Jenkins* [1981] ECR 911 and Case C-170/84 *Bilka-Kaufhaus* [1986] ECR 1607. See further also CARE4CARE WP3 reports, dealing with aspects of care workers, gender equality, and non-discrimination.

[139] On working time and part-time regulation, see e.g. Lotti Ryberg-Welander, *Arbetstidsregleringens utveckling. En studie av arbetstidsreglering i fyra länder* (Lund University, 2000; Lund Studies in Sociology of Law 11), and Birgitta Nyström, *EU och arbetsrätten*, 6th edn (Stockholm: Norstedts Juridik, 2021), 340 ff. and 394 ff.

[140] See Governmental Bill, Prop. 2001/02:97, *Lag om förbud mot diskriminering av deltidsarbetande arbetstagare och arbetstagare med tidsbegränsad anställning, m.m.*

Since the implementation of the Temporary Agency Work Directive into Swedish law, temporary agency work is regulated in the (2012:854) Agency Work Act.[141] According to Swedish law, a temporary agency worker is an employee of the temporary work agency, who within the framework of his/her employment relationship performs work for a third party, the user undertaking. Labour law provisions, e.g., on employment protection, working time, annual leave, information and consultation, etc., generally apply to all employees, including temporary agency workers. Permanent employment is the main rule also for temporary agency workers as well.

Temporary agency work has been successfully integrated into the autonomous collective bargaining system in Sweden. The temporary agency work sector is principally covered by collective bargaining, also in the care sector as we have seen (Section 3.2.2). To promote quality and legitimacy of temporary agency work, the employers' organisation the Competence Agencies of Sweden has developed a system of authorisation for temporary work agencies. The principle of equal treatment is regulated in Section 6 of the (2012:854) Agency Work Act, which states that

> [a] temporary-work agency shall, for the duration of the worker's assignment at a user undertaking guarantee the worker at least the same basic working and employment conditions as would apply if they had been recruited directly by that undertaking to carry out the same job.

Exceptions to the principle of equal treatment are permissible in accordance with Articles 5(2) and 5(3) of the Temporary Agency Work Directive, and consequently Section 8 of the Act provides that the equal treatment principle does not apply to temporary agency workers who have a permanent contract and receive pay between temporary assignments. In addition, the Act states in Section 3 that deviations from the principle of equal treatment may be made through a collective agreement concluded or approved by a central trade union on the condition that the agreement respects the overall protection of workers within the meaning of Directive 2008/2014/EC.[142] [143]

[141] See Government Inquiry Report, SOU 2011:5, *Bemanningsdirektivets genomförande i Sverige*, and Government Bill, Prop. 2011/12:178, *Lag om uthyrning av arbetstagare*.

[142] A new provision regarding temporary agency work, the so-called "two-year rule" (Section 12a of the Act), entered into force on 1 October, against the background of the Temporary Agency Work Directive and case law from the Court of Justice and the new main cross-sectoral collective agreement on security, transition, and employment protection. According to the "two-year-rule', which is "semi-compelling, temporary agency workers, who are engaged to work in the same operating unit for 24 months during a period of 36 months, must be offered permanent employment with the entity engaging the temporary agency worker. Alternatively, it is possible to pay financial compensation to the temporary agency worker.

[143] On temporary agency work in the Swedish context, see e.g. Annika Berg, *Bemanningsarbete, flexibilitet och likabehandling. En studie av svensk rätt och kollektivavtalsreglering med komparativa inslag* (Lund: Juristförlaget i Lund, 2008); Birgitta Nyström, "Utstationerade bemanningsanställda. En kollision mellan två EU-direktiv," in *Festskrift Liber Amicarum et Amicorum in Honour of Ruth Nielsen*, edited by Jens Fejö et al. (Oslo: Jurist- og Økonomforbundets Forlag, 2013),

As we have seen, there is a collective bargaining framework for temporary agency work in the Swedish care sector, and temporary agency work is utilised, especially as regards nurses and medical doctors. At the same time, there is current debate, between *inter alia* politicians, employers' organisations, public and private employers, and trade unions, at national, regional, and local levels, about the conditions for and practical use of temporary agency work in the care sector. The debate relates to issues, such as the benefits and costs of this use of temporary agency work, whether or not temporary agency work is an effective way to address skills and staff shortage, talent management, and the promotion of labour market inclusion, for example of immigrants, in the care sector, what the implications of temporary agency work are for health and safety and working conditions, and the effects of existing strict restrictions on the use of temporary agency work put in place in some parts of the public care sector (Section 2.3).

4.2 Employment Protection

There is comprehensive statutory employment protection regulation in Sweden. Permanent employment contracts can only be terminated if the requirement for objective grounds, or just cause, in the (1982:80) Employment Protection Act (*Lagen om anställningsskydd*, LAS) is met (Section 7 LAS). Partly separate rules apply in relation to dismissal for personal reasons and dismissal for reasons of redundancy, respectively. All dismissals require objective grounds. Dismissals for personal reasons impose a number of obligations on the employer, including an obligation to provide alternative work, training, and rehabilitation and to take other measures in line with an *ultima ratio*-principle, and involve a close scrutiny of the employer's actions in the individual situation in order to avoid arbitrariness. In contrast, redundancy *per se* constitutes objective grounds for dismissal, and employee protection in dismissals for redundancy therefore instead rely upon seniority rules, the obligation to provide alternative work, and the priority right to re-employment together with employee influence and trade union involvement, and support through collectively bargained transition agreements. Extensive case law from the Swedish Labour Court clarifies the content and strength of the employment protection.[144]

233–50, and Niklas Selberg, "Arbetsgivarbegreppet och arbetsrättsligt ansvar i komplexa arbetsorganisationer. En studie av anställningsskydd, diskriminering och arbetsmiljö," diss. (Lunds universitet, 2017).

[144] For an analysis of Swedish employment protection regulation from the perspective of flexicurity and case law developments from the Swedish Labour Court, see Mia Rönnmar and Ann Numhauser-Henning, "Swedish employment protection in times of flexicurity policies and economic crisis," *International Journal of Comparative Labour Law and Industrial Relations* 28, 4 (2012): 443–67. For more detailed information and discussion about the background, development, and content of the current Swedish employment protection, see e.g. Government Bill, Prop. 1973:129, *Lag om anställningsskydd m.m.*, Government Bill, Prop. 1981/82:71, *Ny anställningsskyddslag m.m.*, and Lars Lunning, Gudmund Toijer, Per Lindblom, *Anställningsskydd. En lagkommentar* (JUNO digital version 11B, Norstedts 2022).

