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**The Incidence and Structure of Flexible
Employment in Latin American Countries:
Revisiting the Evidence and Explanations**

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**INCIDENCIA Y ESTRUCTURA DEL EMPLEO FLEXIBLE
EN PAISES LATINOAMERICANOS:
RE-EXAMEN DE EVIDENCIAS Y EXPLICACIONES***

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**THE INCIDENCE AND STRUCTURE OF FLEXIBLE EMPLOYMENT IN LATIN
AMERICAN COUNTRIES: REVISITING THE EVIDENCE AND EXPLANATIONS***

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“Flexible” employment relationships (namely, direct fixed-term, seasonal and casual contracts; employment through labour agencies or subcontractors; and employment not observing legal regulations) facilitate workforce adjustment to fluctuations in labour requirements, and tend also to reduce labour costs more generally. As it has extensively been described in the literature, flexible employment forms, that tend to be over-represented in jobs requiring less schooling and skills, usually are lacking in terms of dimensions such as pay, access to social benefits, union membership, and collective bargaining coverage.

It has often been speculated that sustained economic growth during a reasonably long period, accompanied by an improving labour market situation, would be a favourable condition for the reduction of the incidence of such flexible, lower-quality employment relationships. However, prolonged economic growth may not suffice to ensure the expansion of good, better protected jobs, as employment practices in each country naturally depend on other factors, among which regulatory, enforcement and compliance trajectories in the area of employment protection are central. Longitudinal and cross-country research results, referring to diverse regional contexts, have repeatedly highlighted the role of legal labour regulation in explaining the comparative frequency of the different types of employment relationships, as well as the fact that its actual labour market effects depend on the degree of compliance with legal norms.

The study reported in this article is expected to contribute to the understanding of these issues by looking at the use made of flexible employment forms in the private sectors of three Latin American countries - Argentina, Chile and Peru – during the period that runs from the early 2000s to the early 2010s. Even though having implemented dissimilar economic policies, these countries have in common the fact that economic growth was practically uninterrupted throughout this period, showing persistently high (Argentina and Peru) or moderate (Chile) rates, and also share improving global labour market indicators. At the same time, relevant regulations followed distinctive courses in each country, and each has its own tradition in enforcement and compliance.

The article is organised as follows. In the next section, general economic and labour market trends in each country during the 2000s-early 2010s are recorded to clarify the shared context. In section 2, the incidence and structure of flexible employment in the private sector are examined, and in the third section some of the distinctive features of flexible employment are described. In section 4, and although their respective impacts still require rigorous investigation, the possible influences that might have converged in each one of the three selected countries to shape the configuration and evolution of employment practices, and therefore the job structure, are loosely discussed focusing in regulatory trajectories, and enforcement and compliance traditions. The last section presents some comments intended for future research.

1. The economic and labour market context

A deep recession in Argentina, and growth deceleration in Chile and Peru, marked the end of the 1990s-beginning of the 2000s (table 1).¹ By 2003 recoveries were underway, and from that date the economy improved in the three countries, benefitting from growth of external demand for their natural-resource-based exports and the rise of commodity prices. The expansion of the domestic market played an important part in the growth process in the three countries, but economic strategies, although coinciding in the need to build up international reserves, differed in important matters such as control of fiscal expenditure, position in relation to privatisation, promotion of manufacturing industry, and inflation targeting.² The chosen central partners in international trade agreements were not the same in the three countries, and the stand adopted in relation to the IMF, and foreign borrowing in general, was not homogeneous. Social and wage policies also varied.

In any case, whatever the economic policies implemented from 2003, in the three countries GDP growth was substantial during 2003-2012, not counting the short-lived 2009 recession (table 1).³ Recovery after 2009 was slowed down somewhat in Chile by the 2010 earthquake (ECLAC, 2010) while, in contrast to the other two countries, the pace of economic growth in Argentina decelerated substantially in the year 2012 (table 1).

Table 1. GDP and manufacturing growth, 1999-2002 and 2004-2012
Average growth rates per period (GDP at constant prices, national currencies)

	1999-02	2004-12	2004-08	2009	2010-12	(2012)
total GDP						
Argentina	- 4.9	7.0	8.4	0.9	6.7	1.9
Chile	2.4	4.5	4.9	- 1.0	5.8	5.6
Peru	2.2	6.8	7.6	0.9	7.3	6.3
manufacturing						
Argentina	-7.5	6.7	8.1	-0.5	6.8	- 0.4
Chile	1.7	3.3	4.3	-4.2	4.3	2.6
Peru	2.9	6.3	8.5	-7.0	7.0	1.3

Source: www.cepal.org.

¹ On these processes and their domestic and international causes, see ECLAC, Economic surveys of Latin America and the Caribbean (diverse years).

² For the discussion of the implemented policies, not examined here, see *inter alia* Ocampo (2009), Guerra (2012), Contreras and Ffrench-Davis (2012), Solimano (2009), ECLAC's Economic Surveys of Latin America (several issues), ECLAC (2014).

³ New official national account estimates (at 2004 constant prices), made available in 2014, reduce somewhat growth rates in Argentina, as also do Coremberg's (2013) estimates for 2007-2012.

