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Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators

Danielle Venn

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LEGISLATION, COLLECTIVE BARGAINING AND ENFORCEMENT: UPDATING THE OECD EMPLOYMENT PROTECTION INDICATORS

Danielle Venn

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This paper presents an official update of the OECD indicators of employment protection supervised by the Working Party on Employment of the Employment, Labour and Social Affairs Committee of the OECD. The author gratefully acknowledges the contributions of officials and researchers from OECD member and accession countries in providing updated information and commenting on an earlier draft of this paper presented to the Working Party on Employment. Estimates for non-OECD member countries and Luxembourg build upon earlier work by the OECD Economics Department. Angelika Muller and Sandrine Cazes from the ILO provided valuable legal advice and comments. Contributions from Stefano Scarpetta, John Martin, Martine Durand, Paul Swaim, Peter Tergeist, Glenda Quintini, Anne Saint-Martin and Andrea Bassanini and excellent statistical assistance from Agnès Puymoyen are also gratefully acknowledged.

SUMMARY

This paper presents updated estimates of the OECD employment protection indicators for 30 OECD countries and 10 emerging economies and considers important aspects of employment protection other than those provided in legislation. Collective agreements often contain provisions relating to employment protection, but in most OECD countries, severance pay and notice periods in collective agreements are similar to those set out in legislation. Where bargaining takes place largely outside individual firms at the national, regional or sectoral level and collective agreements include provisions substantially more generous to employees than those in legislation, they are incorporated into the OECD indicators. Many OECD countries exempt some groups of firms or workers from employment protection rules. Such exemptions have mixed success in promoting employment among exempted groups, but do not have a large impact on the accuracy of the OECD indicators. More than half of OECD countries have specialised courts or procedures to handle unfair dismissal cases, reducing the time taken to deal with cases and improving satisfaction with legal outcomes. Resolving disputes early (either through pre-court dispute resolution procedures or pre-trial conciliation) saves time and money compared with waiting for a court decision. More research and cross-country comparable data are needed on the efficiency of conciliation procedures and the cost of pursuing or defending dismissal cases.

RÉSUMÉ

Cet article présente la mise à jour des estimations des indicateurs de la protection de l'emploi de l'OCDE pour 30 pays de l'OCDE et 10 pays émergents et examine les aspects important de la protection de l'emploi, autres que celles prévues dans la législation. Les conventions collectives comportent souvent des dispositions relatives à la protection de l'emploi, mais dans la plupart des pays de l'OCDE, les indemnités de cessation d'emploi et les délais de préavis prévus par les conventions collectives sont comparables à ceux stipulés par la législation. Lorsque la négociation collective se situe au niveau de la branche, au niveau régional ou au niveau national, et que les conventions collectives intègrent des dispositions sensiblement plus généreuses pour les salariés que celles inscrites dans la législation, il en est tenu compte dans les indicateurs de protection de l'emploi de l'OCDE. De nombreux pays de l'OCDE exemptent certains groupes d'entreprises ou de travailleurs de la protection de l'emploi. Ces dérogations ont un succès mitigé dans la promotion de l'emploi parmi les groupes exemptés, mais ils n'ont pas un grand impact sur la précision des indicateurs de l'OCDE. Plus de la moitié des pays de l'OCDE ont des juridictions ou des procédures spécialisées pour traiter les affaires de licenciement abusif, qui facilitent l'accès à la justice, réduisent les délais de procédure et améliorent la satisfaction quant aux résultats. Résoudre les conflits précocement (soit par des procédures précontentieuses de règlement des litiges, soit par une conciliation au stade de la mise en état) permet d'économiser du temps et de l'argent plutôt que d'avoir à attendre la décision d'une juridiction. Il reste cependant nécessaire d'entreprendre des travaux de recherche supplémentaires et de collectes de donnés, plus facilement comparable d'un pays à l'autre, sur l'efficacité des procédures de conciliation et les coûts associés à la présentation ou à la défense d'un cas de licenciement devant les tribunaux.

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LEGISLATION, COLLECTIVE BARGAINING AND ENFORCEMENT: UPDATING THE OECD EMPLOYMENT PROTECTION INDICATORS

1. Introduction

1. When a firm dismisses a worker, the worker loses income, tenure-related fringe benefits and, potentially, accumulated job-specific skills and experience. If it takes a long time to find another job, the worker may experience depreciation of human capital and the negative health effects associated with prolonged unemployment. Society as a whole also bears some of the costs of labour turnover: unemployment or social assistance payments, spending on job-search assistance and active labour market programmes, just to name a few. Employment protection – the rules governing the firing of workers and the use of temporary contracts – is justified by the need to protect workers from arbitrary actions and have firms internalise at least some of the social costs of labour turnover. Stricter employment protection may also have positive impacts for firms by encouraging longer working relationships between firms and workers, facilitating industrial stability and the build-up of firm-specific human capital (Belot *et al*., 2007; Piore, 1986). Nevertheless, by restricting labour turnover, employment protection also restricts firms' ability to respond quickly to changes in technology or consumer demand. Recent research on the labour market impact of employment protection has found that overly-strict regulations can reduce job flows, have a negative impact on employment of some groups of workers (notably youth), encourage labour market duality and hinder productivity and economic growth (*e.g.* Haltiwanger *et al*., 2008; Kahn, 2007; OECD, 2004; Bassanini *et al*., 2009).

2. Finding a balance between protecting workers and allocating labour to its most productive use is a key priority for policy makers, drawing on a range of policy measures including employment protection. From both a research and policy perspective, it is vital to be able to accurately measure employment protection in order to determine its labour market impacts and assess reform progress. The OECD has published estimates of the strictness of employment protection in member countries since the early 1990s (Grubb and Wells, 1993; OECD, 1999, 2004). It is important to note that employment protection is only one of the policies and institutions affecting labour market flexibility. Other important aspects include regulations affecting working hours and part-time contracts, as well as policies affecting wage setting and safety nets.

3. The paper is organised as follows. Section 2 presents the latest estimates of the OECD employment protection indicators for OECD member countries and selected emerging economies. The paper goes on to address some of the criticisms of the OECD indicators by examining the role of collective bargaining in providing employment protection (section 3) and the extent and impact of exemptions from employment protection rules for small firms, vulnerable workers or non-standard contract types (section 4). Section 5 discusses the cost and effectiveness of enforcement of employment protection, focusing on unfair dismissal disputes. The conclusion summarises the importance of collective bargaining, exemptions and enforcement for the accuracy of the OECD employment protection indicators. Despite criticisms about their construction, the OECD employment protection indicators are relatively insensitive to the use of alternative aggregation weights and the incorporation of collectively-bargained arrangements and exemptions and are highly correlated with other cross-country measures of employment protection strictness.

2. Measuring employment protection

The OECD employment protection indicator

4. The OECD employment protection indicators are compiled from 21 items quantifying the costs and procedures involved in dismissing individuals or groups of workers or hiring workers on fixed-term or temporary work agency contracts. The 2008 update incorporates three items that were not included in previous updates: the maximum time allowed for an employee to make a claim of unfair dismissal; administrative authorisation and regular reporting requirements for temporary work agencies; and the requirement for temporary work agency workers to receive the same pay and conditions as regular workers at the user firm. The focus on employment protection as a cost for employers of adjusting employment levels reflects the approach taken in the empirical and theoretical literature examining the labour market impact of employment protection. The overall summary indicator is made up of three sub-indicators quantifying different aspects of employment protection:

- *Individual dismissal of workers with regular contracts*: this incorporates three aspects of dismissal protection: *(i)* procedural inconveniences that employers face when starting the dismissal process, such as notification and consultation requirements; *(ii)* notice periods and severance pay, which typically vary by tenure of the employee; and *(iii)* difficulty of dismissal, as determined by the circumstances in which it is possible to dismiss workers, as well as the repercussions for the employer if a dismissal is found to be unfair (such as compensation and reinstatement).

- *Additional costs for collective dismissals*: this focuses on additional delays, costs or notification procedures when an employer dismisses a large number of workers at one time. This measure includes only *additional* costs which go beyond those applicable for individual dismissal. It does not reflect the overall strictness of regulation of collective dismissals, which is the sum of costs for individual dismissals and any additional cost of collective dismissals.

- *Regulation of temporary contracts*: this quantifies regulation of fixed-term and temporary work agency contracts with respect to the types of work for which these contracts are allowed and their duration. This measure also includes regulation governing the establishment and operation of temporary work agencies and requirements for agency workers to receive the same pay and/or conditions as equivalent workers in the user firm, which can increase the cost of using temporary agency workers relative to hiring workers on permanent contracts.

5. While most of the sub-components used to calculate the indicators refer to national and/or regional legislation,[1] employment protection provided through collective bargaining has been incorporated for those countries where collective bargaining takes place at the industry, regional or national level and where this is an important source of additional employment protection (see section 3). The indicators also cover some aspects of employment protection enforcement, notably the compensation payable and the likelihood of reinstatement if a dismissal is found to be unfair, the time limit for an employee to file a complaint of unfair dismissal and the likelihood that a court will convert temporary contracts to open-

1. In Canada, responsibility for labour matters primarily falls under the legislative authority of the provinces. The federal government has exclusive jurisdiction for regular labour matters in a limited number of industries, such as banking, telecommunications and inter-provincial and international transportation, as well as with respect to federal government employees. Consequently more than 90% of Canadian workers are subject to provincial – rather than federal – legislation. Reflecting this, data for Canada in this paper refer, in most cases, to a weighted average of provisions applying in the four most populous provinces (Ontario, Quebec, British Columbia and Alberta).

ended contracts after a number of renewals. Annex A outlines in detail the definition and measurement of sub-components and the procedure used to aggregate the indicators.