In 2022 there was a major reform of Swedish employment protection, including aspects of fixed-term and part-time employment. This reform was a response to a political agreement on the need for deregulatory employment protection reform (the so-called January Agreement) and the outcome of a parallel process and interplay of legislation and collective bargaining. The final content of the reform was based on a cross-sectoral social partner agreement in the private sector, concluded in 2021, which formed the basis both for the general legislative reform and the conclusion of a new main cross-sectoral collective agreement on security, transition, and employment protection in the private sector (including the private care sector, Section 3.2.2).[145]

A new "semi-compelling" element was introduced in Section 2c LAS, which allows only the top social-partner organisations at cross-sectoral level to deviate from some of the key elements of the statutory employment protection regulation by way of collective bargaining, including interpretation of the notion of objective grounds for dismissal. The reform of the (1982:80) Employment Protection Act entails, in response to employer interests and as regards employment protection for permanent employees, some deregulatory reorientation as regards the notion of objective grounds for dismissal for personal reasons, revised rules for selection of employees in redundancy dismissals with increased scope for unilateral employer exemptions, and new procedures for dismissal disputes, aimed at reducing costs for employers. In response to employee and trade-union interests, the reform includes increased protection for fixed-term and part-time employees, for example, by way of quicker conversion to permanent employment and priority right to re-employment, specific fixed-term employment, and a new main rule on full-time employment (Section 4.1).

Furthermore, the main cross-sectoral collective agreement entails important support for transition and life-long learning, for both permanent and fixed-term employees, of importance both for individual employees' competence development and for the talent management of the Swedish labour market overall, and of specific sectors, including the care sector. Collectively bargained transition support is extended through legislation to companies and employees not covered by collective bargaining. In addition, a new form of study aid, so-called transition study aid is introduced to enable and support employees' life-long learning and general competence provision (Section 6).[146] Previous research has indicated that redundancy dismissals are rare in the public health care sector, and that local collective agreements on selection of employees in redundancy situations are uncommon. Employer and trade union representatives at all levels in the public

[145] See Government Inquiry Report, SOU 2020:30, *En moderniserad arbetsrätt*, Government Inquiry Report Ds 2021:17, *En reformerad arbetsrätt – för flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden*, Government Bill, Prop. 2021/22:176, *Flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden*, and Svenskt Näringsliv samt PTK, *Huvudavtal om trygghet, omställning och anställningsskydd*, and Svenskt Näringsliv samt LO, *Huvudavtal om trygghet, omställning och anställningsskydd*.

[146] See Act (2002:856) on transition study aid (*lag om omställningsstudiestöd*).

health care sector emphasised in interviews that the great challenge in the public health care sector is the need to secure current and future talent management, and to address existing, sometimes urgent, staff shortages.[147]

These recent developments clearly reflect the dynamics and interrelation between employment protection and fixed-term contracts, as well as elements of flexicurity, such as more equal treatment of permanent and fixed-term employees through a progressive build-up of rights of fixed-term employees and a weakened employment protection for permanent employees. At the same time, the main cross-sectoral collective agreement emphasises employability and provides strong support for transitions and training. This cross-sectoral collective agreement can be seen as a strengthening of the autonomous collective bargaining system and social partnership. However, this process has also been criticised as the cross-sectoral social partner agreement had a decisive influence on the legislative process and the substantive content of the legislative reform. Not all social partners, for example, not the social partners in the public sector and public care sector, were part of the negotiations, and the agreement and the ordinary legislative referral procedure was curtailed.[148]

In late 2021, the social partners in the regional and municipal sector, including the public care sector, renegotiated their transition agreement (*Överenskommelse om Kompetens- och omställningsavtal, KOM-KR*), and adapted it to the content of the cross-sectoral social partner agreement on security, transition, and employment protection; the agreement was also adapted to future legislative reforms. New rights to and strengthened support for transitions, life-long learning, and talent management have been introduced in the agreement (Section 3.2.2 and Section 6).

5. Wages and Benefits

In Sweden, collective bargaining, together with employment contracts, regulate wages and benefits, in the labour market in general and in the care sector. There is no system of extension of collective agreements and no statutory minimum wage.

In 1997, the social partners in the industry sector, concluded a cross-sectoral collective agreement, the "Industrial Agreement" (*Industriavtalet*) and introduced a mechanism to ensure that wages on the labour market would not increase at a percentage higher than the growth of the national economy.[149] This mechanism, called the "industry mark" (*industrimärket*), ties the wage increase in

[147] See Rönnmar and Iossa, *CODEBAR*.

[148] See Petra Herzfeld Olsson, "Den svenska modellen i en ny era," *Juridisk Tidskrift* 3 (2021/22): 783–98; Niklas Selberg and Erik Sjödin, eds., *Anställningsskydd i utveckling* (Uppsala: Iustus, 2022).

[149] See Grafiska Företagen, Industriarbetsgivarna, IKEM, Livsmedelsföretagen, Gröna arbetsgivare, Teknikföretagen, TEKO, Sveriges Textil- och Modeföretag och Trä- och Möbelföretagen samt GS Facket för skogs-, trä- och grafisk bransch, IF Metall, Livs/Livsmedelsarbetareförbundet, Sveriges Ingenjörer och Unionen, *Industriavtalet. Industrins samarbetsavtal och förhandlingsavtal*.

various sectors of the Swedish labour market to the wage increase set by national, sectoral collective agreements in the industrial export sector. It uses the degree of international competitiveness as a way to control inflation caused by wage increases and to keep the Swedish economy competitive.[150] Collective bargaining, wage formation, and wage-setting in Sweden are characterised by "organised decentralisation" and an emphasis on local and individual bargaining within a framework of national, sectoral, and multi-employer collective bargaining.[151]

The "industry mark" functions as a cross-sectoral mechanism for collective-bargaining coordination. However, the "industry mark" is frequently criticised from the perspective of gender equality, both by scholars and trade union representatives, including in the care sector. They argue that the "industry mark" makes it difficult to effectively address gender pay gaps and improve wages in female-dominated low-wage sectors.[152]

In the care sector, there is, as we have seen, an elaborate framework of collective agreements. Previous research has shown that wage-setting mechanisms in the public health care sector range from very decentralised (for example, in relation to white-collar employees, and nurses, organised he Swedish Association of Health Professionals) to partly centralised wage-setting mechanisms (for example, in relation to blue-collar employees organised in the Municipal Workers' Union).[153] Thus, provisions on wages and wage-setting processes differ in the national, sectoral collective agreements in the public and private care sectors, but generally include elements of local wage-setting processes and individualised wage-setting.

