

Safety nets or straight jackets – the regulatory frameworks on working time in the Danish, German and American metal industries

Author: Anna IlsÃe, Research Assistant, Employment Relations Research Centre, Department of Sociology, Copenhagen University, Ãster Farimagsgade 5, P.O. Box 2099, 1014 Copenhagen K.

In recent years, flexible working hours have offered a platform for new compromises between employers and employees at the workplace. Employers have pushed for a decentralisation of collective bargaining of working hours to increase local competitiveness, whereas employees have called for a more flexible scheduling of hours to balance their work and family life (Katz 1993; Marginson and Sisson 2004). However, important challenges to meet the needs and wishes of employees with regards to flexible working hours still remain. The regulatory frameworks on working hours across the Western world offer different rooms for manoeuvre regarding collective bargaining of flexible hours at company level. In some countries national legislation and/or sector-level agreements on working hours are highly specific and leave little room for company level negotiations. This can impose a [simplequote]straightjacket[simplequote] to employees[simplequote] wishes of working time flexibility. In other countries, the regulation of working hours leaves more room for negotiating flexible working hours at company level. On one hand, this can facilitate family-friendly working hours. On the other hand, diversity among employees can make it difficult to cover the needs and wishes of all employees when closing a company-level agreement on flexible working hours. Some employees may be unable to offer the requested flexibility outlined in the local agreement and would therefore be better off relying on a more specified regulation at national/sector level. In this case the sector-level agreement would function as a [simplequote]safety net[simplequote].

This paper addresses the question whether regulatory frameworks on working hours at national/sector level impose straight jackets or offer safety nets to employees[simplequote] wishes of working time flexibility. It compares the regulation of flexible working hours (legislation and collective agreements) in the metal industries of Denmark, Germany and the US, where different frameworks for negotiating flexible working hours at company level can be observed. The metal industry has been trend setting for collective bargaining in all three countries, however, with very different results. Variations in the decentralisation processes appear to account for these differences. To limit the scope of the paper, the comparative analysis focuses on the regulation of flexible working hours in the form of variations in the distribution of hours (i.e. the use of annualised hours and flexitime through time accounts) (Seifert 2005).

In the American metal industry, which has been characterised by a disorganised decentralisation, low union densities, poor coverage of collective agreements and little presence of employee representatives make it difficult for employees to articulate their needs because of limited bargaining power (Traxler 1995). Only minorities of workers in the metal industry have access to flexible working hours (Golden 2001). Unions have opposed a suggested reform of the national legislation on working time, The Fair Labor Standards Act (FLSA) that could make it more attractive to employers to introduce working time flexibility (Walsh 1999). Today, the FLSA guarantee workers overtime payment (150%) on all hours above 40 per week. Unions fear a deregulation of working hours and a significant loss in income among workers if this guarantee is removed. Even though the FLSA impose a [simplequote]straight jacket[simplequote] on employees[simplequote] wishes of flexible working hours, unions are not willing pay the price of removing an important [simplequote]safety net[simplequote] with regards to income levels of working families.

In the German case, which has been characterised by an organised decentralisation, bargaining competencies on flexible working hours have been delegated both from national legislation (Arbeitszeitgesetz) and from sector-level agreements to the company level through opening clauses. However, as union densities and the presence of works councils have been declining among SME[simplequote]s over the last decades, unions have been cautious to give up control with developments at company level (Schulten 2005). Whereas some opening clauses on working hours can be used without control from the unions and employers[simplequote] organisations, others still require approval from the sector level parties. The effect is less [simplequote]straight jackets[simplequote] in the regulation but primarily for employees at larger companies, where works councils are present and unions are more willing to give up control.

The Danish metal industry, which is often highlighted as a good example of organised decentralisation, is characterised by high union densities, coverage of collective agreements and presence of shop stewards. In this setting, unions have agreed on a strong delegation of bargaining competencies on flexible working hours from the sector-level to the company level (Due et al. 1994). A number of opening clauses have been introduced to the sector-level agreement, and there is no demand for approval of company-level agreements by the sector-level parties. Case studies suggest that this large room for manoeuvre at company level has been to the benefit of the majority of the employees. However, varying abilities among employees to offer (and gain from) flexibility make this more difficult for minorities like older workers and lone parents. This questions whether [simplequote]straight jackets[simplequote] can be removed for all workers, even in organised settings, without losing important [simplequote]safety nets[simplequote] for some workers at the same time.

Selected references

Due, J., Madsen, J.S., Jensen, C.S. and Petersen, L.K. (1994). The survival of the Danish Model. A historical sociological analysis of the Danish system of collective bargaining. Copenhagen: DJÅF publishing.

Golden, L. (2001). [simplequote]Flexible work schedules: Which workers get them?[simplequote]. In *The American Behavioral Scientist*, 44: 1157-1178.

Marginson, P. and Sisson, K. with the collaboration of James Arrowsmith (2004): *European Integration and Industrial Relations. Multi-Level Governance in the Making*. Basingstoke: Palgrave.

Schulten, T. (2005). *Changes in national collective bargaining systems since 1990 - the German Case*. Dublin: European Foundation.

Traxler, F. (1995). [simplequote]Farewell to Labour Market Associations? Organized versus Disorganized Decentralization as a Map for Industrial Relations[simplequote]. In Crouch, C. and Traxler, F. (eds.), *Organized Industrial Relations in Europe: What Future?* Aldershot: Avebury.

Walsh, D.J. (1999). [simplequote]The FLSA comp time controversy: Fostering flexibility or diminishing worker rights?[simplequote] In *Berkeley Journal of Employment and Labor Law*, 20: 74-137.