GDP growth was accompanied by increasing employment; employment output elasticities were positive and relatively high, in particular between 2004 and 2008.⁴ As a result, between 2004 and 2012 the employment rate increased in the three countries, and urban unemployment rates decreased (table 2); the reduction of unemployment was more marked in Argentina, where earlier it had been extremely high (table 2). To the fall of unemployment in Argentina contributed the small decline in labour force participation rates, while rising emigration abroad might have played some role in Peru's declining unemployment.⁵ More specifically, private-sector wage employment tended to increase together with total employment, with some oscillations.⁶

Table 2. Rates of employment (in relation to population of working age) and unemployment (in relation to the labour force), urban areas, 1997-2012 (%)

	1997		2002		2004		2012	
	E	U	E	U	E	U	E	U
Argentina	47.5	14.9	44.6	19.7	52.1	13.6	55.0	7.2
Chile	51.5	6.1	48.4	9.8	49.5	10.0	55.7	6.5
Peru	58.0	8.6	62.0	9.4	61.6	9.4	64.4	6.8

Note: from 2003 in Argentina, 2010 in Chile and 2002 in Peru data are not strictly comparable with those for previous years because of changes in the household surveys

Source: OIT, Panorama Laboral, several years.

Manufacturing industry, a sector that in principle plays a crucial role in economic growth and is considered to have a larger proportion of higher-quality jobs, showed a promising trend in the three countries (table 1), notwithstanding the differences in policies (with Argentina's government placing some emphasis in the promotion of import substitution "re-industrialisation").⁷ Still, the GDP share of manufacturing industry did not increase: comparing 2012 with 2004 it even decreased somewhat in the three countries, more noticeably in Chile (table 3), and neither did its employment incidence expand (table 3).

⁴ For data on employment output elasticities in Argentina, see Beccaria and Maurizio (2012) for urban areas, and Marshall (2012) for manufacturing industry; for Peru, MTPE (2013). Comparable data for Chile are not readily available.

⁵ Figures on labour force participation rates in the three countries: OIT, Panorama Laboral 2013; data on emigration from Peru are in OIM-DIGEMIN-INEI (2009).

⁶ Data are in OIT, Panorama Laboral, several years.

⁷ On these policies in Argentina, see Marshall (2012).

Table 3. GDP and employment shares of manufacturing industry, 2004 and 2012 (%)
Constant prices, national currencies

	2004		2012	
	mfg in GDP	mfg in urban employment	mfg in GDP	mfg in urban employment
Argentina	16.8	14.1 ²⁰⁰⁵	15.9	13.5
Chile	16.6	14.4 ²⁰⁰³	14.3 ²⁰¹⁰	11.6*
Peru	15.3	12.7 ²⁰⁰⁵	14.2	13.0

* not strictly comparable with 2003

Source: www.cepal.org; OIT, Panorama Laboral in www.ilo.org.

In synthesis, fostered by different policies, and in the context of favourable international conditions, economic growth, and to a slightly lesser extent manufacturing growth, characterised the three countries during 2003-2012. Employment tended to accompany growth, thus contributing to improve the labour market situation in the three countries in varying degrees. Continued employment growth derived from a positive economic performance (and its correlate, declining excess labour) may be expected to be a propitious condition for the replacement of flexible employment forms by more steady jobs, for two reasons: given the diversification of opportunities workers would be less predisposed to accept unstable, unprotected or less protected employment while, at the same time, under the less uncertain economic prospects, employers would more inclined to offer open-ended, more stable employment to their personnel or at the time of recruiting new workers. Persistent economic and employment growth, in principle, should also be reflected in increasing probabilities of transition from less to better protected employment segments.

2. Incidence and structure of flexible employment

‘Flexible’ employment encompasses legal temporary contracts of different types (e.g. fixed-term, casual, seasonal) as much as illegal or precarious employment relationships, both having in common the fact that, due to their zero or lower dismissal costs, they facilitate employment adjustment to variations in economic activity and to firm needs and decisions on labour deployment, although ending legal temporary contracts tends to be more costly and to face greater constraints as compared to precarious, totally unprotected employment. Besides, whereas temporary workers employed under legal forms tend to have the same rights as those having open-ended contracts except for the some type of employment stability, in practice often their access to certain labour or social benefits tends to be restricted. Instead, workers employed under precarious forms generally do not have access to any labour and social benefits, or if they have, it is at the discretion of the employer.

Precarious employment is usually gauged in terms of non observance of employer compulsory social security registration and contributions, but in some countries where a written contract is a legal requirement, data refer to presence or absence of the legally required contract, and these two indicators do not always overlap. In Chile, for instance, 30% of waged workers in the private sector lacking a written contract do pay the mandatory social security contributions (against 96% of those with an open-ended signed contract, and 93% of workers with signed temporary contracts, however).⁸ In Peru, not one worker among those employed without a formal contract is registered in the enterprises' payroll (*planillas*), and between 81% (national) and 96% (Lima) do not contribute to social security, while all the workers with contracts are in the firm's payroll and the large majority are registered at the retirement scheme.⁹

Between the early 2000s and early 2010s the share of precarious employment in the private sector decreased in the three countries.¹⁰ Similar structural changes contributed to this trend: for example, given that, as we will see, unprotected employment is localised mainly in small firms, the increase, that took place in the three countries, of the employment incidence of large enterprises¹¹ may have had a positive, although possibly minor, impact on the overall size of precarious employment. Trends in the use of legal temporary contracts, instead, varied across countries.

In Argentina, a major increases in the incidence of “non-registered” (precarious) employment had taken place in the 1990s, in the context of worsening labour markets and in spite of the substantial rebates to employer contributions to social security (Marshall, 2004), and again during the 1999-2002 crisis. Although it diminished after 2003, the level of precarious employment was still considerable in the early 2010s. During this same period the employment share of workers with legal temporary contracts, already very low, tended to decrease (table 4a).¹² By contrast, in Chile the use of formal temporary contracts in the private sector rose slightly during approximately the same period (somewhat more in relation to the 1990s), while the employment incidence of workers without formal contracts declined steadily, in particular from 2006 (table 4b).¹³ The proportion of workers employed in the private sector without a contract decreased during the second half of the 2000s also in Peru, but remaining at a very high level (table 4c).¹⁴ At the same time, the share of workers employed with legal temporary contracts augmented significantly, departing from the already high point reached earlier, so much so that in 2013 formalised

⁸ Table 7b below.