Wages may not be determined on the basis of gender, and collective agreements must be in accordance with the requirements in the (2008:567) Discrimination Act (*Diskrimineringslagen*). To safeguard the principle of equal pay for women and men, the employer must carry out yearly pay audits in collaboration

[150] See Anders Kjellberg, "Sweden: collective bargaining under the industry norm," in *Collective bargaining in Europe: towards an endgame*, vol. III, edited by Torsten Müller, Kurt Vandaele and Jeremy Waddington (ETUI, 2019), 583–603. The trend towards decentralisation of collective bargaining and wage-setting continued with the introduction of so-called "figureless collective agreements" (*sifferlösa kollektivavtal*) in parts of the Swedish labour market in which the determination of wage and wage increases is delegated entirely to the local level of negotiations, and often to individual negotiations between the manager and the employee, see Kerstin Ahlberg and Niklas Bruun, "Sweden: transition through collective bargaining," in *Collective bargaining and wages in comparative perspective: Germany, France, the Netherlands, Sweden and the United Kingdom*, edited by T. Blank and E. Rose (Alphen aan den Rijn: Kluwer Law International), 117–43.

[151] See Rönnmar and Iossa, *CODEBAR*.

[152] See Mia Rönnmar, "The role of equality law in addressing gender inequalities in work and employment relations: experiences from the European Union," in *Making and Breaking Gender Inequalities in Work*, edited by Mia Rönnmar and Susan Hayter (Cheltenham: Edward Elgar Publishing, 2024; ILERA Publication Series 4), 97–115; Lena Svenaeus, "Konsten att upprätthålla löneskillnader mellan kvinnor och män. En rättssociologisk studie av regler I lag och avtal om lika lön," diss. (Lunds universitet 2017), and Votinius, *'Discrimination map'*.

[153] See Rönnmar and Iossa, *CODEBAR*.

with trade union representatives, under the provisions in the (2008:567) Discrimination Act (Chapter 3 Sections 8 and 11).

As a result of the different conditions for wage formation in different parts of the labour market, wage levels differ between the private and public sectors, and also between different occupational groups. In the public sector, and in care work, both which are female dominated, the pay levels are typically lower than in the private sector and in occupations where most employees are men.[154] In addition, normally, female-dominated occupations display a narrow wage range, thus limiting the possibility of wage progression for those who stay in the profession for many years.[155] The table below shows the average full time monthly pay for the care sector occupations in 2022. In all these occupations, the average wages are lower than in occupations of equal value which are not female dominated.[156]

Table 1 – Average monthly wage, by gender and occupation 2022.

	Men	Women	Total
Nurse (SSYK 2221)	3,773 euros / 42,200 SEK	3,656 euros / 40,900 SEK	3,674 euros / 41,100 SEK
Assistant nurse; home care, home health care and residence homes for the elderly (SSYK 5321)	2,682 euros / 30,000 SEK	2,753 euros / 30 800 SEK	2,745 euros / 30,700 SEK
Assistant nurses; medical and specialised ward (SSYK 5323)	2,759 euros / 30,900 SEK	2,804 euros / 31 400 SEK	2,795 euros / 31,300 SEK
Care assistants (SSYK 5330)	2,384 euros / 26,700 SEK	2,384 euros / 26,700 SEK	2,384 euros / 26,700 SEK
Personal assistant for persons with a disability (SSYK 5343)	2,598 euros / 29,100 SEK	2,589 euros / 29,000 SEK	2,598 euros / 29,100 SEK

Statistics Sweden, Average salary and salary dispersion by sector, occupation (SSYK 2012) and sex 2022.

Despite the autonomous collective bargaining system, migration law is relevant in wage-setting. Swedish migration law and policy are currently undergoing comprehensive changes, which are supported by a broad political majority, and where the restructuring of labour immigration is an important element.[157]

[154] See Medlingsinstitutet, *Löneskillnaden mellan kvinnor och män 2022. Vad säger den officiella lönestatistiken?* (Medlingsinstitutet 2023), Government Inquiry Report, SOU 2015:86, *Mål och myndighet. En effektiv styrning av jämställdhetspolitiken*, and Government Inquiry Report, SOU 2020:46, *En gemensam angelägenhet*.

[155] See Government Inquiry Report, SOU 2015:86, *Mål och myndighet. En effektiv styrning av jämställdhetspolitiken*.

[156] See Swedish Gender Equality Agency, *Analys av den könssegregerade arbetsmarknaden*, 24.

[157] See Government Declarations on Taking Office 2022, Government Inquiry Report, SOU 2024:12, *Mål och mening med integration*, and Government Bill, Prop. 2023/24:1 *Budgetproposition, Utgiftsområde 8, Migration*, 19.

In the Swedish context, labour migrants are third country nationals with a residence permit granted on the basis of a work permit. The main rule is that an alien who wants a residence or work permit in Sweden must have applied for and been granted such a permit before entering Sweden (Chapter 6 Section 4 of the (2005:716) Aliens Act). A precondition for a work permit is that the applicant can demonstrate an employment contract, signed by both parties, where the terms of employment, wage and insurances including pensions, are in line with the collective agreement or practices in the relevant profession or industry. The wage level must also be above a wage floor. To counteract exploitation and abuse, strengthen the position of labour immigrants, prevent the salaries of labour immigrants from being undercut, and discourage competition with low salaries, the wage floor has been increased.[158] The wage floor does not apply to persons who's right to reside in Sweden is based on other grounds, such as protection, family ties, studies, or to those who meet all the requirements for a permanent residence permit. Following a number of different reports on abuses of the labour immigration system specifically identifying fraudulent use of work permits for personal assistants for persons with a disability, a Government Inquiry has proposed that from June 2025 it shall no longer be possible to obtain a work permit to work as a personal assistant.[159]

The aim of the Directive on adequate minimum wages in the EU is to establish a framework for adequate statutory minimum wages aimed at achieving decent living and working conditions, to promote collective bargaining on wage-setting, and to enhance effective access of workers to rights to minimum wage protection provided for in national law or collective agreements. The Directive is seen as an important measure to improve working conditions and strengthen collective bargaining. Although the Directive includes guarantees for national systems of industrial relations built on autonomous collective bargaining, such as Sweden (cf. Article 1.1–1.3), it has met with criticism, for example, by gov-

[158] This increase followed a proposal put forward by the previous Government and was adopted with a significant majority in the Parliament, see Chapter 6 Section 2 of the Aliens Act (2006:716). Government Bill, Prop. 2021/22:284, *Ett höjt försörjningskrav för arbetskraftsinvandrare*. Since November 2023, for the granting of a work permit, the wage must be at least at least 80% of the median salary published by Statistics Sweden, which means a lowest monthly salary of around 2700 euros. This is irrespective of whether the employment is full-time or part-time. A subsequent Government Inquiry has presented a proposal recommending an additional increase of the recently raised wage floor. The proposal is that that the minimum wage level should correspond to the median salary or to around 3400 euros / month, see Government Inquiry Report, SOU 2024:15, *Nya regler för arbetskraftsinvandring*. For occupational groups where there is a labour shortage, the proposal is that the Government could instead stipulate that the wage must correspond to the lowest wage set out in a collective agreement or established practice in the profession or industry. This exception could be of relevance for the care sector, where the matter of labour shortage is high on the agenda.

