

Summary

This allows for increasingly flexible working arrangements with regard to several aspects:

- Thanks to the internet and mobile phones employees can access company data from home or any other location and work on a mobile basis (location-al flexibility).
- Fixed daily working hours are replaced by models for annual and trust-based working time (temporal flexibility).
- Instead of committing oneself to the same job for decades, work is increasingly done in shorter term projects with changing teams (organizational flexibility).
- In turn companies use the possibilities to adjust their personnel to the volume of work and outsource tasks, if necessary (numerical flexibility).

This study aims to clarify what the consequences for the status of gainful employment in society are, to what extent the characteristics of the new forms of work are covered by the present legal situation and what macroeconomic consequences are to be expected and should be systematically observed in the future.

The following points represent the core results of the study:

1. The status of work is under threat from a trend to combine temporal-spatial flexibility and employee entrepreneurship.
2. The legal situation is generally clear and adequate. However, balancing between additional regulations and voluntary self-regulation of the social partners is necessary. Furthermore, virtual work-exchange platforms should be scrutinized.
3. As a macroeconomic consequence, few slight improvements are accompanied by relatively many (slight to considerable) deteriorations.
4. For the flexibility of work, the principle of social partnership is a necessary and sustainable condition.
5. The monitoring and controlling systems miss certain aspects and lack in anticipatory data.

Varying degrees and forms of flexibilization

Regarding flexibility in working hours, part-time work has long been established and is a reality for 37 percent of the Swiss labor population which translates into a European top rank. Part-time workers often report a better life-domain-balance, but rate their career opportunities lower than full-time employees. Roughly 61 percent of Swiss employees make use of flexible models of work time such as flexitime. This particular form is appreciated, but poses problems when timekeeping is waived.

With respect to locational flexibility, a quarter of all Swiss employees work at least partially from home which is also a top ranking percentage in the European context. Also increasingly observable are mobile forms of work that encompass work at home, at the customer's location or during commute. Furthermore, companies increasingly rely on desk-sharing and are consequently flexible with regards to their infrastructures. Provided that working from home is chosen voluntarily by employees and does not come in addition to regular work in the office, this form of flexible work offers many advantages such as higher productivity and satisfaction and a better life-domain-balance.

Numeric flexibility, i.e. the flexible size of the workforce, is exemplified by temporary work contracts, freelancer-based projects or new forms of procurement like crowdsourcing on internet platforms. About 7 percent of all Swiss work contracts are temporary. At 5 percent, the "traditional" on-call work has remained stable over the last 15 years. For the extent of the relatively recent phenomenon of crowdsourcing, respectively crowdwork, there is no reliable data yet. However, this form of procurement is likely to gain importance in the near future: Particularly in the IT and communications industries a reduction of the permanent workforce in the coming years is foreseeable. Additional necessary manpower will be recruited as "liquid talents" out of the "human cloud" – i.e. specialists that can be hired through the internet. In general, these new forms of work give rise to the assumption that workers with higher qualifications will benefit while the ones with low qualifications have to expect considerable draw-backs.

Along with these clearly definable forms of temporal, spatial and numeric flexibilization the trend to flatter hierarchies in organizations continues. Instead of strictly following instructions from superiors, employees are granted greater freedom of action. Predetermined goals can be reached on one's own authority and are often relevant for variable components of the salary. In this way, entrepreneurial

risk is transferred to the employee. In the social sciences this blending of traditional roles has been termed employee-entrepreneur or entrepoyee. Elsewhere, it is known as the subjectivization of work. This increased leeway can be seen as an improvement by some employees. However, there is also a risk for self-exploitation, if the life-domain-balance gradually shifts in favor of work.

