

# STAMINA OR STRESS?

SUSTAINABLE AND FLEXIBLE  
EMPLOYABILITY

February 6<sup>th</sup>, 2018

# Workable and manageable work: impacts on the precarious employment and on the worker

Manon ANTOINE

# Plan

- I. Flexicurity: « workable and manageable work » and precarious employment
- II. Flexibilization of the work
- III. Impacts of the flexibilization on the *work* and on the *worker*

# I. Flexicurity: « workable and manageable work » and precarious employment

Introduction

I.

II.

III.

- **Precarious:** “the character of something that we cannot guarantee the duration, the solidity, the stability and which, all the time, can be questioned”  
> *Hélaridot*
- **Flexicurity:** “an integrated strategy for enhancing, at the same time, flexibility and security in the labor market. It attempts to reconcile employers’ need for a flexible workforce with workers’ need for security”  
> *European Commission*

- Actual labor law is not anymore in measure to supply an answer to the current economic and social questions → **Law of March 5<sup>th</sup>, 2017** concerning the “workable and manageable work” (Peeters’ law) has been adopted = **FLEXICURITY**

**Flexicurity → job insecurity → precariousness**

**+**

“bad” employment and/or working conditions

**=**

Impacts on the **professional and family situation**  
of the worker

**&**

impacts on his **physical and psychic health**

# II. Flexibilization of the work

Introduction

I.

II.

III.



# II.1. Flexibilization of the work by the working time

Preamble of the law of March 5<sup>th</sup>, 2017:

- 1. Annualization of the working time;**
- 2. Voluntary extra hours;**
3. Formation if the worker;
4. Occasional telecommuting.

## II.1.1. Working time

- 8H/D
- 38H/W
  
- If 39H/W or 40H/W → 6 or 12 rest days/Y to respect the weekly average duration of 38H/W



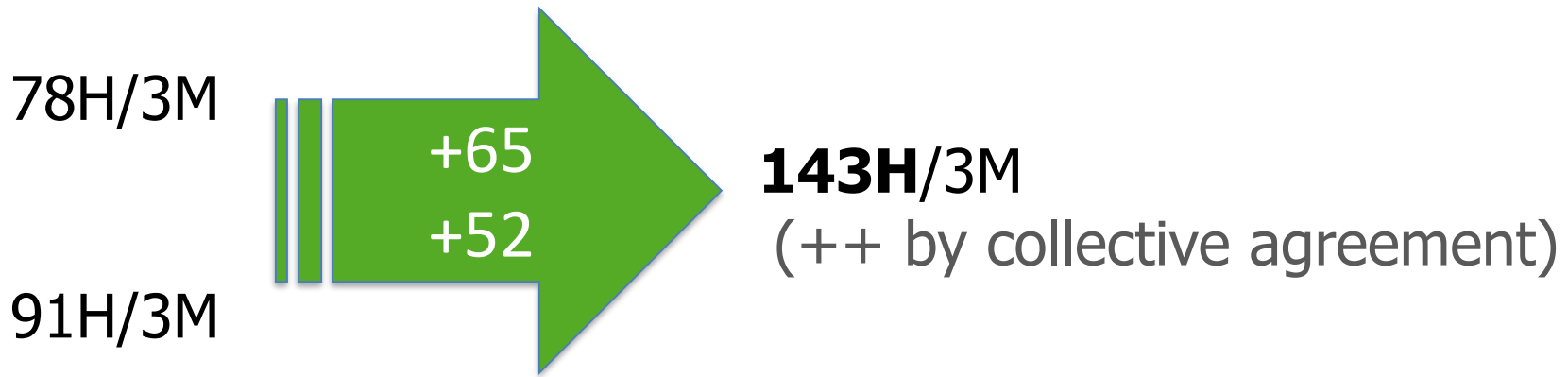


## II.1.2. Extra hours

Law of March 16<sup>th</sup>, 1971 = “all the working hours made outside the daily or weekly working duration”

- Worker is entitled to *compensatory leave* or *overtime pay*;
- 78H or 91H/quarter
- Extraordinary working increasing or a case of absolute necessity