[159] See Government Inquiry Report, SOU 2024:15, *Nya regler för arbetskraftsinvandring* and Nationellt underrättelsecenter, *OLLE – Strategisk rapport om hur personlig assistans och arbetstillstånd otillbörligt och systematiskt utnyttjas av organiserad brottslighet* (Swedish Police 2020). See further Votinius, *'Discrimination map'*.

ernments and social partners in Sweden and Denmark, who have argued that the proposal falls outside the legislative competence of the EU and interferes in autonomous collective bargaining and wage formation at Member State level. In the Swedish context, the social partners have jointly pointed to the absence of statutory minimum wages, the practice of "organised decentralisation" and an emphasis on local and individualised wage-setting.[160]

A Government Inquiry set to review measures to implement the Directive has concluded that Swedish law basically fulfils the requirements of the Directive and that no introduction of statutory minimum wages or other legal reforms are necessary.[161] However, it could be argued that this assessment is too narrow, and does not fully take into account the individual rights element of the Directive and existing industrial relations realities and differences as regards trade union membership rates and collective bargaining coverage rates in different labour market sectors in Sweden.[162]

6. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

The regulation of working time and health and safety are closely connected, both in EU law and Swedish law, and central to job quality and good working conditions. In Sweden, there is an important interplay between legislation and collective bargaining in this area. The Working Time Directive has been implemented through provisions in the (1982:673) Working Time Act (*Arbetstidslagen*), which through its semi-compelling character affords a large scope for collective bargaining. Collective bargaining regulation on working time issues, at both national, sectoral, and local level is frequent, in the labour market in general, and in the care sector.[163] The (1982:673) Working Time Act contains

[160] Cf. Article 153.5 TFEU. The Danish government has brought an action for annulment of the Directive to the Court of Justice. For an industrial relations analysis of minimum wage regulation, see e.g. Irene Dingeldey, Damian Grimshaw, and Thorsten Schulten, edited by, *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Levels* (London: Routledge, 2021). Similar criticism, for basically the same reasons, has been raised by Swedish social partners towards the (2023/970/EU) Pay Transparency Directive.

[161] See Government Inquiry Report, SOU 2023:1655, *Genomförandet av minimilönedirektivet*.

[162] See e.g. Jenny Julén Votinius, Birgitta Nyström, and Mia Rönnmar, *Remiss: Genomförandet av minimilönedirektivet*, Written remit response to the Government Inquiry Report, drafted on behalf of the Faculty of Law and Lund University, Dnr V 2023/1665 (Lund University, 2023). See further Niklas Selberg and Erik Sjödin, "The Directive (EU) 2022/2041 on adequate minimum wages in the European Union: Much ado about nothing in Sweden?" *European Labour Law Journal* (2024); Petra Herzfeld Olsson and Mette Søsted Hemme, "Scandinavian States," in *The EU Directive on Adequate Minimum Wages. Context, Commentary and Trajectories*, edited by Luca Ratti, Elisabeth Brameshuber, and Vincenzo Pietrogiovanni (London: Bloomsbury, 2024).

[163] On decentralised collective bargaining and collective bargaining regulation on working time, in the Swedish labour market in general and in the public health care, the manufacturing, and the retail sectors, see Rönnmar and Iossa, *CODEBAR*.

provisions on, for example, daily rest, breaks, weekly rest periods, maximum weekly working time, overtime, on-call time, and night work. In Swedish law, and within the boundaries set by legislation and collective bargaining, as a main rule working time length (full-time or part-time) is regulated by the employment contract, while working time allocation is regulated by managerial prerogative and the employer's right to direct and allocate work. Part-time work is also seen as a flexible form of employment and the specific regulation on part-time work was discussed above (Section 4.1).

In Sweden, working time aspects related to daily rest are high on the agenda. Collective bargaining regulation in the public sector, including the care sector, recently had to be renegotiated, for example, by SKR, Sobona, the Swedish Municipal Workers' Union, and the Swedish Association of Health Professionals, in response to a legal challenge from the European Commission and claims that Swedish collective agreements contravened the Working Time Directive and its rules in this area. The new collective bargaining regulation and the practical implications of its working time regulation have been debated and criticized, for example, by local trade union representatives and individual employees, from the perspective of a deterioration of work-life-balance.[164] Furthermore, there is, as we have seen, current discussion in the care sector on working time allocation, working time reduction, and part-time work.[165]

In the Swedish context, employees, including care workers, are entitled according to a number of leave schemes. In this area, Swedish labour law legislation interplays with collective bargaining in vital ways, and regulates important rights and schemes of leave, partly as an implementation of EU law, including, for example, annual leave (with a statutory entitlement of five weeks annual leave, according to the (1977:480) Annual Leave Act (*Semesterlagen*)), study leave, parental leave and other work-family related leaves.

For the last forty-five years, Swedish work and family policies have adapted a holistic approach to the particular needs of working parents, with the gradual introduction and improvement of various measures in different areas. These measures include accessible and affordable public childcare, far-reaching rights to parental leave at a high level of economic compensation, a portion of the leave earmarked for each parent, and a high level of protection against unfair treatment at work in connection with parenthood. In line with the uniform character of Swedish labour law, the statutory right to leave related to the birth of a child or parenthood, in the (1995:584) Parental Leave Act (*Föräldraledighetslagen*),

[164] See Erik Sinander, *Memorandum on the regulation of working time for health professionals and municipal workers in Sweden and collective agreements derogating from the Swedish Working Time Act* (European Centre of Expertise 2023), Kerstin Ahlberg, "Svenska arbetstidsavtal under kommissionens argusöga," *EU & arbetsrätt* 1 (2023), and Kerstin Ahlberg, "Kommissionen lägger ned ärende om dygnsvila," *EU & arbetsrätt* 4 (2023).