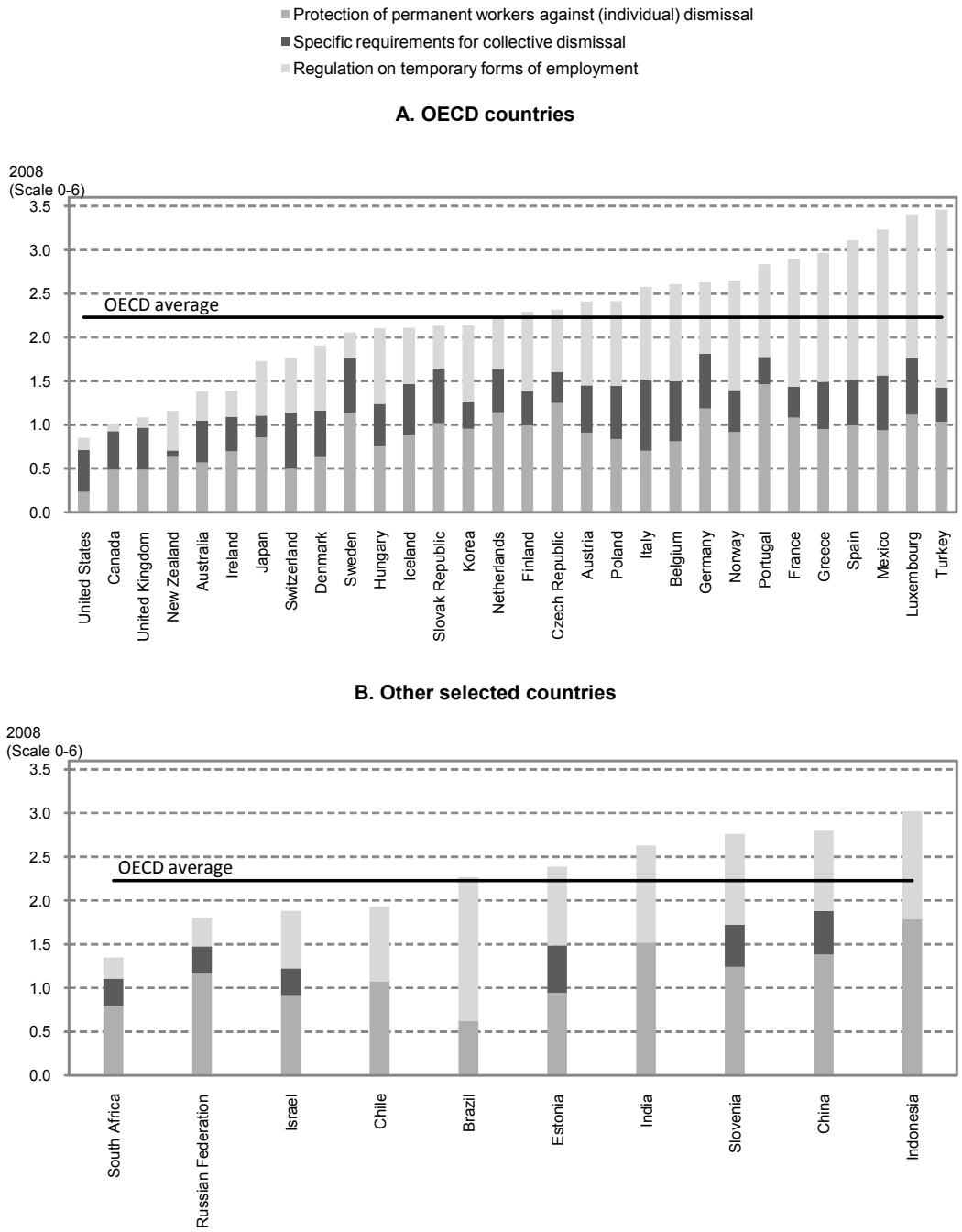
6. This paper presents updated estimates of the employment protection indicators (previously published in OECD, 2004, 1999), reflecting the situation in 2008. The data presented in the next section cover a number of countries that were not included in previous OECD updates. These are Iceland and Luxembourg among the OECD countries, Chile, Estonia, Israel, Russia and Slovenia which are in the accession process, as well as key large emerging economies Brazil, China, India, Indonesia and South Africa. Overall, data are presented for 40 countries. Detailed information on employment protection for each country, along with downloadable annual time series data from 1985-2008 are available from the OECD's employment protection website (*www.oecd.org/employment/protection*). The information used to compile the indicators was collected from questionnaires completed by officials in OECD member and some accession countries and from labour legislation and secondary sources for other countries. Where possible, this latter information was verified by officials from the countries concerned. Estimates for Luxembourg and some non-OECD member countries draw on previous work from the OECD Economics Department published in various editions of *OECD Economic Surveys*. Labour law specialists from the International Labour Organisation also provided valuable guidance on interpreting legislation in non-OECD member countries.

Employment protection in 2008

7. Figure 1 shows the stringency of employment protection in all OECD countries and a selection of non-OECD countries as in force on 1 January 2008.[2] Among OECD countries, the strictest employment protection is in Turkey, Luxembourg and Mexico, while the least strict is in the United States, the United Kingdom, Canada and New Zealand. With a few notable exceptions, strict regulation on regular contracts is accompanied by strict regulation on temporary contracts. In fact, much of the cross-country variation in employment protection is due to differences in the level of regulation on temporary contracts. There are few or no restrictions on the use of temporary contracts in the Anglo-Saxon countries. In contrast, in Turkey and Mexico, temporary agency work is illegal and fixed-term contracts can only be used in limited circumstances. Luxembourg, Spain, Greece and France also have strict rules on the circumstances where temporary employment is allowed, along with limits on the number of successive contracts and their maximum duration. There is relatively little cross-country variation in the level of additional regulation of collective dismissals. Moreover, there is only a weak link between the observed stringency of employment protection and the legal origin of different countries (see Box 1).

2. To reflect recent reforms, data are for 1 January 2009 for France and 17 February 2009 for Portugal.

Figure 1. **Strictness of employment protection, 2008**[a]



Note: Data shown are version 3 of the employment protection summary indicator.

a) 2009 for France and Portugal.

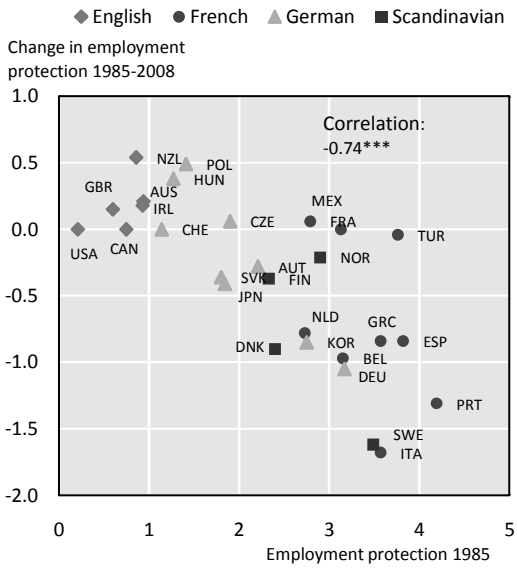
Box 1. **Does legal original influence the strictness of employment protection?**

Legal systems can be broadly categorised according to their origins. Common-law systems derive from English law and are found primarily in former British colonies.* Broadly speaking, common law relies more heavily on judicial precedent than legislation to set legal standards and legal proceedings are adversarial. Civil law, with variants from France, Germany and Scandinavia places greater emphasis on statutory laws. Dispute settlement under civil law tends to be inquisitorial rather than adversarial. Legal systems based on the French civil-law system are found in much of western Europe, Africa and South America. Japan, Korea and many former centrally-planned countries have legal systems based on the German model.

An influential body of research links legal origin to the stringency of regulation, and ultimately to economic performance. The basic argument is that common-law systems, with their emphasis on judicial precedent, are more market friendly, adapt quicker to changes in economic conditions and are less prone to inefficient rent-seeking than civil law's detailed statutory codes. Empirical studies of financial regulation, business registration, media ownership and labour markets have found that common-law countries have a lighter regulatory burden, associated in turn with positive economic outcomes (see La Porta *et al*., 2008 for a summary). Legal origin may also explain the pace of regulatory reform. Hefeker and Neugart (2007) find that governments reform labour market regulations more in common-law than civil-law countries during an economic downturn. They argue that higher levels of uncertainty about judges' interpretation of the law in common-law countries provide an incentive for governments to undertake legislative reform. Critics argue that the legal origin approach is too simplistic, ignores regulatory convergence and cannot explain regulatory changes over time. Deakin *et al*. (2007) argue that legal origin, by definition time-invariant, cannot explain changes in labour regulation over time and so has only a weak influence on the level of regulation. Using measures of labour regulation for five countries – United Kingdom, France, Germany, United States and India – for 1970-2005, they point out that many regulatory changes over this time were driven by political rather than legal factors.

In line with the predictions of legal origin theory, the employment protection indicator is (on average) lower in countries with an English legal tradition (1.5) than in those with a French legal tradition (2.7). Countries based on the German (2.3) and Scandinavian systems (2.2) are in between. Looking at changes in employment protection over the past two decades, most countries that reduced employment protection strictness have French civil-law systems. Indeed, the most common path of reform in common-law countries over the same period was an increase in strictness, even if from very low levels. Indeed, this is largely the result of regulatory convergence: countries with the strictest employment protection in 1985 typically made the biggest changes to reduce the regulatory burden in subsequent years, regardless of their legal origin. In addition, an increasing reliance on legislation as a source of labour law in common-law countries and specialised enforcement procedures (outlined in Section 5 of this paper) mean that the traditional distinction between common and civil law may be overly simplistic in the field of labour law.

Employment protection reform (1985-2008) and legal origin



Note: 1985-2008 except for 1990-2008 (KOR, MEX, NZL, POL, TUR) and 1995-2008 (CZE, SVK).

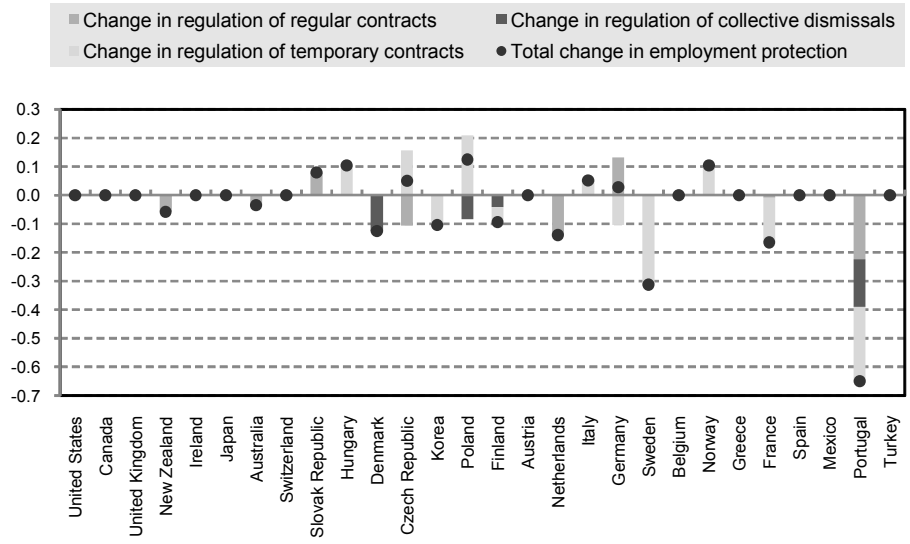
Source: OECD calculations. Employment protection is the unweighted average of the OECD indicators for regulation on regular and temporary contracts (version 1 of the employment protection summary indicator). Legal origin data from La Porta *et al*. (2008).

*. Canada has a dual legal system. While in most provinces and territories private law (*i.e.* matters having to do with property and civil law) is derived from the common law tradition (English legal system), in Québec private law is derived from the civil law tradition (French legal system).