⁹ Table 7c below.

¹⁰ Here on all data refer to wage employment in the private sector excluding domestic service.

¹¹ Based on data from EPH, INDEC (2004 and 2011); CASEN (2003 and 2011); MTPE (2008 and 2013).

¹² From 2003 onwards data are not directly comparable with those for previous years due to methodological changes in the EPH.

¹³ Data from the Encuestas Laborales (ENCLA) show an increasing proportion of temporary employment up to 2006, to fall in 2006-2011, but still the figures are higher in 2011 than before 2006 (Dirección del Trabajo, 2012).

¹⁴ No comparable data for years previous to 2005 are available.

temporary contracts amounted to seven out of each ten formal contracts (table 6). Consequently, the incidence of flexible employment as a whole (legal temporary plus unprotected) declined in Argentina during the 2000s (as the result of the falling proportion of non-registered work), while it remained approximately stable in Chile and Peru (due to the increasing employment share of legal temporary contracts).¹⁵ But in Peru the proportion of flexible employment about triples that found in Chile (table 4 a, b and c).

Table 4. Evolution of the incidence of flexible employment (legal temporary contracts and precarious employment) in the private sector, wage earners, selected years (%)

4a. Argentina, urban

	2004	2008	2011
private-sector wage employment = 100:			
legal temporary (registered at social security)	2.4	1.8	1.6
not registered at social security	46.2	36.7	34.2
sum	48.6	38.5	35.8

4b. Chile, national

	1996	2006	2011
private-sector wage employment = 100:			
legal temporary (with contract)	8.4	13.2	16.6
without contract	21.3	18.7	12.6
sum	29.7	31.9	29.2

4c. Peru, national

	2005	2008	2012
private-sector wage employment = 100:			
legal temporary (with contract)	26.3	31.1	35.3
without contract	65.0	59.1	53.8
sum	91.3	90.2	89.1

4d. Peru, Metropolitan Lima

	2001	2011
private-sector wage employment = 100:		
legal temporary (with contract)	21.3	32.7
without contract	54.9	45.7
sum	76.2	78.4

Source: own estimates based on Encuesta Permanente de Hogares (EPH), Instituto Nacional de Estadística y Censos (INDEC), 3rd quarters, in www.indec.gov.ar (Argentina); Encuesta de Caracterización Socioeconómica Nacional (CASEN), División Observatorio Social, Ministerio de Desarrollo Social, consulta interactiva, in www.desarrollo.cl (Chile); Encuesta Nacional de Hogares (ENAHO), Evolución de los Indicadores de Empleo e Ingresos, in www.inei.gov.pe (Peru, national); Encuesta de Hogares Especializada en Niveles de Empleo (ENIVE), in www.mintra.gov.pe (Peru, Lima).

¹⁵ The incidence of total flexible employment in Peru may have even increased if a longer period were to be considered, as suggested by data for Lima (table 4d).

By the early 2010s, therefore, 63% of wage earners in Argentina and 69% in Chile, but only 13% in Peru, had open-ended employment contracts complying with labour protective legal regulations (as indicated by worker registration at the social security scheme, or by the existence of a written contract). While in Argentina's urban areas most of the remaining employment relationships in the private sector were outright precarious¹⁶ (less than 2% of waged workers having legal temporary contracts), in Chile the latter were somewhat more extensively spread than precarious relations, with workers without a contract accounting in 2011 for only some 13% of wage employment in the private sector. In Peru, however, not only the absence of formal employment relationships was dominant but also legal temporary contracts predominated within formal employment (table 5).

Table 5. Job structure in terms of employment relationship, wage earners, private sector, early 2010s (%)

5a. Total

	Argentina (urban)	Chile (national)	Peru (national)
% in relation to total wage employment: ^a			
- legal open ended ^b	63.1	69.3	12.7
- legal temporary ^{bc}	1.6	16.6	32.0
- no contract or not registered	34.2	12.6	55.3
% legal temporary ^{bc} /total legal ^a	2.5	18.5	71.6

5b. Manufacturing industry

	Argentina (urban)	Chile (national)	Peru (Lima)
% in relation to total wage employment: ^a			
- legal open ended ^b	68.7	79.4	22.1
- legal temporary ^{bc}	1.2	9.5	28.9
- no contract or not registered	28.8	9.2	49.0
% legal temporary ^{bc} /total legal ^a	1.7	10.7	56.6

^a No replies or unknowns not included in table

^b 'Legal' refers to complying with social security registration or having a written contract

^c On types of legal temporary jobs included in each country, see table 6

Source: Own estimates on the basis of EPH, INDEC, 2011, 3rd quarter; CASEN, 2011, www.desarrollosocial.cl; ENIVE, 2011; ENAHO, 2013, 3rd quarter, www.inei.gob.pe/microdatos.

¹⁶ As pointed out in the literature, the level of non-registered, precarious employment in Argentina's agricultural sector is very high (see e.g. Rau, 2010).