[165] On the development of working time regulation in Sweden and in a comparative setting, see e.g. Ryberg-Welander, *Arbetstidsregleringens utveckling*, and on current EU and Swedish regulation, see Nyström, *EU och arbetsrätten*, 340 ff. and 394 ff.

applies equally in all sectors of working life, and implements EU law in this area. Benefits are paid out under the parental benefits scheme of the (2010:110) Social Security Code (*Socialförsäkringsbalken*) (Section 7). The right to maternity leave amounts to seven weeks prior to the estimated delivery date and seven weeks after the delivery (of which two weeks are compulsory). Benefits are paid out at sick pay level under the parental benefits scheme of the (2010:110) Social Security Code, where the days on maternity leave are included in the total amount of days with parental leave benefit.[166] In addition, maternity leave is provided for breastfeeding for as long as needed, which means that the employee must be allowed to interrupt work to breastfeed the child. In connection with the birth of a child there is a right to 10 days off for the other parent of the child (the father or, in same-sex relationships, the other mother). Benefits are paid at sick pay level under the parental benefits scheme. Each parent is entitled to take full-time parental leave from work until their child is 18 months old, with or without paid benefits. In addition, all employees have the right to parental leave when taking up parental leave benefit, which amounts to 240 days for each parent (195 days at sick pay level and 45 days at a low fixed level). Of these days, 90 days are reserved for each parent, the rest of the days may be transferred between the parents at choice. In addition to the regular parental leave, there is a right to temporary parental benefit when caring for a sick child under the age of 12, with 60 benefit days per child, per year paid at sick pay level under the parental benefits scheme. In addition to the statutory regulation, virtually all collective agreements top up the parental leave benefit.[167]

The EU Framework Directive on Health and Safety is implemented through provisions in the (1977:1160) Work Environment Act (*Arbetsmiljölagen*). The aim of the Act is to prevent occupational illness and accidents and otherwise ensure a good work environment. The work environment must be satisfactory, taking into account the nature of the work and social and technological developments in society, and working conditions must be adapted to people's differing physical and mental capabilities (Chapter 1 Section 1). The employer is responsible for securing a healthy and safe work environment, and the employer's obligations entail both general and individual work environment adaptation. Employers and employees must cooperate to create a good work environment, and the employer must systematically plan, direct and monitor activities in a manner that ensures

[166] Income-related pregnancy and maternity benefits correspond to sick leave benefits according to Chapter 12 Sections 18 and 19 of the (2010:110) Social Security Code.

[167] See Jenny Julén Votinius, "Parenthood Meets Market Functionalism – Parental Rights in the Labour Market and the Importance of the Gender Dimension," in *Normative Patterns and Legal Developments in the Social Dimension of the EU*, edited by Ann Numhauser-Henning and Mia Rönnmar (Oxford: Hart Publishing, 2013); Jenny Julén Votinius, "Collective Bargaining for Working Parents in Sweden and Its Interaction with the Statutory Benefit System," *International Journal of Comparative Labour Law and Industrial Relations* 36, 3 (2020): 367–86, and Anne Lise Ellingsaeter, "Dual Breadwinner Societies: Provider Models in the Scandinavian Welfare States," *Acta Sociologica* 4 (1998): 59–73.

that the work environment meets the prescribed requirements for a good work environment. When it comes to individual work adaptation the employer must take into account the particular fitness of the employee to perform the work by adapting the working conditions or taking other appropriate measures. In the planning and organization of work, due account must be taken of the fact that people's fitness to perform working duties differs.

Swedish health and safety regulation contains a strong element of employee influence and trade union involvement. At every workplace where five or more employees are regularly engaged, one or more of the employees shall be appointed as health and safety officers, which are to be appointed by the local trade union; the trade union which is bound by a collective agreement with the employer (Chapter 6 Section 2). The health and safety officer shall represent the employees on work environment matters and strive for a satisfactory work environment.[168] [169]

Current discussion on health and safety in the care sector focuses on stress and workload and the promotion of a sustainable working life and working environment (Section 2.3 and Section 3). Another area that merits mention in the context of health and safety is protection against harassment. Harassment based on sex and sexual harassment are considered psychological occupational safety and health risks and categorised as forms of victimization. Employers are required to take actions to counteract work environment risks of victimization and are obliged to establish procedures for cases where victimization occurs, and make the procedures known to all employees.[170] In parallel with the health and safety legislation, there is also a protection in the (2008:567) Discrimination Act. When conducted by the employer, harassment related to various non-discrimination grounds, including e.g. gender, ethnicity, and sexual orientation, and sexual harassment constitutes discrimination, for which the employer can

[168] The health and safety officer shall participate in the planning of new premises, equipment, work processes and work organisation. If a particular task involves immediate or serious danger to the life or health of an employee and if no immediate remedy can be obtained through representations to the employer, the health and safety officer may order the suspension of that work pending a decision by the Swedish Work Environment Authority (Chapter 6 Section 7 of the (1977:1160) Work Environment Act). At a workplace where fifty or more employees are regularly engaged, there shall be a health and safety committee consisting of representatives of the employer and the employees.

[169] See also Peter Andersson, *Vidta alla åtgärder som behövs. En rättsvetenskaplig studie av arbetsgivarens ansvar att förebygga stressrelaterad ohälsa och uppnå en god psykosocial arbetsmiljö* (Göteborgs universitet, 2013; Juridiska institutionens skriftserie, Handelshögskolan vid Göteborgs universitet, Skrift 13) and Johan Holm, *Ett hållbart arbetsliv. Arbetsgivarens rättsliga ansvar för arbetsmiljö och rehabilitering* (Umeå universitet, 2021; Skrifter från juridiska institutionen vid Umeå universitet 47).

[170] AFS 1993:17 Victimization at work, repealed through AFS 2015:4 Organizational and social working environment. Victimization is defined as "recurrent reprehensible or distinctly negative actions, which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community".

be held liable.[171] When conducted by an employee against another employee, it gives rise to an obligation for the employer to investigate the allegations and, where appropriate, take measures to prevent future harassments. An employer who fails to meet these requirements can be held liable.[172] The (2008:567) Discrimination Act also requires employers to take active preventive measures to prevent harassment or to sexual harassment.[173] This obligation does not correspond to any particular rights for individual employees, but is a matter for supervision of the Equality Ombudsman.