8. The overall level of stringency of employment protection varies dramatically across non-OECD emerging economies. In Indonesia, China, Slovenia and India, regulation is well in excess of the OECD average, while South Africa, Russia, Chile and Israel have relatively low levels of regulation. Despite this variation, the cost of individual dismissal in the emerging economies shown in Figure 1 is almost universally higher than the OECD average (the exception is Brazil). This is typically due to complicated or time-consuming notification requirements and regulations that make it difficult if not impossible to lay off workers for economic reasons. Regulation of individual dismissal is particularly strict in India, China and Indonesia. In India and Indonesia, while there are no additional costs or notification requirements for collective dismissals, the effective cost of collective dismissals (the sum of costs for individual dismissal and any additional costs for collective dismissal) would put both countries among the top third of OECD countries, while China exceeds all OECD countries on this measure.

9. Since 2003, the dominant tendency among OECD countries has been for no change in the regulation of employment protection (Figure 2). However, a number of countries have reformed employment protection in the last five years , most notably Portugal where wide-ranging changes effective since February 2009 have reduced the overall stringency of regulation on permanent and temporary contracts and collective dismissals (see Box 2). In Sweden, the maximum allowable duration for most kinds of fixed-term and temporary work agency contracts was increased, while in France the time limit for temporary work agency contracts was removed and the trial period for regular contracts increased from 1.5 to two months with an extension possible for up to two further months. In the Czech Republic, Poland and Germany, increases in the stringency of regulation in some areas were offset by relaxation of regulations in others. In the Czech Republic, dismissal of workers on regular contracts became easier when the requirement for retraining or redeployment was lifted and the notice period reduced, despite an increase in severance pay. On the other hand, a two-year limit was introduced for fixed-term and temporary work agency contracts. Germany introduced legislated severance pay for dismissals for business reasons and increased the allowable duration of fixed-term contracts for employers launching a new business or hiring older unemployed. In Poland, a maximum limit of two successive fixed-term contracts was introduced and notification periods for collective dismissals were reduced by more than half.

Figure 2. **Changes in employment protection in OECD countries, 2003-2008**[a]



Note: Countries ordered left to right from least to most strict according to overall level of employment protection in 2003. Data shown are version 2 of the employment protection summary indicator so are not directly comparable to Figure 1. Revisions have been made to previously-published estimates for some countries. See Annex A for details.

a) 2003-2009 for Portugal and France.

Box 2. **The political economy of employment protection reform in Portugal**

Reforms to the Portuguese Labour Code in 2003, combined with severe economic conditions in 2004, saw the share of workers covered by collective agreements more than halve between 2003 and 2004. In 2005, the newly-elected Socialist Party Government undertook reforms to restore collective bargaining coverage to traditional levels. The success of these changes showed that more ambitious reforms might be possible with a tripartite, rather than adversarial, approach.

As a first step, the Government released a Green Paper on Industrial Relations in April 2006 outlining key labour market and industrial relations challenges. A committee of experts was then established to come up with specific proposals for changes in labour market regulation. The Committee produced the White Paper on Industrial Relations which was released in December 2007. The report suggested, among other things, simplifying administrative procedures for individual dismissal and greater flexibility in working-time and wage-setting arrangements. After considering the work of the committee and the reaction of social partners, the Government presented a series of proposals designed to tackle problem areas in the Portuguese labour market, including low adaptability of firms and workers, difficulties in balancing work and family life, lack of dynamism in collective bargaining, strict labour law combined with limited enforcement and increasing labour market segmentation. Complementary labour law and social policy reforms were proposed to tackle these problems.

The tripartite agreement for a new system of industrial relations, employment policy and social protection was signed by most social partners in June 2008 and came into law on 17 February 2009. The changes to dismissal regulation include *(i)* reducing the delay before the notice period starts by simplifying administrative procedures for individual and collective dismissal; *(ii)* reducing notice periods for workers with short tenure (*e.g.* from 60 to 15 days for workers with tenure of nine months) and increasing them for workers with long tenure (*e.g.* from 60 to 75 days for workers with tenure of 20 years); *(iii)* reducing compensation paid to workers and the right to reinstatement where the dismissal was found to be irregular only because administrative procedures were not properly followed and introducing government funding for the cost of back pay exceeding one year in unfair dismissal cases if the court takes longer than one year to rule on a case; and *(iv)* reducing the maximum time allowed for employees to make a complaint of unfair dismissal from one year to 60 days.

Complementary changes were made in other social policy areas to reduce the attractiveness of atypical employment (*e.g.* reducing social security contributions for open-ended contracts while increasing them for fixed-term contracts and the self-employed) and increase the effectiveness of labour law enforcement (these measures have been suspended due to the current economic downturn). The changes have had the effect of dramatically reducing the level of regulation on regular contracts in Portugal. Combined with earlier changes to the regulation of temporary contracts in 2007, the reforms have seen the indicator of employment protection for Portugal fall from 3.4 to 2.7. The approach taken shows that negotiation can achieve widespread change in labour regulation if strong evidence on the need for reforms is provided before the negotiation process starts and complementary reforms are made in other social policy areas.

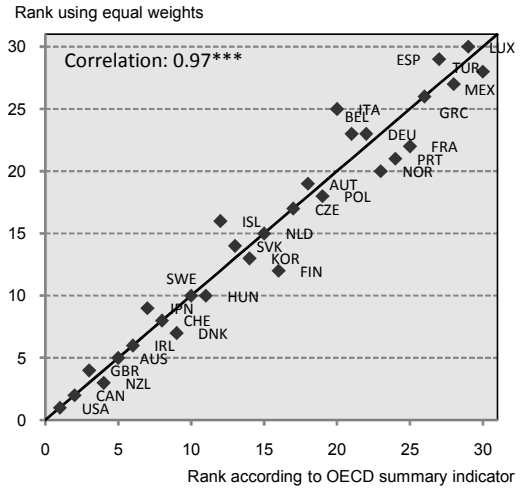
Alternative ways to measure employment protection

10. While the OECD employment protection indicators have been widely used in policy and research circles, they are not without critics (see Addison and Teixeira, 2003, for a summary). Some cite the level of subjectivity in the measurement and weighting of the sub-components as particularly problematic. The construction of composite indicators designed to measure qualitative features of the legal system inevitably involves some degree of subjectivity. Detailed information on all sub-components is provided on the OECD employment protection website (*www.oecd.org/employment/protection*) so users can see how the indicators were constructed and, if desired, reconstruct their own version based on an alternative interpretation. The weights used to aggregate the sub-components are also subjective. Higher weights are given to some sub-components than others to reflect their relative economic importance when firms are making decisions about hiring and firing workers (see Annex A for the weights used). In order to test the sensitivity of country rankings to the weights used, the summary indicator was recalculated using different weights. The first gives equal weight to all 21 sub-components. The second assigns weights roughly

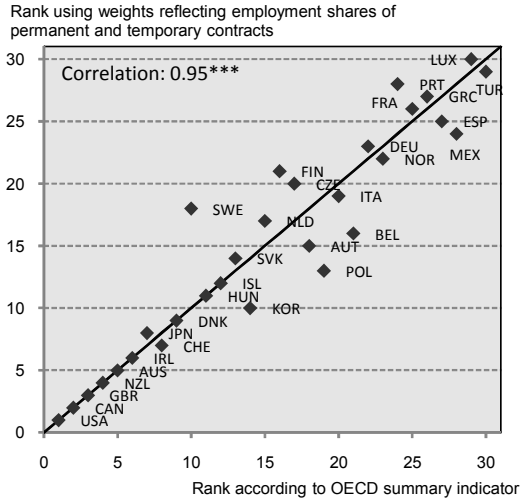
relative to the employment share of regular and temporary contracts.[3] Panels A and B of Figure 3 show that country rankings are relatively insensitive to changes in the weights used to aggregate the indicator.

Figure 3. **Ranking OECD countries using alternative measures of employment protection, 2008**

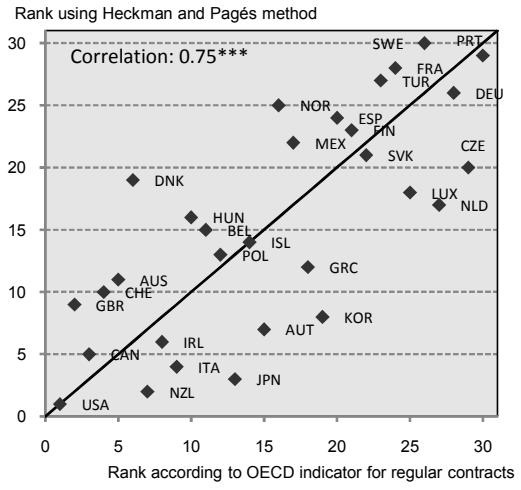
A. OECD summary indicator versus indicator using equal weights for all 21 sub-components



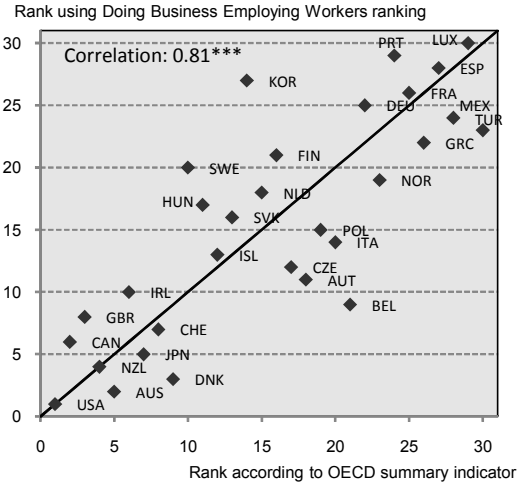
B. OECD summary indicator versus indicator using weights reflecting employment shares of permanent and temporary contracts



C. OECD indicator for regular contracts versus indicator calculated using Heckman and Pagés (2004) method



D. OECD summary indicator versus Doing Business Employing Workers ranking



Note: *** indicates that rank correlation is significant at 99% confidence level. The methodology for calculating the Heckman and Pagés (2004) indicator is explained in full in Annex B.

Source: OECD calculations. See Annex B for details.

3. Assigning weights based on employment shares can be problematic from an analytical perspective if the indicator is used to assess the contribution of employment protection stringency to labour market duality, for example, because the indicator would be endogenous to the outcome being measured.