It is usually considered that manufacturing jobs are of higher quality as compared to those in many of the other major private-sector economic activities, such as construction, retail trade, restaurants and hotels, or personal services. Indeed, in the three countries examined here, the weight of legal as much as of illegal flexible employment forms is, as expected, lower in manufacturing than in the private sector as a whole (table 5b). Nonetheless, there is a substantial heterogeneity within the manufacturing sector itself in the three countries: for example, in Peru (Lima) in the group of activities manufacturing consumption goods the proportion of workers without a contract (58%) practically doubles that found in industries producing intermediate and capital goods (30%); by contrast, the latter employ relatively more workers with legal temporary contracts (33% *versus* 25% in consumption goods industries); and in Argentina more than one half of the workers employed in the textile, clothing, leather, footwear and wood/furniture industries grouped together had not been registered at the social security scheme; this proportion is over four times those in other industries, such as chemicals, petroleum, metals or automobiles, and largely exceeds the average for the private sector as a whole.¹⁷ Employment practices in a large segment of manufacturing industry resemble those typical of economic activities where unprotected employment is extensive, such as construction.¹⁸

In turn, the composition of formalised temporary employment differs across these three countries (table 6), highlighting the predominant types of temporary recruitment. In Argentina fixed-term contracts and those established for carrying out a specific task or work (both of which are included by default within the category 'other' in table 6, first column) would account for the largest segment of (urban) legal temporary employment, followed by workers in the trial period (almost one third, suggesting that sometimes the trial period is misused).¹⁹ In Peru, too, fixed-term contracts explain the bulk of legal temporary employment, but workers in the trial period represent a negligible proportion. In Chile, however, seasonal contracts, that tend to be linked to the nature and organisation of economic activities, represent more than half of legal temporary contracts, and fixed-term contracts about one third, while few temporary workers said that they were in the trial period. In contrast to Argentina, the household survey in Chile is applied also in rural areas, and this helps explain the importance of seasonal contracts within total legal temporary employment; no estimates on seasonal contracts separately are available for Peru.

¹⁷ Own estimates based on ENIVE, 2011, for Lima (Peru), and in EPH, 2011, for urban areas in Argentina.

¹⁸ Trajtemberg and Varela (2013) find that in Argentina manufacturing is also an important user of agency labour.

¹⁹ The relatively small number of workers in legal temporary employment in Argentina may affect the accuracy of the estimates on composition of temporary employment.

Table 6. Composition of legal temporary employment according to type of contract,* private-sector wage earners, early 2010s (%)

	Argentina	Chile	Peru (national)	Peru (Lima)
fixed term	#	32.0	88.0	89.7
trial period	31.3	3.9	1.5	0.9
apprenticeship	0.8	#	5.9	#
seasonal	#	52.7	#	#
youth training	#	#	1.6	#
employ. prog.	1.4	#	#	#
honoraries	#	#	2.9	9.1
casual	#	11.4	#	#
other	64.1	#	#	0.3
NR	2.4	---	---	---

* based on listed options in each country's surveys

this option is not listed in the survey's questionnaire among possible contract types

Source: own estimates based on data from EPH, INDEC, 2011(Argentina); CASEN, 2011 (Chile); ENAHO, 2013 and ENIVE, 2011 (Peru).

Subcontracting and other forms of intermediation such as labour agencies are well-known mechanisms for attaining flexible employment, but information on them for Argentina and Peru is sparse at best.²⁰ In Chile, some 6% of the written open-ended contracts had been agreed with a subcontracting firm, and about 1% with a labour agency (temporary work services); the figures double in the case of written temporary contracts (respectively, 12% and 2%). Even though in Chile the proportion of workers employed through some form of intermediation is not high, that of firms having recognised that they make use of subcontracting, sometimes for carrying out the firm's main activity, is considerable (37% in 2011); this practice is more extensive among large enterprises.²¹ Nonetheless, the proportion of enterprises resorting to subcontracting declined between 2004 and 2011, in particular once regulations on subcontracting were tightened in 2007. Workers employed without receiving a written contract had not been recruited more often via subcontracting than directly,²² but the usual disadvantages that subcontracting brings about in terms of pay and working conditions have been remarked also in the analyses on the Chilean case.

²⁰ In Metropolitan Buenos Aires, for instance, labour agencies supply less than 2% of employed workers (survey of a sample of enterprises with 10 or more employees; MTEySS, Encuesta de Indicadores Laborales; several years). Trajtemberg and Varela (2013) provide interesting information on the use of agency labour, and mobility of agency workers.

²¹ More details in Dirección de Trabajo (2009, 2012); see also Echeverría Tortello (2010).

²² Own estimates with data from CASEN 2011. Similarly, the absence of a written contract was not more widespread among subcontracted workers.

3. Distinctive features of flexible employment

The distributions of workers with formal open-ended jobs and with legal temporary contracts, in terms of the economic activity of employment, are much less dissimilar in Peru than in the other two countries, where activities with varying seasonal labour requirements such as construction, hotels, and/or agriculture are more clearly over-represented in temporary employment, and manufacturing industries more clearly under-represented (table 7).²³ This suggests that in Peru specific, “objective” requirements for temporary work play a lesser role in explaining temporary recruitment, a fact which is consistent with, and may already be inferred from, the overwhelming incidence of temporary contracts among formally employed workers. Differences in the incidence of unskilled and skilled manual jobs (operatives), in general higher among workers with temporary contracts, are small in Argentina and Peru but more marked in Chile (table 7).²⁴

Table 7. Selected characteristics of private-sector wage earners according to employment relationship, early 2010s

7a. ARGENTINA, urban areas, 2011

	registered in social security		not registered in social security
	open ended	temporary	
% in:			
- manufacturing	22.8	15.7	17.7
- construction	5.1	15.8	19.3
- trade	19.9	13.0	22.7
- restaurants/hotels	4.4	10.5	7.2
% in unskilled jobs	16.1	18.8	32.6
% in operative jobs	57.1	60.1	55.3
% in firms with +200 employees ^a	16.4	8.8	1.1
% in small firms (1-5 employees) ^a	12.6	7.0	47.3
% with tenure up to one year	11.2	71.9	40.8
average hours worked per week	46.0	41.3	41.5
average wage ^b (open-ended average wage =100)	100	79	67

^a the rate of non response to the question on size of establishment of employment is considerable

^b wages per hour

²³ As mentioned earlier, the statistical error of the estimates on the distribution of workers in legal temporary employment in Argentina is higher due to the smaller number of cases.