The COVID-19 pandemic had an important impact on the Swedish labour market and on the care sector.[174] Care workers were negatively affected by the COVID-19 pandemic in multiple ways. The social partners, social dialogue, and collective bargaining played a major role in the handling of the COVID-19 pandemic. The social partners, at cross-sectoral, sectoral, and local level, engaged in various measures and activities, including postponement of the ordinary rounds of negotiations on national sectoral agreements; temporary re-negotiations and adaptations of national, sectoral agreements in force to assist local social partners and address the extraordinary situation of the pandemic; the conclusion of thousands of local collective agreements on short-time work in the private sector;[175] lay-offs and redundancy dismissals, supported by collective agreements on transitions and restructuring; crisis-management agreements in the public sector, of particular importance for the public health care sector;[176] proactive and protective measures in the area of disease control and health and safety; and transition to remote work and work from home for large groups of white-collar and professional employees. Furthermore, the government substantially increased

[171] Chapter 1 Section 4, p. 4 and 5 of the Discrimination Act (2008:567).

[172] Chapter 2 Section 3 of the Discrimination Act (2008:567).

[173] Chapter 3 Section 6 of the Discrimination Act (2008:567).

[174] For a thorough review of the handling of the COVID-19 pandemic by the government, government authorities, and regions and municipalities, see the outcome of the work of the so-called "Corona commission', Government Inquiry Report, SOU 2022:10, *Sverige under pandemin*.

[175] The first collective agreements on short-time work were concluded and implemented in the industry and manufacturing sector to deal with the effects of the 2008 and 2009 economic crisis. The short-time work scheme was later extended to the overall Swedish labour market and complemented by statutory regulation and state financial support; see the (2013:948) Act on Support for Short-time Work.

[176] See Sveriges Kommuner och Landsting och Sobona, Kommunala företagens arbetsgivarorganisation samt Svenska Kommunalarbetareförbundet, OFRs förbundsområde Allmän kommunal verksamhet jämte i förbundsområdet ingående organisationer, AkademikerAlliansen och till AkademikerAlliansen anslutna riksorganisationer samt Brandmännens Riksförbund, *Överenskommelse om Krislägesavtal,* i lydelse 2019-07-01 and Sveriges Kommuner och Regioner och Sobona, Kommunala företagens arbetsgivarorganisation samt Svenska Kommunalarbetareförbundet, OFRs förbundsområden Allmän kommunal verksamhet, Hälso- och sjukvård jämte i förbundsområdet ingående organisationer, Lärarförbundets och Lärarnas Riksförbunds samverkansråd samt AkademikerAlliansen och till AkademikerAlliansen anslutna riksorganisationer samt Brandmännens Riksförbund, *Överenskommelse om Krislägesavtal,* i lydelse 2021-07-01.

investment in financial support to employers; unemployment and sickness insurance; employment services and labour market measures; and higher education and training. At the same time, in the care sector, it became obvious that staff shortages, increasing stress and health and safety risks could not be attributed solely to the COVID-19 pandemic. Instead, these phenomena constitute long-standing problems, which rest for the employers and social partners to resolve.[177]

Training and competence development is of key importance not only for the job quality in care work but also for the quality of the care provided. Furthermore, training and competence development relate to the current debate on skills and staff shortage and the overall, and important role, of education, training and competence development for general talent management and recruitment in the care sector. There are multiple perspectives of training and competence development and crucial links to the general educational system, to university education, to vocational training and life-long learning, to active labour market policy and job transitions, as well as to rights of competence development and training on the job within the framework of the employment contract.

In the Swedish context, and within existing employment relationships and the employment contract, there is more emphasis on managerial prerogative, direction and allocation of work, and employees' *obligations* to participate in training and competence development, than on employees' individual *rights*. However, in the context of dismissals for reasons of redundancy the employer's obligation to provide alternative work and the seniority rules imply a limited obligation of the employer to provide training in order for employees to obtain sufficient qualifications.[178]

Transition agreements (*omställningsavtal*) are cross-sectoral collective agreements, which cover all sectors (private and public, blue-collar, white-collar, and professional employees) and large parts of the labour market. They constitute a key feature of Swedish labour law and collective bargaining and comprise an important complement to the statutory employment protection regulation on redundancy dismissals, and to active labour market policies and unemployment insurance. The transition agreements provide employees facing dismissal for reasons of redundancy with different rights to severance pay and economic compensation and active transition support measures, by way of coaching, job-searching services, training, and re-education etc. The transition agreements

[177] See further on the implications of the COVID-19 in the Swedish public health care sector, Rönnmar and Iossa, *CODEBAR*. On the COVID-19 pandemic, see also, Caroline Johansson and Niklas Selberg, "COVID-19 and Labour Law: Sweden," *Italian Labour Law E-Journal* 13 (2020); Anders Kjellberg, *Den svenska modellen 2020. Pandemi och nytt huvudavtal*, 2nd edn (Stockholm: Arena Idé, 2021).

[178] See Mia Rönnmar, *Arbetsledningsrätt och arbetsskyldighet. En studie av kvalitativ flexibilitet i svensk, engelsk och tysk kontext* (Lund: Juristförlaget i Lund, 2004); Rönnmar and Numhauser-Henning, "Swedish employment protection," 443–67; Carin Ulander-Wänman, "Arbetsbrist och arbetstagares rätt till kompetensutveckling," *Svensk Juristtidning* 8 (2017): 613–30.

also provide support for employers in re-organisations and redundancy situations. The transition agreements are administered by transition foundations, set up by the social partners and collective bargaining, and the severance pay and transition support are financed by the employers, often through an insurance and premium-based scheme.[179]

The new main cross-sectoral collective agreement on security, transition, and employment protection concluded in in the private sector in 2022 replaces and integrates previous transitions agreements between the Confederation of Swedish Enterprise, PTK, and the Swedish Confederation of Trade Unions, LO (Section 4.2). This agreement adds to existing protection and entails important support for transition and life-long learning, for both permanent and fixed-term employees, of importance both for individual employees' competence development and for the talent management of the Swedish labour market overall, and of specific sectors, including the care sector. Collectively bargained transition support is extended through legislation to companies and employees not covered by collective bargaining. In addition, a new form of study aid, so-called transition study aid is introduced to enable and support employees' life-long learning and general competence provision. This main agreement, and the statutory employment protection reform, has also impacted on the re-negotiation of the transition agreement in the public care sector.[180]

7. Social Security Coverage and Benefits

Labour law and social security law have close links. Social security has developed as part of industrial society and is complementary to, and dependent on, wage work. Social security provides protection against risks and maintenance in situations in which a person is unable to earn a living through wage work, owing to, for instance, old age, sickness, unemployment or childbirth.[181] In the EU, the substantive content of social security is, in principle, a matter for the respective Member States and national legislation. However, the coordination of social security in the EU and between the Member States was implemented early on as a way to facilitate the free movement of workers. Through soft law and the open method of coordination, various welfare state, social policy, and social security aspects are also being coordinated, for example, as regards health care, long-term care, and pensions.[182]

[179] See Gabriella Sebardt, *Redundancy and the Swedish Model. Swedish collective agreements on employment security in a national and international context* (Uppsala: Iustus, 2005).