11. Another criticism of the indicator is that the omission of collective bargaining and enforcement means that it does not accurately portray employment protection as it works in practice. Employment protection provisions delivered through collective bargaining are included in the indicator for some countries where collective agreements represent an important source of additional employment protection and collectively-bargained provisions are set largely exogenously to the individual firms to which they apply. The 2008 update treats the issue of collective bargaining more systematically than in past updates, using data on collectively-bargained provisions outlined in section 3. Enforcement practices are also partially incorporated. Notification or consultation procedures in several countries are not set out in legislation, but may nevertheless be required by courts in the event that a dismissal is disputed, and are included in the indicator. Likewise, where the duration of temporary contracts is unregulated by legislation but courts often convert temporary into ongoing contracts after a certain number of renewals, this is reflected in the indicator. Compensation and reinstatement following unfair dismissal often depend on the discretion of judges, and these decisions are incorporated where possible in the indicator. However, it is true that some aspects of enforcement, such as the cost of court proceedings and uncertainty about court outcomes, are not fully captured in the indicator. Moreover, the indicator only refers to formal-sector employment. In countries with a sizeable informal sector the overall degree of de facto flexibility is much higher than expressed by the indicator. The importance of enforcement of employment protection is examined in greater detail in section 5.

12. A more fundamental problem relates to the interpretation of the employment protection indicator as a measure of labour market flexibility. The indicator measures only one aspect of labour market flexibility: the cost to firms of hiring and firing regulations. The idea of "regulation as cost" has been criticised by Berg and Cazes (2007) who argue (in relation to the World Bank's Doing Business indicator for employing workers, see below) that focusing only on costs ignores potential positive externalities of labour market regulation, such as increased job security, greater investment in firm-specific human capital and less industrial conflict. This criticism is relevant if the employment protection indicator is used in isolation as a measure of labour market flexibility. The recent reassessment of the OECD Jobs Strategy (OECD, 2006) highlights the importance of considering policy packages and complementarities, rather than single policies, when evaluating labour market performance. Different countries have different mixes of internal and external flexibility, of which employment protection is only one part.

13. Partly to address some of these criticisms and partly to extend country coverage to non-OECD countries, several alternative measures of employment protection have been developed in recent years. Heckman and Pagés (2004) present a measure of the direct monetary cost of dismissing regular workers for economic reasons in OECD and Latin American countries. Their indicator focuses only on directly quantifiable costs (severance pay, notice periods and, for countries where dismissal is difficult, compensation for unfair dismissal), to avoid using subjective measures of qualitative aspects of employment protection. They incorporate the whole tenure-cost profile by summing discounted dismissal costs across 20 years of tenure. They assume constant cross-country discount and dismissal rates, which introduces its own level of subjectivity into the analysis. The indicator also overlooks some of the more qualitative aspects of dismissal that are captured in the OECD indicators, notably the possibility of reinstatement in cases of unfair dismissal and the notification procedure required. Nevertheless, there is a clear positive correlation between country rankings derived from the OECD indicator for regular contracts and an indicator recalculated for 2008 based on the Heckman and Pagés methodology (Panel C of Figure 3). Deviations in rankings using the two measures for some countries can be explained by differences in the aspects of employment protection covered. For example, Denmark has a much lower ranking (*i.e*. stricter regulation) using Heckman and Pagés than the OECD indicator because Heckman and Pagés do not take into account the long trial period, relatively low compensation or infrequent reinstatement orders in cases of unfair dismissal. In contrast, the Heckman and Pagés rankings for Korea, Japan and the Netherlands are much higher (*i.e.* less strict regulation) than using the OECD indicator

because Heckman and Pagés do not take into account short (or non-existent) trial periods, frequent reinstatement (Japan and Korea) or high levels of compensation (Netherlands) after unfair dismissal.[4]

14. The World Bank's Doing Business "Employing Workers" ranking incorporates a number of measures of labour market policy including difficulty of hiring (restrictions on when fixed-term contracts can be used and their maximum duration and the level of the minimum wage), difficulty of firing (notification and approval requirements for individual and collective redundancies, obligations to reassign or retrain and priority rules for redundancy and reemployment), firing costs (severance pay, notice periods and penalties for unfair dismissal) and hours rigidity (working time regulation and paid leave). Information used to compile the indicators is collected through a questionnaire completed by in-country experts, mainly lawyers, based on a "representative" worker and firm.[5] Countries are ranked based on their score on each sub-indicator, with a higher rank indicating less stringent regulation. The "Employing Workers" measure has significant drawbacks as an overall measure of labour market regulation and costs, ignoring important policy measures such as unemployment benefits, labour market programmes and wage bargaining arrangements (see Berg and Cazes, 2007, for a critique). Even with regard to employment protection, the use of representative workers and firms abstracts from the complexity of rules and none of the measures includes provisions from collective bargaining or judicial decisions that are included in the OECD indicators.[6] Bearing in mind these caveats, Panel D of Figure 3 shows a significant positive correlation between country rankings using the OECD summary indicator and the Doing Business Rigidity of Employment index. Variations between the two are likely to reflect the inclusion in the Doing Business index of regulations on working hours and minimum wages, along with more comprehensive information on employment protection included in the OECD indicators, including remedies in cases of unfair dismissal, regulation of temporary work agency contracts and collective bargaining provisions for a number of countries. For example, Belgium's Doing Business ranking is much higher (*i.e.* less strict regulation) than using the OECD indicators because Doing Business does not take into account the lengthy notification procedures for individual dismissal, longer notice periods for white-collar workers or relatively high level of compensation for unfair dismissal. The Doing Business ranking for Korea is much lower (*i.e.* stricter regulation) than using the OECD indicators because Doing Business includes in its measure of severance pay a separation allowance that is paid for all separations, not just dismissals, which is not included in the OECD indicators.

15. Overall, there is a high (and statistically significant) positive correlation between the country rankings derived from the OECD indicators and from alternative measures of employment protection. Differences mainly reflect the range of aspects of employment protection covered by the various proxies. In this regard, the OECD indicators could be considered more comprehensive than either the Heckman and Pagés or Doing Business indicators because they cover more aspects of employment protection than either.

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4. The Heckman and Pagés measure only includes compensation for unfair dismissal in countries where transfer or retraining must be attempted prior to dismissal or where worker capability cannot be a ground for dismissal.

5. A representative worker is a non-executive full-time employee in the manufacturing sector, 42 years old, male, has worked at the same company for 20 years, receiving a salary plus benefits equal to the country's average wage during the entire period of his employment. He is not a union member, unless union membership is compulsory and is a lawful citizen who is not part of a minority group. A representative firm is a limited-liability manufacturing company with 201 employees, subject to collective agreements in countries where collective bargaining covers more than half the manufacturing sector. Both the worker and firm are based in the country's most populous city.

6. More broadly, the Doing Business indicators have been criticised for a lack of transparency in their compilation and calculation, variability in the quality and number of participants in each country and the fact that small changes in policy can lead to relatively large changes in ranking and vice versa (World Bank Independent Evaluation Group, 2008).

3. Collective bargaining

16. Legislation is not the only source of employment protection rules in many OECD countries. Labour law typically sets a minimum standard, while collective agreements or individual contracts can include provisions more generous to employees than those in legislation. In a few countries (Germany, Netherlands and some parts of Canada), collective agreements can include notice periods shorter than those in legislation. Table 1 outlines collective bargaining arrangements in OECD and selected non-OECD countries. Collective agreement coverage ranges from less than 20% of the workforce in Japan, Korea and the United States to 90% or more in Austria, Belgium, Finland, France, Slovenia and Sweden. In about half of the countries examined, collective bargaining occurs primarily at the company level. While collective agreements in these countries often include employment protection provisions that are more generous to employees than those in legislation, these are agreed to by firms and workers during the bargaining process, possibly in return for productivity improvements or adjustments to wages or other working conditions. As such, these should not be considered to be adding to firms' dismissal costs in the same way as statutory provisions.

17. In countries where collective bargaining takes place at an industry, regional or national level and where collective agreements can be extended to include employers and employees that were not originally parties to agreements, employment protection provisions in collective agreements could be considered in a similar light to legislation in terms of their impact on firms' dismissal costs. In many of these countries, provisions in collective agreements relating to notice periods and severance pay are similar to those in legislation. However, in Denmark and Iceland collective agreement provisions are substantially more generous than those in legislation.[7] These provisions are incorporated into the standard OECD employment protection indicators so that they provide a more accurate reflection of dismissal costs facing employers in these countries. Even so, incorporating collective bargaining has only a minor impact on the employment protection indicators (Box 3).

7. Trial periods from collective agreements for blue collar workers in Italy are also incorporated into the indicator (see Box 3 for details).

Table 1. **Collective bargaining about employment protection in OECD and selected non-OECD countries**

	Collective agreement coverage (%)	Principal bargaining level	Multi-employer extension	Can agreements undercut legislation?	Do collective agreements provide more generous (to employees) provisions than legislation on the following aspect of employment protection?:	
					Severance pay	Notice periods for individual dismissal
Australia[a]	60	Company	None	No	There is no statutory severance pay. Collective agreements typically contain the award standard for redundancy pay (4-8 weeks' pay for workers with more than one year of service). Agreements can provide less than the award standard only if the employee is not worse off in net terms.	No
Austria	99	Industry	Automatic; enlargement on request	No	No	Rules on notice periods are mainly found in agreements for blue-collar workers. In the first years of job tenure, notice periods are similar to those in legislation. At longer tenures, provisions in collective agreements tend to be more generous than those in legislation.
Belgium	96	National	Request	No	No	Notice periods are slightly more generous than those in legislation in the agriculture, manufacturing, construction, transport and some service industries.
Canada	32	Company	None (outside Québec)	Yes, on notice periods in British Columbia and Prince Edward Island	Only Federal and Ontario jurisdictions have statutory severance pay. Roughly half of major collective agreements in Canada (500+ employees) contain severance pay provisions. Federally regulated employers provided permanently laid off employees on average 8 days of wages per year of service in 2004 (cf. 2 days per year with min. 5 days in legislation). In large enterprises (100+ employees), average severance pay was 11 days of wages per year of service.	Collective agreements and employer policies generally provide for notice that is at least slightly more generous than legislated standards.
Chile	24	Company	None	No	..	..
Czech Republic	44	Company/ industry	Representative	No	No	No
Denmark	82	Industry/ company	None	No	No	There is no statutory notice requirement for blue-collar workers, but collective agreements include notice periods ranging from 3-10 weeks for workers with more than 9 months of service.
Estonia[a]	22	Company	None	No	The majority of agreements in all sectors have provisions about the same as in legislation. Some agreements in all sectors have slightly more generous provisions.	The majority of agreements in all sectors have provisions about the same as in legislation. Some agreements in all sectors have slightly more generous provisions.
Finland	90	Industry (national framework)	Representative	No	No	No
France	95	Industry/ company	Request	No	Collective agreement provisions are about the same as those in legislation.	Collective agreement provisions are about the same as those in legislation.
Germany	63	Industry	Representative	Yes, on notice periods	No severance payments for normal termination in collective agreements. Some industries with rationalisation protection agreements have severance pay under certain conditions to protect older workers with long tenures against the negative social consequences of rationalisation measures due to technical progress. Such severance payments vary by industry, but typically range from 1-12 monthly salaries.	Collective agreements generally define extended notice periods with gradations either according to tenure or a combination of tenure and age. Notice periods range from 6 days to 12 months, depending on the industry (compared with 1-7 months in legislation). The average notice period across four large industries (construction, chemical, iron and steel and retail) is similar to legislation.