# Law of March 5<sup>th</sup>, 2017:



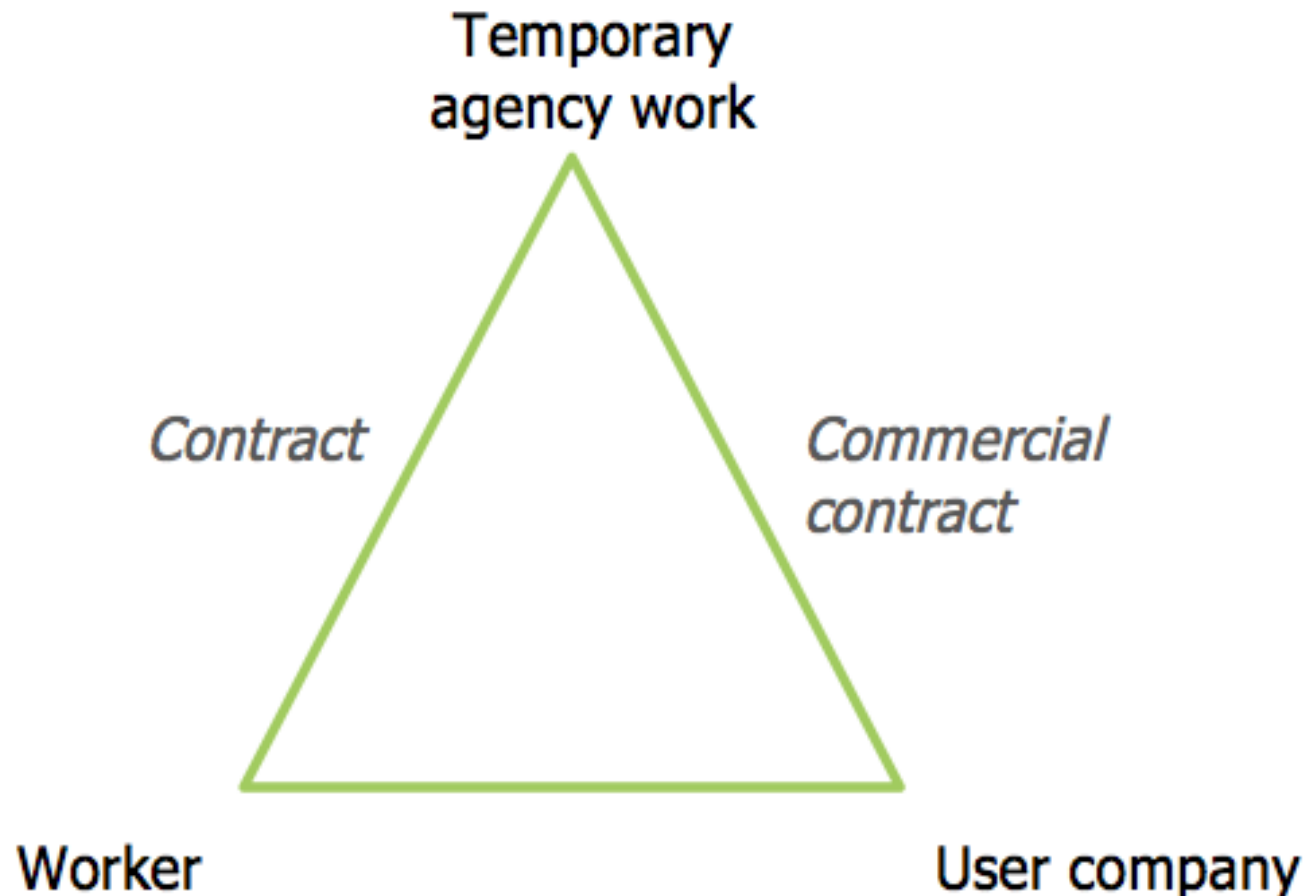
- “Volunteer extra hours” = + 100H/Y (or 360H/Y in some sectors)

## II.1.3 Small flexibility

- Art. 20*bis* of the law of March 16<sup>th</sup>, 1971: “the employer can varies/changes working schedules according to the demand or to the rhythms of the activity of the company, as far as the average of 38H/W is respected”
- **Law of March 5<sup>th</sup>, 2017** : period of reference = **one year** (not week)

## II.2. Flexibilization of the work by the working contract: the open-ended temporary work contract

Art. 7 of the law of July 24<sup>th</sup>, 1987: « Temporary work contract is the one by which a temporary worker makes a commitment towards a temporary agency work, against remuneration, to make for one or several user companies, a temporary or fixed-term work »



! no contract between the worker and the user !

At the beginning, temporary work is used to:

1. Replace temporarily a permanent worker (contract reduced, suspended or ended);
2. Answer a temporary working increasing compared to the normal activity of the company;
3. Insure the execution of an exceptional work

2013 : temporary work of insertion (consequence of the removal of the « trying clause ») → permanent hiring





# Law of March 5<sup>th</sup>, 2017 → **open-ended temporary work:**

- Permanent employment contract btw the Temp AG and the worker ;
- Contract covers the execution of several consecutive temporary services ;
- Each missions are mentioned in a specific contract ;
- Temp AW will pay the worker when he does not work btw missions!

# III. Impact of the flexibilization on the work and on the worker

Introduction

I.