²⁴ Note that definitions of unskilled and skilled jobs vary across countries; this should explain the surprisingly low incidence of unskilled work in Peru (table 7c).

cont. table 7

7b. CHILE, national, 2011

	with signed contract:		without contract
	open ended	temporary	
% in:			
- agriculture	5.6	21.4	21.5
- manufacturing	14.3	7.5	9.0
- construction	7.9	25.5	10.9
- trade	21.5	17.5	23.5
- restaurants/hotels	4.6	2.8	7.7
% in unskilled jobs	19.1	37.9	34.2
% in operative jobs	26.7	38.8	33.0
% in firms with + 200 employees	19.0	20.4	5.6
% in small firms (1-5 employees)	13.5	9.4	36.8
% with tenure up to one year	19.1	62.6	50.1
% who pay compulsory contribution to retirement	95.6	92.8	29.6
% who do not pay to any retirement scheme	2.9	5.5	63.5
average hours worked per week	45.9	44.9	40.2
average wage (open-ended average wage =100)	100	58	46

7c. PERU, national, 2013, and Metropolitan Lima, 2011

	open ended		temporary (fixed term only)		without contract	
	national	Lima	national	Lima	national	Lima
% in:	---	--	---	--	---	--
- agriculture		--		--		--
- manufacturing		24.2		22.5		25.5
- construction		5.7		7.2		12.2
- trade		16.5		16.8		18.1
% in unskilled jobs	---	1.0	---	3.4	---	7.4
% in operative jobs	---	18.2	---	20.0	---	30.3
% in firms with +100-500 employees	18.1	18.1	19.0	19.2	2.9	3.2
% in firms with + 500 employees	33.6	30.6	33.7	32.5	2.2	1.9
% in small firms	25.1 ^a	13.0 ^b	22.3 ^a	7.4 ^b	86.1 ^a	68.7 ^b
% registered in payroll	--	100	--	100	--	0
% not affiliated to retirement scheme	4.3	0	14.8	0	81.1	96.1
% trade union member ^c	--	46.1	--	18.7	--	0
average tenure (years)	10.1	7.3	2.4	2.7	2.9	2.2
average hours worked per week	44.6	47.4	47.1	47.6	40.7	46.3
average wage (open-ended average wage = 100)	100	100	59	57	16	20

^a up to 20^b 2-10 employees^c the rate of non response to this question is considerable

Source: own estimates based on data from EPH, INDEC, 2011 (Argentina); CASEN, 2011 (Chile); ENAHO, 2013 and ENIVE, 2011 (Peru).

The size of the employing firm is not too distinctive in the case of temporary workers. By contrast, and as it could be expected, workers lacking formal contracts or social security registration are disproportionately employed in micro or small firms, and seldom in large enterprises, the concentration in the smallest establishments being highest in Peru (table 7). Of course, the segment of small firms includes also units working via subcontracting chains for larger enterprises, not identifiable in the data sources. Similarly, precarious workers perform unskilled jobs more often than workers with contracts (although not in comparison to formal temporary workers in the case of Chile); they work more often in the building sector (in Argentina and Peru; in Chile, instead, over-representation of construction is highest among temporary workers); and the average number of hours that they work per week is lower (table 7).

Comparative economic distributions contribute to explain the lower pay of both temporary and informal workers, the latter clearly receiving the lowest wage rates. But pay is lower for workers employed under flexible forms even after controlling for certain job as well as personal characteristics. Regression analysis shows that in Argentina the wage premium for registered jobs in the private sector has been persistent over time during 2004-2011, having controlled for the influence of individual and employment variables (Groisman and Marshall, 2013). In Peru, the wage gap (between formal and informal workers and between those with open-ended and fixed-term contracts, private and public sectors together) is still substantial after controlling for the influence of demographic, social and economic variables (Jaramillo, 2013).

Naturally, it is the length of job tenure which defines one of the major distinctions among wage earners in different types of employment relationships, workers with formal temporary contracts showing, as expected, much higher turnover rates (proxied by average years of tenure, or proportion with up to one year employment; table 7). But while in Argentina and Chile the length of job tenure of workers lacking contracts is somewhat longer than that of temporary workers, in Peru it is as short.

Segmentation may be expected to be strongest between unprotected employment and the rest, as the former is over concentrated in the smallest firms. In Argentina, on average during 2006-2008, only 12% of workers in non-registered employment moved to a registered job (Vergara, 2013). Still, in Peru, according to estimates in Jaramillo (2013), the chances of moving from an informal to a formal status have improved in the context of economic expansion, although figures continue to be quite low (6% changed status in 2002/2003, 15% in 2008/2009).²⁵

²⁵ Data for both countries refer to workers employed in the private and public sectors together.