Table 1. **Collective bargaining about employment protection in OECD and selected non-OECD countries** *(cont)*

	Collective agreement coverage (%)	Principal bargaining level	Multi-employer extension	Can agreements undercut legislation?	Do collective agreements provide more generous (to employees) provisions than legislation on the following aspect of employment protection?:	
Greece	85	Industry	Representative	No	Collective agreement provisions are about the same as those in legislation.	Collective agreement provisions are about the same as those in legislation.
Hungary	35	Company	Representative	No	More than 60% of collective agreements contain provisions about severance pay, of which 88% contain provisions that are more generous than legislation.	Three quarters of collective agreements contain provisions about notice periods. No information available on whether these provisions are more generous than those in legislation.
Iceland	88	Industry	Automatic	No	No	Notice periods in collective agreements for affiliates to the two largest private-sector trade union federations range from 1-12 weeks for workers with less than one year of service (cf. none in legislation) to 1-6 months for workers with more than one year of service (cf. 1-3 months in legislation).
Ireland	..	National/ company	None	No	No	No
Israel	56	Industry/ company	Representative	No	Most industries have severance pay provisions that are slightly more generous than those in legislation.	Notice periods in collective agreements are about the same as those in legislation.
Italy[a]	80	Industry	None (only wages)	No	No	No
Japan	16	Company	None	No	Yes, but no further details available.	Yes, but no further details available.
Korea	12	Company	None	No	There are very few, if any, cases where collective agreements contain provisions more generous than those in legislation.	There are very few, if any, cases where collective agreements contain provisions more generous than those in legislation.
Luxembourg	60	Industry/ company	Automatic	No	..	..
Mexico	..	Company	None	No	..	..
Netherlands	82	Industry	Representative	Yes, on notice periods	There are no statutory provisions for severance pay. In some industries "social plans" provide guidelines on redundancies including provisions for severance pay. However, severance pay is usually lower than that awarded by judges in court-based dismissals.	Notice periods in collective agreements can undercut those in legislation by one month, providing the overall period of notice is not less than one month. On average, notice periods in collective agreements do not differ much from those in law.
New Zealand	30	Company	None	No	No statutory requirement for severance pay. About 42% of employees covered by a collective agreement that provides for redundancy pay receive 6 weeks' pay for their first year of service and 2 additional weeks' pay for every year thereafter.	No statutory requirement, although "reasonable notice" is required. The most common notice periods in collective agreements are: 2 weeks (6% of employees covered by collective agreements), 4 weeks (61%), 5-8 weeks (16%), 8 weeks (3%). 12% of collective agreements do not include notice periods.
Norway	72	National / industry	None	No	Some sectors (mining, manufacturing, electricity gas and water supply, construction, transport, storage and communications, other services) have severance payments slightly more generous than those in legislation, but only for employees aged 50+ and after a certain length of service where the dismissal is justified on the basis of circumstances relating to the undertaking or the employer.	With the exception of public administration and service industries, most collective agreements have provisions for notice periods about the same as those in legislation.

Table 1. **Collective bargaining about employment protection in OECD and selected non-OECD countries** *(cont)*

	Collective agreement coverage (%)	Principal bargaining level	Multi-employer extension	Can agreements undercut legislation?	Do collective agreements provide more generous (to employees) provisions than legislation on the following aspect of employment protection?:	
Poland	35	Company	Ministry	No	No	No
Portugal	62	Industry	Ministry, enlargement	No	Collective agreements typically have provisions about the same as those in legislation.	Collective agreements typically have provisions about the same as those in legislation.
Russian Federation[a]	62	Multiple	None	No	..	..
Slovak Republic	35	Industry/ company	Request	No	Most collective agreements contain provisions that are about the same as those in legislation. The exceptions are those in the mining, manufacturing and electricity, gas and water supply industries where provisions are slightly more generous. However, collective bargaining coverage is very low (<5% of employees) in these industries.	No
Slovenia	100	National / industry	Automatic	No	Transport industry severance pay is a lot more generous than statutory provisions. In other industries, collective agreements are about the same or slightly more generous than legislation.	Construction industry notice periods are a lot more generous than statutory provisions. In other industries, collective agreements are about the same as legislation.
Spain	80	National/ industry/ company	Representative	No	..	..
Sweden	92	Industry	None	No	No	No
Switzerland	48	Industry/ company	Representative	No	Provisions in public-sector agreements are more generous than those in legislation, but in other industries, provisions in collective agreements are about the same as those in legislation.	Provisions in public-sector agreements are more generous than those in legislation, but in other industries, provisions in collective agreements are about the same as those in legislation.
Turkey	24	Company	None	No	No	No
United Kingdom	35	Company	None	No	No	No
United States	13	Company	None	No	Yes, but no further details available.	Yes, but no further details available.

Notes: .. indicates that data are not available. Automatic: extension is automatic or quasi-automatic (*e.g.* through mandatory membership of employer organisation in Austria and Slovenia). Representative: extension may be undertaken by the Labour Ministry or requested by parties if the agreement already covers a sufficient proportion of total employment in sector or region. Request: extension may be requested by the parties without any conditions. Ministry: extension may be undertaken by Labour Ministry (*e.g.* for public interest reasons in Poland).

a) Country notes:

Estonia: industry-level agreements are possible, but only used in the transport and health care industries. Industry-level agreements can be extended across all employer and employees in an industry by agreement between the social partners, but this rarely happens in practice.

Italy: collective agreements often set more severe regulations about the use of temporary contracts (*e.g.* reasons, limits, maximum number of workers employed under temporary agency or fixed-term contracts) than in legislation.

Russian Federation: collective bargaining in Russia ostensibly occurs at several different levels, but often there is little real bargaining (*e.g.* agreements are made between trade unions and the government without involving employers). National-level bargaining typically comprises general statements of intent and little real content relating to wages or working conditions. Sectoral agreements often just replicate legislative standards, while the content of regional-level agreements varies widely. Company-level agreements are often not adhered to or enforced (World Bank, 2003). Sectoral agreements can be extended by the Minister of Labour if they cover a majority of employees in a particular sector, but uncovered employers can opt out of the extension by writing to the Minister within 30 days of the extension.

Source: See Annex B.

Box 3. **Incorporating collective bargaining into the OECD employment protection indicators**

For the countries listed below, where collective bargaining at the industry, regional or national level results in substantially more generous employment protection than legislation, the OECD employment protection indicators incorporate these provisions in order to more accurately reflect the situation facing employers and employees:

- *Denmark*: notification procedures, notice periods and severance pay for white collar workers are set out in special legislation and may be supplemented by provisions in collective agreements. Blue-collar workers receive dismissal protection primarily through collective agreements, which are typically negotiated at the industry level. Both white- and blue-collar workers are protected against discriminatory dismissal through legislationThe indicators incorporate collective bargaining for Denmark by taking the average of provisions for blue- and white-collar workers.
- *Iceland*: collective agreements are extended automatically to cover all employers and employees in a particular industry or region. Average notice periods from collective agreements concluded by affiliates to the two largest private-sector trade union federations are incorporated into the indicators.
- *Italy*: trial periods for blue-collar workers from collective agreements are included in the indicators.

In Australia, there is no statutory severance-pay requirement and despite collective bargaining taking place at the company level, the indicators incorporate severance pay required for redundancies under the award standard. Most employees not covered by collective agreements are entitled to the award standard. In addition, collective and individual agreements can typically only reduce redundancy pay from the award standard if employees are compensated through higher wages or better working conditions.

Including collectively-bargained provisions for Denmark, Iceland and Italy and the award standard for Australia has only a minor impact on the value of the OECD employment protection indicators for these countries. In Denmark, the indicator is 1.91 compared to 1.86 if collective bargaining was ignored. In Iceland, the indicator is 2.11 or 2.03 if collective bargaining is ignored. In Australia, the indicator is 1.38 compared to 1.30 if the award standard is ignored. The indicator for Italy is unchanged if collective bargaining is ignored.

4. Exemptions from employment protection legislation

18. Employment protection legislation often excludes some workers from its scope. In most OECD countries the self-employed, maritime workers, domestic workers, family members working in a family business, diplomats, political office-holders, entertainers, sportspeople, police and civil servants are excluded from coverage or are subject to different rules for hiring and firing to the general workforce. In addition, some countries have exemptions or alternative regulations for particular industries. For example, the construction industry is exempt from most legislative provisions concerning employment protection in a number of Canadian provinces and most agricultural workers are exempt in Greece, Turkey and the United States (alternative regulations define some aspects of employment protection for agricultural workers in the United States). Exemptions are also made for some groups of workers or firms in order to encourage employment growth. However, it should be pointed out that even where some industries, firms or groups of workers are exempted from certain aspects of employment protection, in most cases they remain covered by anti-discrimination provisions that prevent dismissal on discriminatory grounds such as gender, age, ethnicity, disability or trade union membership. This section examines the prevalence of employment protection exemptions and their labour market impact, along with the use of non-standard employment contracts that fall outside the scope of standard employment protection rules.

Exempting small firms

19. Many OECD countries exempt small firms from some or all employment protection requirements (Table 2). Most commonly, small firms are exempt from additional notification or procedural requirements when undertaking collective dismissals. In addition, several countries reduce or remove severance payments, notice periods or the risk of being accused of unfair dismissal for small firms. Blanket

exemptions from dismissal rules apply in Korea (for firms with less than five employees), Germany (10 or fewer) and Turkey (less than 30), although protection against discriminatory dismissal continues to apply. The scope of small-firm exemptions is much greater than for other types of exemptions examined in this paper, ranging from around 20% of employees in Korea to more than half in Australia, Spain, Italy and Turkey. Even so, small-firm exemptions have only a minor impact on the accuracy of the OECD employment protection indicators (Box 4).