Substantial increase in occupational diversity

In addition to the increase in the number of employee-entrepreneurs, a growing portion of the labor force is expected to combine one or more part-time jobs with freelancing activities. This form of (partial) self-employment can lead to the realization of professional alternatives and a better self-fulfillment. However, there are also some pitfalls with this highly flexible mode of working. In particular, there is the risk that employees slide into precarious conditions. When part-time employees are temporarily employed and have fluctuating volumes of work, their income and employment situation are no longer reliably predictable. The acquisition of work orders using crowdsourcing platforms hardly permits a dependable planning of income and workload. Moreover, this form of self-employment requires a lot of individual responsibility as well as, for example, negotiation skills. Therefore the development of this work form mainly depends on personal qualifications: well-trained and self-reliant actors are quite able to push through their financial demands and terms vis-à-vis their clients thanks to their sought-after profiles. The low-skilled, however, might enter a precarious downward spiral due to occupational uncertainty and collapsing income.

The permanently employed benefit the most from flexibilization. Especially qualified personnel in executive positions gain considerable freedom of action and leeway in decision-making. This can result in higher motivation and satisfaction, if the increased pressure to perform can be coped with.

New legal questions arising from flexibilization

Labor legislation is intended to ensure that the interests of the social partners are accounted for in a balanced manner. In a more flexible world of work, it will be about protecting social achievements and making the benefits of flexible work available to everyone. The standard employment relationship is based on the normal individual employment agreement or the collective employment agree-

ment according to the Swiss Code of Obligations. The individual and collective agreements regulate core aspects of the relationship between the social partners. This concerns the performance to be effected by the employed as well the obligations regarding pay and the duty to care on the employer's side.

Firstly, it should be noted that Swiss labor legislation compares favorably with its European counterparts, especially with regard to social security. However, this accomplishment is not guaranteed for all time and new forms of work entail legal challenges: Of central importance is the differentiation between the individual employment agreement and other forms of contracts, in particular the work order and the contract for work and services. While the individual employment agreement offers temporal and objective protection from dismissal, a work order can be revoked anytime. Also essential for the differentiation is the extent to which employees are subject to directives by management. This criterion determines whether a person is employed or self-employed. In the intermediate forms of work contracts arisen from flexibilization, individual workers are only rudimentarily integrated in corporate structures of employers, but economically fully reliant on them. These dependent contractors do not have legal access to unemployment benefits, occupational pension funds, compulsory accident insurance or protection from occupational diseases.

Crowdsourcing is also situated in a legal grey area. External crowdworkers are self-employed which renders all labor regulations (minimal pay, paid leave, continuation of payments, etc.) nonapplicable. Since these kinds of work relationships often cross national borders, the applicability of foreign legislation has to be clarified in a costly manner in each individual case. Presently also unresolved is the question how income and sales tax claims can be enforced. Furthermore, crowdsourcing platforms act as intermediaries and therefore as partners of principals and agents. The general terms and conditions of the platform hereby function as the legal framework. The often observable ban on contracts with external principals violates personal rights and the principle of economic freedom.

However, not only atypical work relationships pose legal problems. Flexible work within the scope of a standard employment relationship might also require legal clarifications. It is unclear how the means of labor and intermediate inputs paid for by the employees are to be compensated. Currently, the compensation for expenses is mandatory, but not the use of private working equipment.

The continued growth of the importance of working from home and on a mobile basis also raises the question of who is liable for damages. In corporations, the employer has to assume liability. However, if the computer at home breaks down and data is lost, the situation is unclear. A company should clarify whether its business liability insurance covers special risks such as the loss of data in the home office or in other mobile forms of work. Vice-versa, the risk for damages to the company increases with the professional use of private equipment. Productivity benefits from this “bring-your-own-device” practice, because employees can use the means they are accustomed to and the costs of procurement are partially eliminated. But for all that, it is imperative to clarify who has to pay for software and support for devices owned by employees. In sum, there are considerable inherent risks for both sides, if no contractual agreement has been reached.

