

The status of workers

3.7m

People in
insecure
work

1 in 9

Workers in
insecure
work

67%

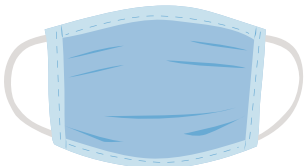
Do not
get sick
pay

Insecure workers can be found in all sectors of the economy, but particularly in low-paid service roles. These individuals typically have no guarantee of work and therefore of pay. Their jobs are frequently characterised by one-sided 'flexibility' in which workers may be called in at the last moment or have their shifts cancelled at short notice. They feel they cannot refuse any offer of work or speak out against unfair treatment due to the risk of dismissal, against which they have no legal protection.

INSECURE WORKERS ARE:

- On zero-hour contracts
- Working through an employment agency
- Paid through an umbrella company
- In bogus self-employment
- Forced by the employer to establish and work through a Personal Service Company, of which they are the sole employee

The cost of insecurity



Twice as likely to die
from Covid-19



More likely to be key workers

15.6% of caring, leisure and service workers; 18.4% of workers in roles, such as security guards, taxi drivers and shop assistants; 18.5% of those in the skilled trades; 17.2% of process, plant and machine operatives.

More
likely
to be
female



Unlikely to earn at least the National Minimum Wage

Average hourly rates: £8.03 for casual work; £8.10 for seasonal work; £8.17 for zero-hour contract work. Only agency workers earn above the NMW (£9.69), but this is well behind employees (£12.25).



Economically
unproductive



More likely to be BAME

More likely to be exploited by lawbreaking bosses



More likely to
be disabled

Workers' rights: it's a status thing

People in work currently fall into one of the following categorisations:

Employee	Has a traditional contract of employment with a guaranteed salary.	Access to all employment rights after relevant qualifying periods.
Limb (b) worker	Technically self-employed, though often they have only one employer and are not in business on their own account with their own clients.	Access to the bare minimum of rights, including holiday pay, rest breaks and the National Minimum Wage. No protection against unfair dismissal or right to redundancy pay.
Self-employed	In business on their own account with their own clients or customers.	No employment rights.

This three-tier employment status system has caused three major issues:

- 1** **Competition based on labour exploitation** in which unscrupulous employers undercut their rivals by staffing their operation with limb (b) workers who are easier to fire and underpay, thereby triggering a race to the bottom in employment rights.
- 2** **Miscategorisation** in which individuals are misled as to their employment status and therefore their eligibility for employment rights. For instance, some of those informed they are on a zero-hour contract may actually be legally defined as an employee, many of those told they are self-employed are actually limb (b) workers, and those forced to set up a Personal Service Company become responsible for meeting their own employment rights, thereby effectively leaving them with no rights at all. Unionised workers may fight this through the courts, but this process can take years, often needs legal backing, and any success will only be applied to those individuals who made a tribunal claim and not to similarly placed colleagues who did not.
- 3** **A drain on the public purse**
One motivation for employers to falsely classify their workers as self-employed is that they can avoid paying National Insurance contributions. This, alone, is estimated to be costing the treasury £2.1bn. Further, insecure workers pay less income tax, due to their low wages, and are significantly more likely to claim in-work benefits. Altogether, the cost to the Treasury comes to £4bn a year. In effect, the taxpayer is subsidising the payroll bills of unscrupulous employers.

“

Working practices are closer to that of a Victorian workhouse than that of a modern, reputable high street retailer.”

Iain Wright MP, former BIS Select Committee Chair

An inquiry by the Business, Innovation and Skills (BIS) Select Committee found the – mostly agency – workers at Sports Direct's Shirehouse warehouse were treated “as commodities rather than as human beings”, not paid the National Minimum Wage, penalised for taking breaks to drink water, and sacked for getting ill. The inquiry concluded that the chain's business model depended on the exploitation of its staff to keep its prices low.

“

...fictions, twisted language and even brand new terminology...”