Table 2. **Small firm exemptions from employment protection, 2008**

Country	Threshold and type of exemption	% of total employment[a]
Australia	Firms employing 100 or less employees are exempt from unfair dismissal laws, but unlawful termination (for discriminatory reasons) continues to be prohibited in all firms. Firms with fewer than 15 workers do not have to pay redundancy pay.	56 (<100) 20 (<15)
Austria	Firms with less than five employees are not required to establish a works council so there is no requirement to inform the works council of impending dismissals nor possibility for the works council to challenge unfair dismissals. In enterprises where works councils could be established but where the employees do not set up a works council, the requirement to notify the works council about dismissals is also waived. Firms with less than 20 employees are exempt from requirements for collective dismissals.	15 (<5) 36 (<20)
Belgium	Firms with less than 20 employees are exempt from requirements for collective dismissals.	37
Czech Republic	Firms with less than 20 employees are exempt from requirements for collective dismissals.	39
Denmark	Firms with 20 employees or less are exempt from requirements for collective dismissals.	28
Finland	Firms with less than 20 employees do not have to take part in consultations with employees, reducing delays before notification can take place.	27
Germany	Establishments employing 10 or fewer employees are exempt from regular employment protection legislation. Special protection is still provided to protect employees against discriminatory dismissal and arbitrary dismissal. Employers must not give notice without a minimum of social consideration. Firms with 20 employees or less are exempt from requirements for collective dismissals.	18 (<10) 28 (<20)
Hungary	Firms with less than 20 employees are exempt from requirements for collective dismissals.	43
Iceland	Firms with less than 20 employees are exempt from requirements for collective dismissals.	..
Italy	Firms with less than 15 employees are not required to pay back-pay or reinstate workers who are found to be unfairly dismissed.	51
Korea	Workplaces with four workers or less are exempt from provisions of the Labor Standards Act relating to dismissal.	20
Mexico	Firms employing less than 20 employees are exempt from requirements for collective dismissals.	48
Portugal	In cases of unfair dismissal, companies employing up to 9 workers may submit a request to the court to oppose reinstatement.	42
Slovenia	Employers employing 10 workers or less can, by collective agreement, conclude fixed-term contracts irrespective of the substantive limitations applying to fixed-term contracts and with longer duration. When terminating contracts, small employers do not have to verify the possibility of redeployment or retraining. Shorter notice periods are allowed for small employers by collective agreement.	21
Spain	The maximum duration of the trial period for workers without higher education qualifications is 3 months for firms with 25 workers or less (2 months for larger firms). In the case of redundancies in firms with less than 25 employees, the Wage Guarantee Fund pays 40% of the compensation due to workers, the maximum daily wage being equal to twice the minimum inter-professional wage. In the case of collective dismissals in firms with less than 50 workers, the consultation period with employee representatives is reduced by half (to 15 days) and there is no requirement to submit a social plan.	51 (<25) 61 (<50)
Sweden	Firms with up to 10 employees are entitled to exempt two employees who are of particular importance to the business before the order of priority in connection with termination of employment is determined.	24
Switzerland	Firms with less than 20 employees are exempt from requirements for collective dismissals.	..
Turkey	Firms with less than 30 employees do not have to reinstate workers or pay compensation or back-pay in cases of unfair dismissal. Firms with less than 20 employees are exempt from requirements for collective dismissals.	52 (<30) 45 (<20)
United States	Firms with less than 100 employees are exempt from requirements for collective dismissals.	30

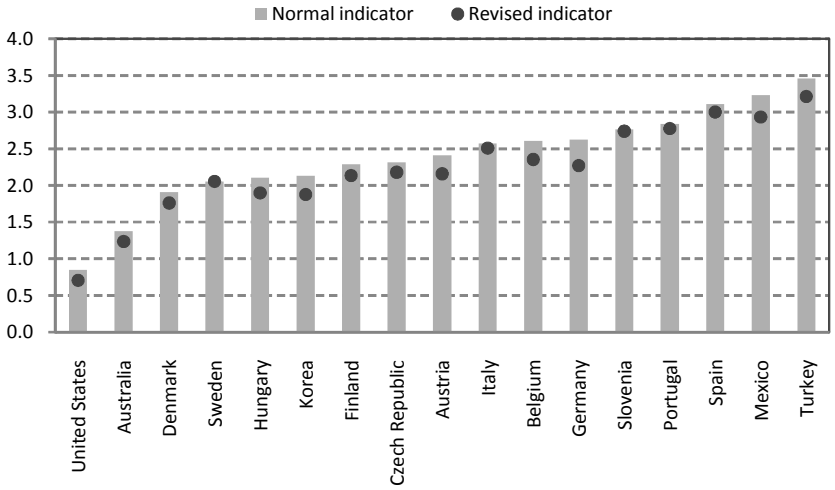
Notes: .. indicates no data available.
a) Except for Australia, Korea, Slovenia and Turkey, where figure given is percentage of total employees.

Source: Responses to OECD questionnaire; national labour legislation. Coverage estimates are from OECD Structural Business Statistics database, except for Australia and Korea, which are from responses to OECD questionnaire, Slovenia, which is from the Statistical Office of the Republic of Slovenia and Turkey, which is interpolated from the 2006 Turkish Labour Force Survey.

Box 4. **Taking small-firm exemptions into account when measuring employment protection**

To determine the impact of small-firm exemptions on their accuracy, the OECD employment protection indicators were re-estimated for the countries in Table 2. The summary indicator was calculated separately for firms of different sizes and the "revised indicator" in the figure below is the weighted average for each country, where the weights reflect the employment share in firms of different sizes. Generally, taking small-firm exemptions into account has only a minor impact on the value of the indicator. The largest variations are for countries where employment protection rules are very different for large and small firms (*e.g.* Germany, Korea, Belgium) or where small firms comprise a large proportion of total employment (*e.g.* Hungary, Mexico, Turkey). The indicator for Spain and Italy already takes small-firm exemptions into account to some degree by including an unweighted average of costs/requirements across small and large firms, hence there is very little difference between the original and revised indicator for these countries.

OECD employment protection indicator recalculated to reflect small-firm exemptions



Source: OECD calculations using data from Table 2. No estimates available for Iceland or Switzerland.

20. The logic behind exempting small firms from some aspects of employment protection is that regulation may impose higher relative costs on smaller than larger firms. Small firms are less likely to have specialised human resources departments to deal with the sometimes complex process of complying with regulation. The fixed cost of dismissing a worker (incorporating severance pay and possibly compensation and legal costs if the dismissal is disputed) comprises a larger proportion of the wage bill for small than large firms. Small firms also have less scope for internal redeployment of workers than larger firms. However, evidence from firm-level surveys suggests that small firms in OECD countries are actually *less* likely than larger firms to report that employment protection is an obstacle to running a business, even after controlling for firm age, the likely enforcement effort (proxied by GDP per capita) and the actual strictness of employment protection (Pierre and Scarpetta, 2004, 2006). Part of this is explained by the existence of exemptions. In countries with small-firm exemptions from employment protection, the difference in perceptions between small and larger firms is much smaller, but still statistically significant (Venn, 2009). Regardless of whether they are officially exempted from regulations, small firms can evade detection more

easily than larger firms, are less likely to be subjected to labour inspection or may simply be oblivious to the existence of regulations.[8]

21. Economic theory predicts that exempting small businesses from employment protection should increase separations and hiring in exempt firms, although the overall effect on employment levels is ambiguous. An exemption could also provide an incentive for firms to stay small to avoid moving above the threshold and incurring additional hiring and firing costs, or for firms facing higher dismissal costs to meet their labour requirements by internal adjustments (*i.e.* internal mobility or adjustment of working hours) rather than hiring or firing. Firms may also be able to shift higher dismissal costs onto employees' wages. If the exemption threshold is defined according to the number of workers in a workplace or establishment rather than a firm, high employment protection costs could encourage firms to split their operations in order to remain below the threshold. Firms close to or above the threshold may hire non-standard workers, either to remain below the threshold (in countries where non-standard workers are not included in measures of firm size) or to bypass higher costs for dismissing regular workers that apply to firms above the threshold.

22. The results of existing empirical studies of the impact of small-firm exemptions on labour market outcomes or firm growth differ markedly from country to country. In Italy, firm-size exemptions are found to have a small negative impact on the growth of firms just below the threshold and to increase dismissal (and possibly hiring) rates in small relative to large firms. Firms above the threshold respond to higher dismissal costs by reducing working hours and possibly increasing their use of temporary contracts (Boeri and Jimeno, 2005; Garibaldi *et al*., 2003; Kugler and Pica, 2008; Schivardi and Torrini, 2005).[9] In Turkey, a reform of the labour code that increased dismissal costs for large firms resulted in lower hiring rates in large relative to small firms, most notably for formal or regular workers (Venn, 2009). In contrast, an exemption from employment protection for small firms in Germany appears to have neither threshold effects nor impact on hiring or firing, but reduces the use of fixed-term contracts among exempted firms (Bauer *et al*., 2007; Bookmann and Hagen, 2001; Bugert, 2005; Verick, 2004). Exempting small firms from unfair dismissal rules in Australia also appears to have had little impact on hiring or firing rates, possibly because employment protection regulation in Australia was already amongst the least stringent in the OECD prior to the reform (Venn, 2009). Exemptions from procedural requirements for dismissal have no impact on hiring or firing in exempted firms in Sweden (von Below and Thoursie, 2008) or Portugal, but small Portuguese firms were more productive after firing costs were reduced (possibly because worker effort increased in response to the greater dismissal threat) and wages fell (possibly due to increased bargaining power of employers) (Martins, 2009).

Exemptions targeted at disadvantaged groups

23. All OECD countries have legislation preventing the dismissal of workers on discriminatory grounds such as gender, age, race, disability or trade union membership (see OECD, 2008, for a survey of anti-discrimination laws in OECD countries). However, in some countries, exemptions from employment protection rules (other than those relating to discriminatory dismissal) are made for particular groups of workers in order to encourage their employment (Table 3). The most common type of exemption is for apprentices or workers undertaking training (*e.g.* Australia, Canada, Italy, Norway, Poland, Spain). Participants in active labour market programmes, disabled or older workers may also be exempt from

8. Another explanation is that the variable used in these studies refers to labour regulations in general, not just employment protection. Other types of labour regulation (e.g. minimum wages, working hours and health and safety requirements) usually apply to all firms, regardless of size.

9. Abidoye *et al*. (2008) also find that a small-firm exemption from employment protection in Sri Lanka has threshold effects, but only in areas where dismissal laws are properly enforced.

regulations relating to dismissal or the use of fixed-term contracts. Targeted exemptions affect only a small proportion (typically less than 2%) of the workforce.