[180] See Act (2002:856) on transition study aid (*lag om omställningsstudiestöd*).

[181] See Anna Christensen, "Normativa grundmönster i socialrätten," *Retfaerd* 78 (1997); Anna Christensen, "Normative Patterns and the Normative Field: A Post-Liberal View on Law," in *From Dissonance to Sense. Welfare State Expectations, Privatisation and Private Law*, edited by Thomas Wilhelmsson and Samuli Hurri (Ashgate, 1999).

[182] See Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. See also Frans Pennings, *European Social Security Law*, 7th edn (Larcier: Intersentia, 2022), and in relation to cross-border health care,

The Swedish welfare state and social security system has been described in terms of a coordinated market economy (Hall and Soskice), a social democratic welfare state (Esping-Andersen), and a Scandinavian social security system. The Swedish welfare state is both publicly funded and comprehensive and oriented towards the individual. Every adult person should be able to support themselves and live independently according to their own choices taking into account the services, benefits, and, if needed, additional support provided by the public system.[183]

The Swedish social security system has a uniform and extensive coverage and integrates the care sector and care workers. Individuals are insured on an individual basis, irrespective of occupation and civil status. The social security system includes a number of social security benefits, such as pensions, sickness insurance, unemployment insurance, and parental benefits. One main statute is the (2010:110) Social Security Code (*Socialförsäkringsbalk*), which includes the main principles of the social security system, provisions on social security coordination, and regulation of a number of social security benefits, including e.g. pensions, sickness insurance, work injury, and parental benefits. The unemployment insurance is regulated by the (1997:238) Unemployment Insurance Act (*Lagen om arbetslöshetsförsäkring*). The social security system contains both work-based benefits and residence-based benefits. Work-based benefits are related e.g. to old age, sickness, invalidity, work injury, and unemployment. The loss-of-income-principle (*inkomstbortfallsprincipen*) is generally applied in relation to work-based benefits. The qualification requirements, benefit levels, and lengths of payment periods vary depending on the social security benefit. Most social security benefits are financed by contributions paid by employers, but some benefits are tax-financed.[184] The unemployment insurance represents the so-called Ghent-system, where independent unemployment insurance funds, closely tied to the trade unions, manage the unemployment insurance.[185]

social security coordination, and the interplay between EU and Swedish law, Martina Axmin, "Access to Cross-Border Healthcare for Older Persons in the European Union: the Interplay between EU Law and Swedish Law," PhD. diss. (Lund University, 2020).

[183] See Peter A. Hall and David Soskice, edited by, *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001); Esping-Andersen, *The three worlds of welfare capitalism*; Axmin, "Access to Cross-Border Healthcare"; Berggren and Trägårdh, *The Swedish Theory of Love*.

[184] On the Swedish social security system, see e.g. Titti Mattsson, "Social-welfare Law," in *Swedish Legal System*, edited by Michael Bogdan and Christoffer Wong, 2nd edn (Stockholm: Norstedts Juridik, 2022), 102–25; Martina Axmin and Göran Lundahl, *Socialförsäkring och arbetslöshetsförsäkring. En introduktion till viktiga delar av Sveriges välfärdssystem*, 2nd edn (Studentlitteratur, 2023); Lotti Ryberg-Welander, *Socialförsäkringsrätt. Om ersättning vid sjukdom*, 3rd edn (Stockholm: Norstedts Juridik, 2018), and Martina Axmin and Jenny Julén Votinius, "Survivors benefits in Sweden: Social Security Developments, Collective Agreements and Gender Aspects," in [*book title yet to be confirmed*], edited by Stamatia Devetzi (Stuttgart: Ibidem-Verlag, forthcoming).

[185] See e.g. Anders Kjellberg, "The Swedish Ghent system and trade unions under pressure," *Transfer – European Review of Labour and Research* 15, 3–4 (2009): 481–504.

At present, the statutory Swedish social security system, including the sickness insurance and unemployment insurance, is undergoing important reform, and aimed *inter alia* at strengthening the work-first principle (*arbetslinjen*).[186]

In Sweden, collective bargaining plays a major and complementary role in social security. In parallel with the public welfare system, almost the entire workforce is also covered by collective agreements which provide occupational insurances for social risks. As we have seen, in Sweden, collective agreements are private contracts (Section 3), and the occupational welfare system is completely separated from the public welfare system. Collectively bargained provisions for pensions, along with financial support in the case of sickness, invalidity, and unemployment have been in place for around a century or more and nowadays, the occupational schemes also cover provisions relating to parenthood.[187]

Collective agreements on occupational welfare are normally concluded at the national, cross-sectoral level. Thus, each such collective agreement covers a large part of the labour market, for example, all private blue-collar employees, all private white-collar employees, all employees in regions and municipalities, or all state employees. Through these cross-sectoral collective agreements, the social partners have formed joint insurance companies and, normally, disputes are settled by bi-party arbitration boards. This very comprehensive occupational welfare system, which tops up the public welfare system, covers about 90 percent of the entire workforce, namely all employees covered by a collective agreement, i.e. all employees working for an employer bound by a collective agreement. In recent years, occupational schemes for risks covered by the public social security system have gained increasing importance. In social science scholarship, this development has been explained by reference to a combination of the strong position of the social partners, and a general decline in the statutory welfare system, including an erosion of statutory benefits, starting in the early 1990s.[188]

[186] See e.g. Government Bill, Prop. 2023/24:128, *En arbetslöshetsförsäkring baserad på inkomster*, Government Inquiry Report, SOU 2024:26, *En utvärdering av förändringar i sjukförsäkringens regelverk under 2021 och 2022*, Government Inquiry Report, SOU 2023:30, *Ett trygghetssystem för alla – nytt regelverk för sjukpenningsgrundade inkomst*, and Government Inquiry Report SOU 2023:53, *En ändamålsenligt arbetsskadeförsäkring – för bättre ekonomisk trygghet, kunskap och rättssäkerhet*. On the work-first welfare state, see Sara Stendahl, Thomas Erhag, and Stamatia Devetzi, edited by, *A European Work-First Welfare State* (Centrum för Europaforskning, 2008).