One of the most distinctive characteristics of temporary workers – on which data are available only for Peru – is their much lower rate of union membership (table 7c).²⁶ Low unionisation surely is associated with their short job tenure and high turnover. It has also been argued that the renewal of a temporary contract in Peru is conditioned by employers to non unionisation (IESI, 2012; Vidal Bermúdez et al., 2012). The usual obstacles to the unionisation of temporary workers (and more generally of workers experiencing high turnover) have been emphasised also in the literature describing the situation in Chile (e.g. Yanez and Espinosa, 1998; Salinero et al., 2006).²⁷ In the case of workers in precarious employment, legal and practical barriers preclude their unionisation. In Argentina, for example, even if there is no explicit proviso in the law regulating trade unions stating that non-registered workers are not entitled to join unions, in practice and as stipulated in many union statutes such registration constitutes an indispensable requirement for union affiliation (Marshall and Perelman, 2008); besides, given that generally union dues should be deducted from wages by the employer, this is feasible only if the employment contract has officially been registered.

4. Discussion: factors shaping employment practices

Recapitulating: in the 2000s-early 2010s period, and not counting seasonal employment in agriculture (on which comparable data are not available), use of legal forms of temporary employment has been only marginal in Argentina; instead, precarious employment continued to show considerable incidence in small firms. In Chile flexible employment has increasingly been adopting the form of legal temporary contracts, often associated to “objectively” temporary, seasonal or cyclical, labour requirements. Finally, in Peru, all indications converge in pointing to an extensive use of legal modalities of temporary contracts well beyond genuinely temporary labour requirements, and an even more extensive use of illegal employment forms, these concentrated in small businesses.

In this context, which factors might have contributed to explain the consolidation of the mix of employment practices and recruitment patterns in each one of the three countries?

i. Argentina

Before the 1990s, in the framework of intermediate levels of legal employment protection, the rate of temporary employment observing regulations had been comparatively low in Argentina (Marshall, 1992). The use of temporary contracts was encouraged during the 1990s by the labour law reforms that accompanied economic liberalisation, with

²⁶ It should be noted that the rate of non response to this question has been very high, and therefore cases are fewer than for the other variables examined.

²⁷ The problems posed by subcontracting and externalisation to the development of collective bargaining have also been discussed in the literature on Chile (e.g. López Fernández, 2009).

“promoted”, less-costly temporary employment modalities (Marshall, 2004),²⁸ but following the elimination of those promoted forms in 1998 temporary employment returned to its previously usual levels. Instead, employment forms not complying with labour regulations (sometimes via externalisation and subcontracting on whose incidence information is sparse) continued to ensure flexibility and lower labour costs.

During the 2000s regulations on the employment contract tended to become more protective, starting with the doubling of dismissal compensation to prevent massive layoffs in 2002, in the midst of the economic crisis; what had originally been an “emergency” measure was repeatedly renewed until 2007, as long as the unemployment rate exceeded 10%. The most salient measures of this period include the new labour code of 2004, that reversed some of the 1990s-early 2000s reforms still in force, e.g. introducing more limitations on the use of the trial period;²⁹ the further regulation of the activities of temporary labour agencies, defining *inter alia* the nature of the employment contract of temporary agency workers (2006); and the somewhat improved protection of workers under apprenticeship contracts (2008). Regulatory reforms were not accompanied by changes in the employment incidence of legal temporary contracts, whereas precarious employment remained at a high level.

To address the problem of precarious employment measures were taken to facilitate worker registration (e.g. simplification of procedures), to expand the inspective activity, and to provide incentives to registration for small and medium firms through rebates to their social security contributions.³⁰ However, the success of legislation to foster regularisation (among which also legislation directed at agricultural labour) and of the somewhat improved enforcement after 2003³¹ was only partial, and their positive results were most likely localised in the larger firms.

In this context, trends in the incidence of precarious employment depend mainly on the behaviour of micro and small businesses, which in principle face greater constraints to meet non-wage labour costs (whose overall level in 2013 was about 29% of profits, according to

²⁸ Small firms were benefited by less restrictions on the use of temporary contracts and less stringent dismissal regulations.

²⁹ In the year 2000 a new labour code had relaxed regulations on the trial period; in 2004 the possibility of extending the trial period up to six month via collective agreement, and the six-month trial period for small enterprises, extensible to 12 months via collective agreement, were eliminated. Dismissal compensation was also slightly modified.

³⁰ See e.g. MTEySS (2010).

³¹ Indicators on labour law enforcement (resources allocated to enforcement in government budgets; numbers on diverse violations, inspections, firms inspected, regularisations, sanctions, penalties paid, etc.), several of which available in the web sites of the Labour Ministries of Argentina, Chile and Peru, are sketchy and not always easy to interpret (e.g. decreases in the number of sanctions may reflect less transgression due to the success of enforcement measures, or fewer enforcement actions). In any case, there are indications, among which official evaluations, pointing out that during the 2000s and early 2010s there was some progress in enforcement activity in the three countries.

World Bank estimates).³² Micro units (up to 5 workers) explain practically one half of precarious employment (table 7a), and unprotected work is dominant in these micro firms and substantial in firms with 6-10 workers, accounting for 65% and 43%, respectively, of wage employment.³³ The inclination of small firms for non compliance was reinforced, during decades of persistent economic uncertainty, by a tradition of low government enforcement, and the generalised tolerance of non observance of norms, which is reflected by the low values given to Argentina all along the 2006-2012 period in “control of corruption” and “rule of law”,³⁴ two World Bank Worldwide Governance indexes that in a cross-country study were shown to be correlated with the degree of enforcement in each country, as expressed by the ratio inspections/workers (Marshall, 2007). Non compliance was fostered by the perception that evasion not only is seldom penalised but also periodically condoned by government amnesties; these amnesties, while providing incentives (e.g. social security rebates) to employment and tax regularisation, often condone totally or partially earlier debts, or reduce or eliminate penalties (e.g. the 2008 law promoting tax and employment regularisation in Argentina condones penalties, and also the debt for the first ten regularised workers). Trade unions, too, play a role in explaining non compliance with the requirement of employment registration. Even though unionisation rates in Argentina are high and have been relatively stable over time (Marshall and Perelman, 2004), trade unions’ weak involvement in combating precarious employment facilitated the consolidation of that practice. Labour organisations seldom visualised smaller firms as territories for implanting union representation at the workplace, and this contributed to the fact that trade union preoccupation with non-registered employment has not been widespread (Marshall and Perelman, 2008).