II.

III.

Law of March 5<sup>th</sup>, 2017 has been adopted a few months ago = we still don't have the sufficient feedback to analyse the precise impacts of its measures but...:



- What about the freedom of the temporary worker who refuse a mission? (skills...)
- What about the respect of the “right to work” and the respect of the “free choice of a professional activity” protected by the article 23 of our Constitution?

# The law of March 5<sup>th</sup>, 2017 seems to **increase the precariousness of the work and of the worker:**

## 1. Uncertain working schedules/extra hours/small flexibility:

- Consequences on **accessible services** as guard of children, grocery stores, etc.
- Complicating the **organization of professional and family life** + complicating their **adequacy**

## 2. Open-ended temporary work contract:

- Increases the **mobility** of workers
- Tests the capacities of **adaptation** of the worker
- **Fluctuation** in salary, periods of **inactivity**
- **Freedom? Right to work?**

# Conclusion

- **Precariousness** of the worker increase
- Consequences on the **health** and on the **well-being** of the worker: stress, etc.
- Are the measures contained in the law of **August 4<sup>th</sup>, 1996** concerning the well-being at work still respected?

## Main references

- Article 23, Constitution belge.
- Loi du 5 mars 2017 concernant le travail faisable et maniable, *M.B.*, 15 mars 2017.
- Loi du 10 août 2001 relative à la conciliation entre l'emploi et la qualité de vie, *M.B.*, 15 septembre 2001.
- Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs, *M.B.*, 20 août 1987.
- Loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail, *M.B.*, 18 septembre 1996.
- Arrêté royal du 28 avril 2017 établissant le livre I<sup>er</sup> Principes généraux du code du bien-être au travail, *M.B.*, 12 juin 2017.
  
- DOCKES, E., « Perte du sens et effritement du droit du travail », *Revue Projet*, 2008/1, p. 23.
- LEBRUN, A., « Le travail intérimaire, le travail temporaire et la mise à disposition de personnel », in C. BAÏNI e.a., « La flexibilité en droit du travail », *Les ateliers de la FUCAM*, Anthémis, Limal, 2012, pp. 257 et 258.
- HÉLARDOT, V. et DRULHE, M., « Intensité, densité et sens du travail : quelques configurations de l'expérience des salariés aux prises avec la précarisation », in, ASKENAZY, P. e.a., *Organisation et intensité du travail*, 2006, Octares, Toulouse, pp. 345 à 351, [http://marcel.drulhe.online.fr/pub/Intensit\\_sens\\_travail\\_2006.pdf](http://marcel.drulhe.online.fr/pub/Intensit_sens_travail_2006.pdf).

- LEROUGE, L., « Les effets de la précarité du travail sur la santé : le droit du travail peut-il s'en saisir ? », Perspectives interdisciplinaires sur le travail et la santé, Les Amis de PISTES, 1er mai 2009, p. 2, <https://pistes.revues.org/2306>.
- MICHAUX, A.-V., *Eléments de droit du travail*, Bruxelles, Larcier, 2010
- VALENDUC, G., « Qu'est-ce qu'un travail précaire ? Une comparaison entre la Belgique et les pays voisins », Note d'éducation permanente de l'ASBL Fondation Travail) Université (FTU), N° 2013 – 4, avril 2013, p. 2, <http://www.ftu.be/ep>, consulté le 2 mai 2017.
- FONDATION EUROPÉENNE POUR L'AMÉLIORATION DES CONDITIONS DE VIE ET DE TRAVAIL (EWCS), Sixième enquête européenne sur les conditions de travail – rapport général, Eurofound, EF/16/34/FR, [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634fr1\\_0.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634fr1_0.pdf), consulté le 2 mai 2017.
- COMMISSION EUROPÉENNE, EMPLOI, AFFAIRES SOCIALES ET INCLUSION, « Flexicurité », disponible sur : <http://ec.europa.eu/social/main.jsp?catId=102&langId=fr>, consulté le 26 mai 2017.
- MORAIS B., Les 100 heures sup' volontaires de la loi Peeters et la limite interne (art. 4-7, 34 et 80 loi TFM), [www.socialeye.be](http://www.socialeye.be), consulté le 12 juin 2017.
- SPF EMPLOI, TRAVAIL ET CONCERTATION SOCIALE, « Durée du travail et diminution de la durée de travail », <http://www.emploi.belgique.be/defaultTab.aspx?id=29448>, consulté le 16 mai 2017.
- SPF EMPLOI, TRAVAIL ET CONCERTATION SOCIALE, « Loi concernant le travail faisable et maniable », <http://www.emploi.belgique.be/defaultNews.aspx?id=45797>, consulté le 16 mai 2017.