Macroeconomic benefits of flexibilization depend on adequate qualifications

The macroeconomic consequences of flexible work cannot be predicted unambiguously, either. Different determining factors influence the outcome of flexibilization. Training and education of the workforce play a key role: The higher the portion of the highly qualified, the better the chances for flexibilization to increase overall productivity and subsequently unlock the potential for higher wages and tax revenue. Challenges can be found with regard to self-management: Round-the-clock availability, waning separation of work and leisure and not always ideally arranged workplaces endanger the physical and psychological health. On the other hand, spatial and temporal flexibility can also be helpful in finding a better fit of work and one's own needs (biorhythm, family, hobbies, etc.).

For the low- and unskilled workers flexibilization holds considerable risks, however. Since the digital revolution facilitates outsourcing of routine activities to low wage countries, the chances of finding a job are diminished for workers with low or no skills. Often the only work left is in the personal service industries. Additionally, low-skilled workers on average have to perform more shift-work or work on-call, have a higher risk of falling physically or psychologically ill, have a lower work-satisfaction and are at a higher risk of becoming unemployed, especially if they work on a temporary basis or have a low quota of working hours.

Recommendations

The most important message of this report is that the individual and societal consequences of flexible work are ambiguous and should be steered through careful measures on different levels in order to reach a positive outcome. A qualified basic educational and vocational training enhances the chances that employees can benefit from the positive potentials inherent in flexibilization. Which direction the development can take is not technically or economically predetermined, but depends on the shaping of new forms of work on the company and supra-company levels. Here we recommend:

1. to set a broad framework for the handling of the erosion of temporal and spatial barriers of work: Legal provisions that are enforced if need be, are necessary. However, they should only exclude extreme forms and represent legal guidelines.
2. to sensitize the public to the subjectivization of work (“employee-entrepreneurship”): A strengthening of individuals is necessary in order to enable workers to cope with a flexible world of work. Especially institutions offering basic and advanced training could step into the void here, but it is also an opportunity for labor unions to expand their range of activities.
3. to plan company flexibility as a participatory organizational development: Social partners should have the possibility to work out local and adapted solutions together within the legal framework.
4. to strengthen employee participation and self-organization in companies: Particularly employers are required to react to demands for more flexibility or certain forms thereof.

The flexibilization of work has numerous legal consequences. Improvements and reassessments are important with regard to:

5. working time regulation, because labor law regulates, e.g., minimal rest periods and maximum working hours that are difficult to apply to deviant working time models;
6. deficiencies in the social insurances concerning short periods of employment because variable incomes can affect, e.g., disability benefits;
7. the handling of (yet) undefined forms of work because they are situated in legal grey areas;

8. the clarification of questions regarding the place of work as well as dependent contractors because they are connected to the compensation of expenses resulting from external places of work, tax deductibility and insurance options;
9. personnel placement because operators of crowdworking sites can elude the Swiss legal system with the help of registered business addresses and websites abroad;
10. the enforcement of regulations, because smaller organizations making use of new forms of work are harder to control by the Labor Inspection Authority than large firms;
11. the regulations concerning the retirement phase because this strongly depends on the previous occupation; and
12. the compilation of a general survey of all relevant legal forms and its maintenance.

The existing surveys by the official statistical bodies and the periodicity of their publications do not permit a current and short-term future assessment in many cases. This is especially relevant in the cases of:

13. the professional mobility of employees,
14. the shadow economy, and
15. the working conditions of the employee entrepreneurs.

As the dynamics of the labor market are expected to increase, a more forward-looking monitoring is required in order to be able to take efficient measures on different levels. The development of more and more accurate indicators with an early warning function and the associated appropriate data collection are desirable.

In conclusion, the phenomenon of a flexible world of work remains diffuse, i.e. it is an ill-defined problem. As such, it is a challenge the successful tackling of which can make a real difference towards a robust and resilient Swiss work environment able to keep or even expand its international top position. This is by no means a trivial task, but rather a collective achievement by all participants in order to be able to act in this currently fairly unclear, complex, but also interesting and promising situation.

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