ii. Chile

Of the three countries analysed in this article, Chile had in the 1980s the most permissive regulations on employment contracts and dismissals (the military government having drastically reformed the labour code in that direction in 1979; Marshall, 1996). Employment protection was somewhat improved during the 1990s under the successive democratic governments (e.g. some restrictions were imposed on fixed-term contracts reducing the maximum period they were allowed to last, dismissal costs were increased for employees with longer seniority, workers dismissed due to economic factors became entitled to lay-off compensation, and engagement in collective action was removed from the list of causes for fair dismissal; Marshall, 1996). There were no major modifications afterwards, except the strengthening of regulations on subcontracting in 2007. According to some analysts, of the changes introduced during the 20 years that go from 1990 to 2010, the measure with the greatest resonance among labour and political actors was this 2007 law, which *inter alia* specified the situations in which the user firm shares responsibility with the subcontracting

³² World Bank, “Paying taxes” (www.doingbusiness.org).

³³ Own estimates with data from EPH, INDEC, 2011, 3rd quarter.

³⁴ World Bank Worldwide Governance Indicators (WGI) dataset (www.databank.worldbank.org). See also Bergman (2003) on the high level of tax evasion in Argentina.

firm for certain worker rights.³⁵ It was noted also that enforcement improved substantially from about 2006 (Kanbur et al., 2013), and in this connection the possible role played by international trade agreements with partners such as Canada and the U.S. was also highlighted (e.g. Eber and Posthuma, 2011).

Mildly protective regulations (which nonetheless are perceived by a considerable segment of employers as an important constraint),³⁶ and low levels of non-wage labour costs (estimated in about 4% of profits by the World Bank, that contrasts with 29% in Argentina),³⁷ coexist with a historical tradition of high compliance levels with regulations generally (e.g. Chile was given high values in “control of corruption” and “rule of law”, the two WGI indexes mentioned earlier).³⁸ This combination is reflected, on the one hand, in the comparatively low incidence of precarious employment, a situation further consolidated by strengthened enforcement since 2006, and on the other in the fact that the use of legal temporary contracts seems to be to an important degree associated to genuinely temporary, particularly seasonal, labour requirements. Still, the incidence of temporary contracts (not necessarily always expressing spurious utilisation) has been rising, and subcontracting continues to be extensive. The ingrained distrust of Chilean employers *vis-à-vis* trade unions (see e.g. Yanez and Espinosa, 1998) cannot be disregarded as one possible factor contributing to explain the option for temporary workers, whose job tenures are short, and for subcontracting.

iii. Peru

Of the three countries, it is the situation in Peru which is the most striking. With a few exceptions, the decline of legal employment protection in Peru has been considerable and persistent over time, and the incidence of non-wage labour costs, although not as low as in Chile, is not high (11% of profits, World Bank estimate).³⁹ Indeed, either because constraints are weak, or they are easily surmounted, only few employers (about 15%) in Peru do perceive labour regulations to be a major constraint for “doing business”.⁴⁰ Nonetheless, it is in this country where, as we have seen, flexible employment, under both formal and precarious forms, has consolidated as the dominant type of wage employment in the private sector, notwithstanding the context of economic expansion and the to some extent better general labour market conditions.

In the 1980s it was Peru which had, of these three countries, the most restrictive regulations on dismissals, but relatively few impediments to temporary contracts which, already at that

³⁵ Echeverría Tortello (2010).

³⁶ According to the World Bank 2010 enterprise survey, 28% of Chilean employers consider that labour regulations represent a constraint on business operation (www.enterprisesurvey.org).

³⁷ Data from World Bank, “Paying taxes”, for 2013 (www.doingbusiness.org).

³⁸ Data in www.databank.worldbank.org. Bergman (2003) highlights the higher level of compliance with tax regulations in Chile.

³⁹ Data from World Bank, “Paying taxes”, 2013 (www.doingbusiness.org).

⁴⁰ Estimates from World Bank enterprise surveys, 2006-2012 (www.enterprisesurvey.org).

time, had shown a substantial level (Marshall, 1992). However, as in Argentina in the context of the “labour reforms” that went together with economic liberalisation, several of the constraints on dismissals were weakened in the 1990s, in particular the right to reinstatement through a labour court decision unless dismissal had been due to serious misconduct or *force majeure* (stability in “the strict sense”), extended to the private sector in 1970-72,⁴¹ and dismissal compensation was partly replaced by a capitalisation fund (Marshall, 1996). A number of temporary modalities of employment were also created which, by the early 2010s, still coexisted with the usual fixed-term, casual, and seasonal contracts offered in Argentina and Chile.⁴²