[187] See Olle Jansson et al. "Sweden: Supplementary Occupational Welfare with Near Universal Coverage," in *Occupational Welfare in Europe: Risks, Opportunities and Social Partner Involvement*, edited by David Natali, Emmanuele Pavolini and Bart Vanhercke (European Trade Union Institute, 2018), 55–77; Caroline Johansson, "Occupational Pensions and Unemployment Benefits in Sweden," *International Journal of Comparative Labour Law and Industrial Relations* 36, 3 (2020): 339–66.

[188] See Paula Blomqvist and Joakim Palme, "Universalism in Welfare Policy: The Swedish Case Beyond 1990," *Social Inclusion* 8, 1 (2020): 114–23. Compare Bent Greve, "At the Heart of the Nordic Occupational Welfare Model: Occupational Welfare Trajectories in Sweden and Denmark," *Social Policy & Administration* 52, 2 (2018): 508–18. See further Martina Axmin and Votinius, "Survivors benefits in Sweden".

8. Concluding Remarks

This report analyses job quality and inclusive working conditions of care workers in Sweden. The focus of the analysis is on labour law, but also includes aspects of industrial relations, policy, and labour market characteristics, and the interplay between Swedish law and EU/European and international law.

Legal and policy developments in the care sector reflect the characteristics of the Swedish labour law and industrial relations system, such as an emphasis on autonomous collective bargaining, a tradition of collaboration and social partnership, and strong legal rights and industrial relations practices of employee influence. There is an important interplay between EU law and Swedish law, with recent legal tension as regards the scope for Swedish autonomous collective bargaining and issues regarding minimum wage, working time, and health and safety.

This report highlights core labour law topics and includes an analysis of: characteristics and current debates as regards the care sector, care workers, and domestic care work (Section 2), industrial relations, fundamental trade union rights, collective bargaining, and employee influence (Section 3), employment status, flexible forms of employment, and employment protection (Section 4), wages and minimum wage regulation (Section 5), working time and health and safety, including implications of the COVID 19-pandemic and training and competence development (Section 6), and social security (Section 7).

The care sector in Sweden is mainly public with a relatively small but growing private care sector. Around 80 percent of care services in Sweden are provided by public regions and municipalities. The CARE4CARE project studies a selected group of care workers, namely home caregivers, basic care workers, health professionals in nursing with a Bachelor's degree, and health professionals in nursing with a Master's degree. The definitions and demarcations of specific categories of care workers and care occupations are linked to actual care work tasks, professional occupational licenses and protected titles, and trade union and labour market organisation. In this report, the following categories of care workers and care occupations in Sweden have been studied: personal assistants for persons with a disability, care assistants, assistant nurses, nurses, and specialised nurses. The Swedish development confirms European and global trends of a female-dominated workforce, a workforce with an important element of immigrant workers, and a flexible workforce, with high rates of fixed-term and part-time employment.

In Sweden, social partners and collective bargaining play a key role in the care sector, both in the public and private care sector. The semi-compelling character of most labour law legislation encourages and enables collective bargaining on various aspects of job quality and working conditions, such as wages, working time, leave, and flexible forms of employment. The collective bargaining coverage rate is about 90 percent and there is an elaborate collective bargaining framework at cross-sectoral, sectoral, and local level, which is characterised by "organised decentralisation". Important national cross-sectoral, main, agree-

ments provide long-term regulation of important aspects, including cooperation and co-determination, collective action, employment protection, transition and competence development, and social security.

Legal regulation and practical application of employee influence is of great importance in the labour market in general, and in the care sector. Trade union representatives engage in information, consultation, and co-determination at the workplace, and health and safety representatives are involved in health and safety activities at work. A comprehensive legislative framework is complemented in important ways by national, cross-sectoral collective agreements on cooperation and co-determination. At workplace level, local collective bargaining and employee influence interact and often reinforce one another.

The two main current debates on care work and the care sector in Sweden are the debate on the skills and staff shortage and challenges of recruitment and talent management, and the debate on the low level of wages and poor quality of working conditions, including health and safety concerns, especially stress, workload, and the promotion of a sustainable and healthy working environment. These debates are closely interconnected. Given the Swedish labour law and industrial relations system, these challenges must be addressed by the social partners through social dialogue and collective bargaining. However, the difficult collective bargaining negotiations and the industrial conflict in the public care sector in the spring and summer of 2024 indicate that there are conflicting perspectives and a need for further dialogue and policy development between the social partners.

Against the background of the ageing Swedish population and current and future skills and staff shortage in the care sector, the development in the area of digitalisation, AI, and new technology (including E-health and remote care) presents both an important future potential and challenge for the care sector and for care work. In order to promote improved working conditions, job quality, and care quality in this context, it is important to engage employers, care workers, and social partners through collective bargaining and employee influence and social partner cooperation, and to take health and safety concerns into account.

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2. Collective agreements

2.1 Public Sector

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OFR:s förbundsområde Hälso- och sjukvård (Vårdförbundet), Lärarförbundets och Lärarnas Riksförbunds Samverkansråd samt AkademikerAlliansen och till AkademikerAlliansen anslutna riksorganisationer, *AB 20/Allmänna Bestämmelser 20*, Bilaga till samtliga HÖK:ar, i lydelse 2022-01-01 (med Kommentarer).

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2.2 Private Sector, Commercial

Grafiska Företagen, Industriarbetsgivarna, IKEM, Livsmedelsföretagen, Gröna arbetsgivare, Teknikföretagen, TEKO, Sveriges Textil- och Modeföretag och Trä- och Möbelföretagen samt GS Facket för skogs-, trä- och grafisk bransch, IF Metall, Livs/Livsmedelsarbetareförbundet, Sveriges Ingenjörer och Unionen, *Industriavtalet. Industrins samarbetsavtal och förhandlingsavtal*.

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2.3 Private Sector, Non-Profit

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STUDI SUL LAVORO DI CURA – STUDIES ON CARE WORK

TITOLI PUBBLICATI

1. Maria Luisa Vallauri, William Chiaromonte (edited by), *CARE4CARE - We Care for Those Who Care – Vol. I. Care Work and Working Conditions: National Legal Frameworks and Comparative Insights*, 2025

The volume brings together the national reports and the comparative report prepared within the framework of the CARE4CARE project, which analyse the working conditions of care workers in France, Germany, Italy, Poland, Spain and Sweden. The reports highlight the main critical issues in the regulation of employment relationships in the care sector, with the ultimate aim of emphasising, above all, the social value of these workers and promoting a discussion on the relevant labour law framework in the EU countries.

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