Table 3. **Exemptions from employment protection for particular groups of workers, 2008**

Country	Exempt groups and alternative regulations applying
Australia	Apprentices and trainees cannot claim unfair dismissal, but are protected against discriminatory dismissal.
Canada	**British Columbia:** students in approved work-experience programmes or employed at the secondary school where they are enrolled and persons receiving income assistance while participating in government training or work-experience programmes are not covered by employment protection legislation. **Ontario**: secondary or tertiary students engaged in approved work-experience programmes are not covered by employment protection legislation. **Québec**: students who work during the school year in a job induction programme are not covered by employment protection legislation.
Denmark	Workers on active labour market programmes are sometimes exempted from regulations on fixed-term contracts.
Finland	An employee's employment relationship can be terminated without a notice period at the end of the calendar month during which the employee becomes 68 years of age unless the employer and the employee agree to continue the employment relationship. If they agree to a continuation, they may agree to a fixed-term continuation regardless of the rules on the use of fixed-term contracts.
Italy	There are four special contracts for training or labour market entry. *Educational training apprenticeships* are for 15-18 year olds and can last for up to three years. *Vocational training* and *higher-level apprenticeships* are for 18-29 year olds and last from two to six years depending on the qualification to be obtained. Apprenticeship contracts can be used in any sector but are limited so that the number of apprentices cannot exceed the number of skilled workers employed by a firm (small firms without skilled staff can hire up to three apprentices). Apprenticeship contracts cannot be terminated except for just cause or for any reason at the end of the contract. *Access-to-work contracts* can be made with youth aged 18-29, long-term unemployed aged 29-32, workers aged 50+ who are not working, workers who wish to return to work after a break of two years or more, women in areas where employment rate is 20% lower than for men and disabled workers. Contracts have a maximum duration of 6-18 months (36 months for disabled workers) and can be used in any sector except public administration. An employer can only hire new workers on access-to-work contracts if at least 60% of employees hired in the past on these contracts whose contracts have expired are still employed in the firm.
Germany	For employees over 52 years of age and unemployed for more than 4 months or who have participated in a public employment measure for more than 4 months, fixed-term contracts are possible without any need to prove objective reasons up to a cumulative duration of 60 months.
Norway	Participants employed through labour market programmes under the auspices of (or in cooperation with) the Labour and Welfare Service (PES), and for work as a trainee, can be hired temporarily without the general rules/restrictions for temporary employment applying.
Poland	The termination of contracts of employment with adolescents for the purpose of vocational training is permitted in the case of: (1) an adolescent's failure to perform his or her duties under a contract of employment or the duties arising from compulsory schooling, despite corrective measures applied to him/her; (2) declaration of bankruptcy or liquidation of the employer; (3) reorganisation of an employing establishment preventing the continuation of vocational training; or (4) unsuitability of an adolescent for work in which he or she is receiving vocational training.
Slovenia	Employees engaged in public works programmes (under such a contract, a person usually spends a quarter of their working time participating in training or educational programmes) are subject to different provisions for early termination of the contract. Early termination is possible if the participant takes up new employment with a different employer, takes part in an EU-sponsored training programme, rejects an appropriate job offer or training programme proposed by the Employment Service, fails to provide results that can be expected from an average participant due to untimely, unprofessional or poor-quality work, arbitrarily abandons a public works programme or if the programme of public works is terminated early for objective reasons on the part of the Employment Service, the implementer or the contractor of the public works programme.
Spain	Work placement contracts exist for employing youth holding tertiary or equivalent vocational qualifications within four years of graduation. Job training contracts can be used to employ youth aged 16-21 years without tertiary qualifications, disabled people and adults participating in specified training programmes organised by the public employment service. The contracts have a minimum duration of six months and maximum of two years, with a trial period of 1-3 months. Job training contracts can be extended to three years by collective agreement or four years for workers with a disability and are subject to a maximum number of workers that can be hired relative to firm size. Both types of contract are terminated by giving 15 days notice. If a contract is converted into a permanent position, the employer is entitled to a reduction in social security contributions for two years following conversion, or indefinitely in the case of a disabled worker.
Sweden	Employees who are employed under a number of active labour market programmes (Special Recruitment Incentive, Sheltered Public Employment or Development Employment) are exempt from the provisions of the Employment Protection Act, although they may be covered by employment protection through individual or collective agreements.

Source: Responses to OECD questionnaire; national labour legislation.

24. Targeting employment protection exemptions at groups with less attachment to the labour market should improve their labour market prospects. The impact of targeted exemptions is difficult to assess because exemptions are often accompanied by other employment incentives, such as wage, training or social contribution subsidies or discounts. Nevertheless, the limited empirical evidence suggests that targeted exemptions can have positive employment impacts for those targeted, particularly youth. Kugler

et al. (2002) assess the impact of a 1997 Spanish reform that reduced dismissal costs and payroll taxes for young and older workers.[10] The reform increased hiring of young workers with little impact on dismissal rates, leading to a net increase in their probability of employment. In contrast, both hiring and firing rates increased for older men, with no net change in employment (there was no impact on hiring or firing for older women). Another key consideration is whether those who are initially employed under employment protection exemptions eventually move into jobs with full employment protection. Berton *et al*. (2008) find that Italian workers who enter the labour market on training or apprentice contracts are significantly more likely to move into regular contracts than those coming from non-work situations. After two years (the maximum legal duration of a training contract with the same firm), 70% of those who began working on a training contract and 29% of apprentices (whose contracts can last up to five years and are likely to still be completing apprenticeship training) have moved into open-ended employment, the majority of them within the same firm. In fact, working on a training contract has no significant impact on the likelihood of moving into an open-ended contract in a different firm, suggesting that employers value training contracts as a screening device rather than for providing general-purpose training which can increase the worker's value to another employer.

Bypassing legislation using non-standard employment contracts

25. The OECD employment protection indicators measure the strength of regulation applying to regular contracts, fixed-term contracts and contracts through temporary agencies. However, some types of employment – self-employment, casual, daily or seasonal contracts – are typically not covered by employment protection or are covered by hiring and firing regulations that are not incorporated into the OECD indicator. Where employment protection for regular contracts is very strict, employers may resort to hiring workers on non-standard contracts to avoid regulation. The relationship between regulation on fixed-term contracts and the incidence of fixed-term employment is well documented: temporary contracts have been used to get around strict regulation of regular contracts and large differences in the strictness of regulation on regular and temporary contracts can lead to labour market segmentation (see Kahn, 2007, for an overview of recent literature). This sub-section will examine the regulation (or lack thereof) of non-standard contract types that are not incorporated into the OECD employment protection indicators and assess whether exemption from standard employment protection has lead to an increase in their use.

26. Self-employed workers are typically not subject to employment protection regulations. In fact, employers sometimes engage workers as self-employed contractors rather than employees purely in order to bypass regulations and reduce labour adjustment costs.[11] The growth of so-called "false" self-employment is cause for concern because it undermines one of the primary purposes of employment protection (*i.e.* providing greater job security for workers). Workers employed on this basis may also miss out on other forms of protection such as social insurance or minimum wages. False self-employment is notoriously difficult to measure, but could account for a significant share of self-employment in some OECD countries. For example, Pedersini (2002) reports rough estimates that "economically dependent workers" (self-employed workers who get all or most of their income from a single employer) comprise 4% of self-employment in Greece, 5% in Portugal, 12% in Denmark, 14% in Austria, 15% in the Netherlands and 28% in Italy.[12] Hála (2007) estimates that between a quarter and a third of all

10. The reform also targeted the long-term unemployed, women who are underrepresented in their occupations and disabled workers, but the impact of the reform on employment for these groups was not evaluated by the authors.

11. Employment protection is not the only potential influence on the hiring of self-employed contractors. High tax rates on labour income compared with capital income and high social security contributions can also influence employer and worker incentives for self-employment.

12. In Italy, some forms of dependent self-employment have been regulated by creating special project work contracts (see Table 4 for more details).

self-employed workers in the Czech Republic could be false self-employed. A positive relationship between the stringency of employment protection and the share of self-employment could indicate that self-employment is being used to bypass employment protection, however existing research on this subject has found little evidence that such a relationship exists. While reductions in the strictness of regulation on temporary contracts from the late 1980s to the late 1990s were associated with a reduction in the share of self-employment in total employment (OECD, 1999), Robson (2003) and OECD (2000) point out that this result only holds when the farm sector is included in the measure of self-employment: there is no significant relationship between employment protection and the share of non-farm self-employment. Likewise, Torrini (2005) finds little evidence of a link between employment protection and self-employment using pooled cross-sectional data for a sample of 25 OECD countries. While there is little evidence that strict employment protection has led to the growth of non-farm self-employment, better proxies for false-self employment (such as cross-country comparable measures of dependent self-employment) are necessary to definitively rule out a positive relationship between employment protection and false self-employment.

27. In addition to the self-employed, some workers are employed on contracts – such as casual, daily or seasonal contracts – that are not covered, or are covered to only a limited degree, by standard employment protection.[13] Table 4 outlines the types of employment contracts, other than fixed-term or temporary work agency contracts, not subject to employment protection regulations. In general, these non-standard contracts cover less than 5% of workers. However, one in four employees in Australia is employed on a casual contract, a proportion that has remained relatively unchanged since the mid-1990s. It seems clear that the low cost of dismissal is one of the primary attractions of casual contracts for Australian employers, even though casuals generally receive a higher hourly rate of pay to compensate them for a lack of job protection and other entitlements. The use of casual contracts is highest in industries such as retail trade (42% of employees are casual), accommodation and food services (65%) and arts and recreational services (38%) where employers need flexibility to rapidly adjust to changing customer demand (Australian Bureau of Statistics, 2008).

28. Australia aside, the availability of non-standard contract types that are exempt from employment protection and – with the exception of Hungary – have few legal limits on their use does not seem to have led to their widespread take-up by employers to evade employment protection. For example, an employment protection exemption for part-time workers in the Slovak Republic, implemented to increase labour-market flexibility, has had little impact on the use of part-time work (Cziria, 2005). Low average wages in the Slovak Republic may make it unattractive for workers to accept part-time work. In Japan and Korea, exemptions from advanced notice of dismissal for daily or seasonal workers apply only to the initial few months of engagement, after which standard notice applies. The re-regulation in Italy in 2003 of a range of non-standard contract types (*e.g.* project-work contracts, on-call contracts) was designed to increase the level of protection offered to these types of workers, improve their employment prospects and reduce the proportion of the Italian labour force working in "grey" areas of the labour market (Tiraboschi, 2006). This appears to have been partly successful: more than three quarters of economically dependent workers (defined according to various subordination criteria, such as working for only one employer, having a regular presence at a workplace and a daily work schedule) were covered by a project-work contract in 2006 (Giaccone, 2008). Since the new contracts were introduced in 2003, their incidence in total employment has remained relatively stable (Ministero del Lavoro, della Salute e delle Politiche Sociali, 2008).

13. In the Netherlands, non-standard contract workers such as seasonal or on-call workers are subject to regulations on fixed-term contracts.