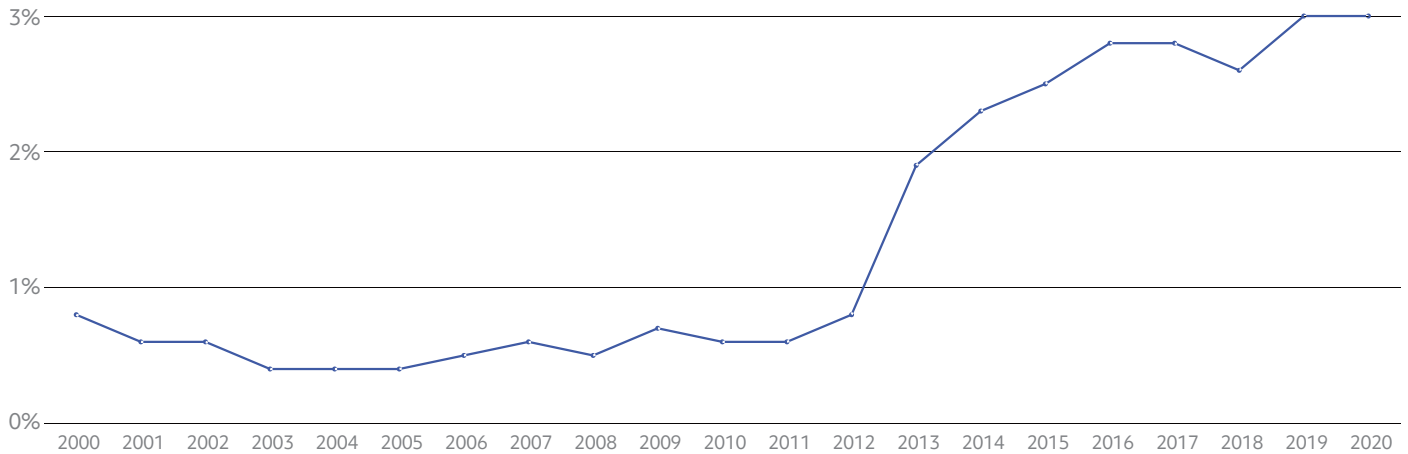
Central London Employment Tribunal ruling on Uber's contracts with its drivers

Uber drivers and their unions, GMB and IWGB, were forced to drag the firm through the courts for four years before the Supreme Court finally pronounced Uber drivers to be limb (b) workers and not, in fact, self-employed. But the drivers are still vulnerable, with hundreds reporting their accounts were summarily 'deactivated' during the pandemic and finding that limb (b) workers have no entitlement to claim unfair dismissal.

A growing problem

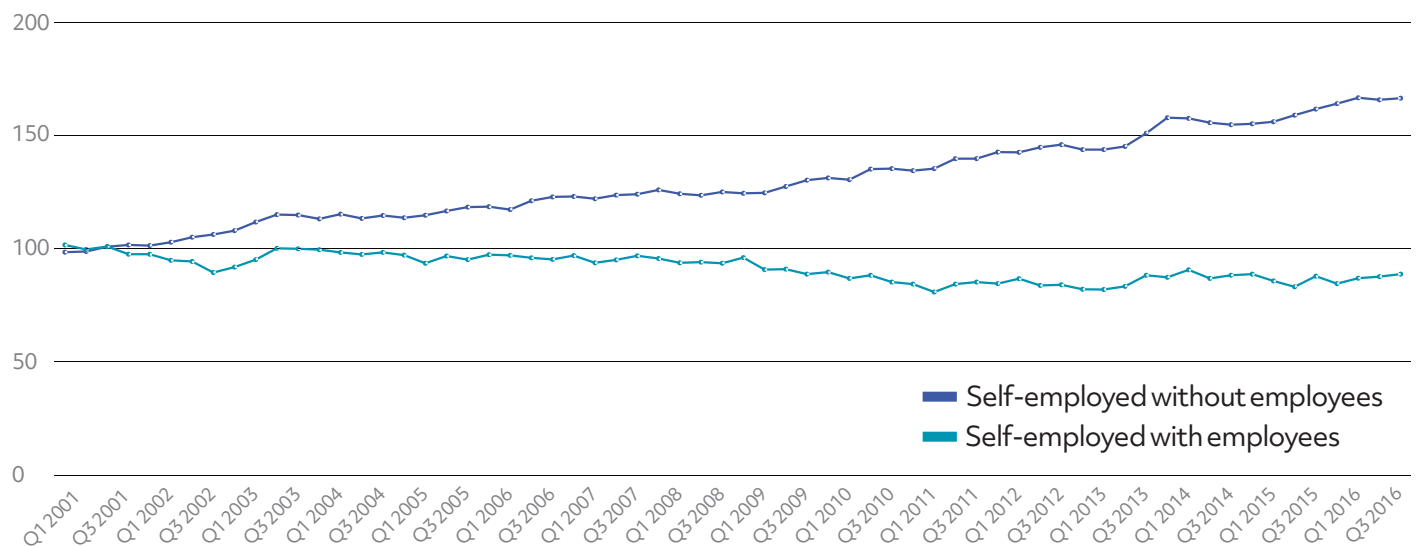
Since 2012, the proportion of the workforce falling under the 'limb (b) worker' category or being misclassified as 'self-employed' has drastically increased. By its very nature, insecure employment is difficult to measure, but the graphs below provide an indication as to the rate of change.