In the 2000s, and continuing with the same spirit of the extensive reforms of the 1990s, two laws creating “special regimes” for small enterprises were successively enacted. The first applied to firms with up to 50 workers and a certain sales level (2003), and the second extended the scope of the special regime for firms with up to 100 workers and a higher level of sales (2008), i.e. to firms employing the large majority of private-sector wage earners (e.g. 75% in 2013).⁴³ The special regimes not only flexibilise restrictions on dismissals (reducing dismissal compensation), but also establish various lower-than-standard benefits for workers employed in those firms, such as the possibility of a lower minimum wage in micro enterprises (up to 10 workers), no extra rate for night shifts, one-half of paid vacation, no family allowance, less or no annual bonuses, no share in firm profits, etc., thus reducing labour costs.⁴⁴ In this way, the relaxation of constraints of the 1990s was intensified, further cutting down on labour costs and protection. Consistently, the place of Peru in the country ranking according to the Doing Business Employing Workers indicator was moved down in terms of restrictiveness.⁴⁵

Nonetheless, protection of workers employed via intermediation and externalisation was improved in 2008 and, more importantly, without introducing modifications to the laxer dismissal legislation of the 1990s, from 2002 the Constitutional Court tended to apply, for most types of dismissals, the worker reinstatement clause that had been relaxed in the 1990s (Tomaya Miyagusuku et al., 2009), thus establishing crucial legal precedents. It has been argued that constitutional court decisions actually did “re-write” the existing laws for practically all types of dismissal except for non-proven serious misconduct (Tomaya Miyagusuku et al., 2009; Jaramillo, 2013).

⁴¹ The right to reinstatement experienced some limitations during a short period, but had been fully re-established in the 1980s (Marshall, 1992).

⁴² Toyama Miyagusuku et al. (2009) list the following contracts: for initiation or increase of activity, market needs, enterprise reconversion, occasional, substitution, emergency, specific work or service, discontinuous, and seasonal, apart from training modalities. For a summary, see Jaramillo (2013).

⁴³ On the basis of data from ENAHO, 2013.

⁴⁴ The state is to subsidise one half of micro-firms’ contributions to the health care scheme (Tomaya Miyagusuku et al., 2009).

⁴⁵ According to Banco Mundial (2010), by the end of the 2000s the business and regulatory environment in Peru had improved as a result of government strategies, with progress in various areas, in particular, increased labour market flexibility, considering the new regulatory regime for small enterprises. Consequently, Peru was moved down in the ‘employing workers’ index (ibid.).

In this context, the combination of several factors, some affecting employment practices in all types of enterprises, others in small firms only, or only in the larger enterprises, may help understand the anomalous situation in Peru as regards the incidence of flexible employment:

- First, the long-lasting government promotion of temporary contracts and the diversification of promoted forms that resulted in a wide variety of opportunities for temporary employment, which built upon a previously consolidated practice, already unusually extensive; this practice characterises large enterprises (while in firms with up to 20 workers temporary contracts represent 13% of employment, in those with over 100 they reach 63%, and in firms with over 500, 65%).⁴⁶
- Second, the enduring imprint of the strongly restrictive regulations of past periods, that was revived – or reinforced - by constitutional court decisions favouring reinstatement.
- Third, past tolerance of non observance,⁴⁷ that facilitated the prevalence of evasion practices specifically in small firms (more than 80% of workers in firms with up to 20 employees are employed without a contract, against 16% and 11%, respectively, in enterprises with 101 to 500 and with more than 500),⁴⁸ for whom the “special regimes” designed to reduce their labour costs do not seem to have resulted in a real alternative. As in Argentina, also the implementation of amnesties may have contributed to undermine compliance in this segment of firms (the special regime of 2008 condones penalties due to non compliance, although not the debt itself). Besides, even if enforcement was strengthened somewhat (e.g. the budget for inspection was increased from 2007: Toyama Miyagusuku et al., 2009), presumably as a result of the free trade agreement with the U.S., its positive impacts were very limited (Bermúdez et al., 2012) and, as in Argentina, most likely concentrated in larger units.
- Last, the contribution of flexible employment to check the growth of unionisation and the expansion of collective bargaining coverage, emphasised by several analysts. As in Chile, the rate of unionisation in Peru is low (to an important extent because of the low propensities to unionise of temporary workers, and the lack of eligibility of precarious workers), and unions lost much of the influence they had had in the past. Considering the much higher rate of union membership among workers with open-ended contracts as compared with that of temporary workers, mentioned earlier, and the unusual degree of generalisation of flexible employment contracts, it would seem plausible that the aim of avoiding the increase of unionisation is one of the reasons for the preference of employers for flexible

⁴⁶ Own estimates with data from ENAHO, 2013.

⁴⁷ As in the case of Argentina, the World Bank WGI dataset gives Peru low values for “control of corruption” and “rule of law” during 2006-2012 (www.databank.worldbank.org).

⁴⁸ Own estimates with data from ENAHO, 2013. In enterprises with 21 to 100 employees the proportion of workers without a contract reaches 31%.

employment, especially in large firms (as, in any case, a minimum of 20 employees is a legal requirement for permitting union formation).

5. By way of conclusion

While trends in Argentina and Chile seem to point out to the importance of both, the level of legal labour protection and its associated costs and entrenched perceptions and traditions (namely, the cultural tradition of compliance and non compliance) in defining which is the preferred option between either legal or illegal flexible forms of employment, it is the situation in Peru which highlights more fully the influence on recruitment practices not only of current regulations and enforcement measures but also of the strong imprint left by past regulatory, enforcement and compliance trajectories.

It is because the choices among employment forms are contingent on historical traditions and previous regulatory paths in each country that recruitment practices may be impervious up to a point to the global economic and labour market context, and also fail to respond in the expected way to the positive or negative incentives brought about by existing labour legislation.

Inevitably, the relevance of stressing particular *ad hoc*, country-specific factors in attempting to explain the configuration and evolution of employment practices is limited, but the tentative conclusions from this study, confined to three cases, may fuel research considering a large number of countries.

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