Percentage of workforce on zero-hour contracts (October-December)



Source: ONS Emp17: People in employment on zero-hour contracts

Dramatic rise in "sole traders" masking the jump in bogus self-employment



Source: ONS Trends in self-employment in the UK

Poor quality jobs fueling employment rate increase

In 2019, the vast majority of new jobs were either zero-hour contracts or reported as self-employed. But a TUC analysis demonstrated that [nearly half of all self-employed people and 52% of female self-employed people in 2019 earned less than the National Minimum Wage](#), amounting to 1.85 million people overall.

It is more than likely these people are not genuinely running their own businesses, but instead have been forced into bogus low-paid self-employment by unscrupulous employers.

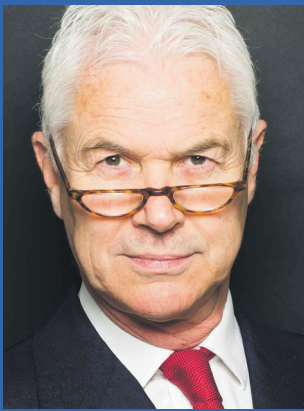
Four easy steps to justice

The Status of Workers Bill was introduced to the House of Lords by Lord John Hendy QC, Chair of the IER, on 24 May 2021 and is scheduled to have its Second Reading on 10 September 2021.

It will:

- 1** Get rid of different categories of 'employee', 'limb (b) worker', bogus self-employed and fake Personal Service Companies replacing them with a **universal status of 'worker'**. The only workers outside this would be the genuinely self-employed with their own business and own clients and customers.
- 2** Provide everybody in employment ('workers') with **equal employment rights**.
- 3** Switch the presumption so that where there is a dispute over employment status, it is for **the entity contracting labour to prove they are not an employer**, rather than the 'bogus' self-employed tasked with proving they are a 'worker'.
- 4** Clarify that where 'workers' provide labour through a 'Personal Service Company', **the 'employer' is the entity for which labour is performed**.

Lord John Hendy QC



“

Times of economic hardship and recession are known to accelerate the growth of precarious work and the impact of the Coronavirus pandemic is no exception – we have already seen several major retailers fall into the hands of employers known for using insecure contracts.

Without urgent action, we can expect to see even more workers in the extraordinary position of never knowing when they will be working or how much they will earn, still less how much they will be paid (or when) if they do work.

For years this state of affairs has been justified in the name of 'flexibility' but there will be nothing to prevent employers from negotiating flexible conditions with their workers under the terms of this Bill.

Instead, the proposals laid out today will provide for true flexibility, for both workers and employers. The reality is that a casual worker is unlikely to turn down a shift if they risk never being offered another, but when a worker has rights, they can make flexibility work for them too.

”

Support the bill

For press queries contact Sarah Glenister at sarah@ier.org.uk

Find out more about insecure work, the proposal for a universal status of worker and how you can support the bill by visiting the Institute of Employment Rights' website and social media pages below.



TheInstituteOfEmploymentRights



IERUK



www.ier.org.uk/statusofworkers