Table 4. **Non-standard contracts exempt from employment protection, 2008**

Country	Exempt contracts and alternative regulation applying	% of total employees[a]
Australia	Short-term casual employees (<12 months of regular and systematic employment), employees engaged for a specified task and seasonal workers cannot claim unfair dismissal, but are protected against discriminatory dismissal. All casual employees are exempted from notice of termination and redundancy pay requirements. Some awards contain provisions requiring casual employees to be converted to permanent contracts upon request after 6-18 months of continuous service. Casual employees generally receive a loading of 20-25% on top of their hourly pay to compensate them for lack of paid leave and job security.	Casual (25%); around 80% of casual employees are exempt from unfair dismissal laws.
Canada	**Federal**: seasonal workers and employees employed on an irregular basis under an arrangement where they may elect to work or not to work when requested to do so are exempted from notice of group termination requirements. **Alberta**: employees who are employed for a definite term or task for a period not exceeding 12 months on completion of which employment terminates, seasonal workers and employees who may elect to work or not for a temporary period when requested by employer are not entitled to notice of termination or pay in lieu of notice. **British Columbia**: seasonal workers covered by a collective agreement, employees who may elect to work or not for a temporary period when requested by the employer, employees employed for a fixed term or employed for specific work to be completed in a period of up to 12 months (unless the employee continues to be employed at least three months after completing the term or specific work) are not covered by individual and group termination of employment provisions. **Ontario**: employees who are employed under an arrangement whereby they may elect to work or not to work when requested to do so are not entitled to notice of termination or severance pay. **Québec**: employees whose contract for a specific undertaking expires are not entitled to notice of individual or group termination.	Seasonal (2%); casual (3%)
Hungary	Workers on casual contracts are not subject to regulations related to dismissals and severance pay. A casual employee cannot be employed for more than five consecutive days at a time. The maximum length of employment with one employer is 15 days in a month and 90 days in a year, with longer periods allowed in the agricultural sector. A casual employee can work for more than one employer, but not for more than 200 days per year in total.	Casual (2%)
Italy	*Project-work contracts* are quasi-subordinate contracts for workers who autonomously manage a specific project or project phase. The contract is concluded for completion of a project, regardless of the time required for completion. Project-work contracts can be used in most sectors with exemptions for certain groups (*e.g.* registered professionals, sales representatives, workers aged 65+, athletes and workers in public administration). *On-call contracts* can be made with unemployed workers aged under 26 and workers aged 45+ who have been made redundant or are on mobility schemes or registered as unemployed. Contracts can be either with or without a standby allowance. Where a stand-by allowance is paid, the worker is bound to accept an offer of work. Refusal to work in this situation is grounds for termination. On-call contracts can be used in all firms except public administration and those which have made workers redundant in the last six months.	On-call (1%); project work contracts (6%)
Japan	Requirements for advanced notice of dismissal do not apply to *(i)* workers employed on a daily basis who have not been employed consecutively for more than one month; *(ii)* workers on a fixed-term contract of less than 2 months duration; or *(iii)* workers employed in seasonal work for a fixed period of less than 4 months.	Casual (1%); fixed-term contract (4%)
Korea	Daily workers employed for less than three months and workers employed to do seasonal work lasting less than six months have no right to advanced notice of dismissal.	Short-tenure daily (2%); short-tenure seasonal (1%)
Slovak Republic	Employees on a contract of reduced working time (less than 15 hours per week) can have their employment terminated by the employer giving notice of 30 days (compared with 2-3 months for regular employees), and are not covered by employment protection provisions relating to permanent or fixed-term contracts or collective redundancies.	

Notes: Table excludes employees on fixed-term or temporary work agency contracts.
a) Except for Italy and the Slovak Republic, where coverage is as a percentage of total employment.

Source: Responses to OECD questionnaire; Australian Bureau of Statistics (2008); Murtough and Waite (2000); Statistics Canada (2005); Ogura *et al*. (2006); OECD calculations using the 2005 Korean Labour and Income Panel Study; Giaccone (2008).

29. The evidence on whether non-standard employment contracts (other than fixed-term or temporary agency contracts) act as a stepping-stone to permanent employment is mixed. Berton *et al*. (2008) examine the persistence of non-standard contract types for labour market entrants in Italy prior to the 2003 reform. After one year, workers on quasi-subordinate contracts (similar to project-work contracts) are more likely than the non-employed to move into open-ended contracts. But after two years, this effect disappears and this type of contract operates as a bridge only to further quasi-subordinate work or true self-employment. For Australian men, having a casual job in one year (rather than being unemployed) increases the likelihood of moving into a permanent job the following year. However, unemployed women

have a slightly higher chance of moving to a permanent job than those in casual jobs, suggesting that, for women at least, casual employment may have a stigma attached that discourages future employers (Buddelmeyer and Wooden, 2008). In Canada, 39% of seasonal workers and 51% of casual workers move into permanent jobs on average each year. The rates are similar for men and women (Fang and MacPhail, 2007).

5. Enforcing employment protection and resolving disputes about dismissal

30. The discussion of employment protection to this point relates to regulation that *should* apply under prevailing legislation and collective agreements. However, the cost and effectiveness of enforcement is also a vital consideration when assessing the impact of regulations on firm and worker behaviour. For employers, costly, complex or time-consuming legal processes can add significantly to the cost of hiring and especially dismissing workers. But equally, if it is difficult or costly for employees to pursue cases of unfair dismissal, the law may be less strictly adhered to by employers. It is in the interest of all parties for the process of enforcing dismissal rules to be as quick, transparent and effective as possible. This section will focus mainly on enforcement of unfair dismissal rules as this is one of the key areas where the interpretation of the law leaves room for disagreement among the parties, often leading to protracted legal proceedings to establish whether a dismissal was fair or not. However, many of the processes for enforcing unfair dismissal rules (workplace-based dispute resolution procedures, mediation, labour courts, etc.) apply equally to disputes about other aspects of employment protection regulation (*e.g.* temporary contracts). While this paper focuses mainly on the *costs* of enforcing rules, corruption and evasion mean that laws are not always adequately enforced, regardless of the cost. This problem is likely to be more acute in lower-income countries lacking adequate enforcement resources (Box 5).

Box 5. **Some examples of non-enforcement of labour law**

A study of labour tribunal cases in Mexico finds that 56% of monetary awards made to employees in unfair dismissal cases are not collected. The process of enforcing payment is time-consuming. The winning employee must accompany a court clerk to the firm's place of business to serve notice. If payment is still not made, an additional hearing is required to seize the firm's assets in order to pay the award. Workers with large payouts (based on long tenure) compared with the fixed costs of enforcement are more likely, while those with poorer information about the cost of enforcement are less likely, to successfully collect their compensation (Kaplan and Sadka, 2008).

In Brazil, the distance of firms from the local office of the Ministry of Labour (where workplace inspectors are based) directly influences the likelihood of a firm being inspected. An increase of one hour in the distance from a firm to the local labour office reduces the likelihood of inspection by around 10%. Firms in areas with lower enforcement capacity are more likely to employ informal workers. In areas where Brazil's strict labour laws are enforced more rigorously, the labour market is less dynamic and firms' productivity may be impeded (Almeida and Carneiro, 2006).

A survey of judges, labour inspectors, employment centres, employer organisations and trade unions in Russia shows that labour law enforcement is seriously lacking. Almost 85% of respondents think that non-observance of labour law is a serious or very acute problem, with hiring, contracts, dismissal, pay and working time being the areas of labour law most frequently violated (Gimpelson *et al*. 2008).

In India, factories employing more than 100 employees are required to gain permission from the Ministry of Labour before making any dismissals. Figures from the Ministry of Labour's annual report show that in 2006, just 24 firms were given permission to dismiss a total of 884 workers. However, job flows in the Indian manufacturing sector are comparable to those in the United States, which has very lax labour regulation. While strict dismissal regulations appear to reduce job creation for regular workers in large manufacturing firms (13% per year compared with 27% in firms with less than 100 workers), job destruction rates in large firms are relatively high: 19% per year, compared with 10% in small firms (Dougherty, 2008). This suggests that there is widespread evasion of the requirement for large firms to gain permission for dismissals. For example, firms may pay additional severance payments in return for voluntary quits. Alternatively, the costly system of resolving disputes through the labour court system (which usually takes 3-4 years) may discourage dismissed employees from seeking reinstatement or compensation, leaving them with little recourse against unscrupulous employers.

Resolving dismissal disputes in OECD countries

31. Rules for individual dismissals are typically enforced by an employee making a complaint that their dismissal was unfair or did not follow proper procedures *after* the dismissal has taken place. Table 5 outlines the procedures involved in resolving a non-discriminatory unfair dismissal case in OECD countries. Most have pre-court disputes resolution procedures set out in legislation and/or collective agreements designed to help parties resolve disputes before an official complaint is made. In several countries, attempting pre-court dispute resolution is an official prerequisite to lodging a complaint with a court or tribunal (*e.g.* Italy, New Zealand, Sweden, United Kingdom) or the court/tribunal takes pre-court negotiation attempts into consideration when making a decision on unfair dismissal cases.

32. If parties cannot resolve a dispute themselves, the employee can make a complaint of unfair dismissal to a court or tribunal. Just over half of OECD countries have special courts or tribunals to hear labour disputes, while in the remainder, disputes are heard by ordinary civil courts (in Italy, Poland and Portugal, there are special branches of the ordinary civil court system to hear first-instance labour disputes). The use of lay judges is also widespread in labour-related cases. Many courts and tribunals waive court costs (such as administrative, witness and sitting fees) for parties to labour disputes. However, in order to discourage frivolous legal action, the losing party must pay the other party's legal costs (and any applicable court costs) in around half of OECD countries. Legal aid – either direct advice and representation or reimbursement of costs – is available in most countries, although typically only to parties with few financial resources to fund legal action. Trade unions and employer organisations often provide legal advice and assistance their members in such situations.

33. In most OECD countries, the first stage of court or tribunal proceedings involves conciliation or mediation to encourage the parties to resolve the dispute amicably. Parties can generally opt out of conciliation, although participation is mandatory (or near mandatory) in Australia, Germany, Hungary, Italy, New Zealand and Spain. In a number of countries, an agreement reached in the conciliation phase of the trial is legally binding (or becomes legally binding after verification by the court). The final decision of a court or tribunal can be appealed in every country except Iceland and Sweden (grounds for appeal are very limited in Canada). Most appeals are heard by higher level ordinary courts, although some countries have higher-level labour courts for hearing appeals.

Are specialised courts better?

34. In an effort to make enforcement of labour law quicker and more accessible, most OECD countries have simplified procedures for dealing with labour law cases in courts and tribunals, compared with ordinary civil cases. Many countries have specialised labour courts, and even among those that use ordinary civil courts, most have simplified procedures for hearing labour law cases. For example, evidence may be taken orally and proceedings are much less formal than in ordinary civil cases. The burden of proof, which usually rests with the party making the complaint in civil cases, has been reversed in most countries so that the employer must prove that a dismissal was fair, making it easier for employees to pursue claims. Many countries have lay judges with expertise in labour matters and nominated by employer and employee representatives serving alongside, or instead of, professional judges (see Table 5).

Table 5. **Process for resolving non-discriminatory unfair dismissal disputes**

	Pre-court dispute resolution			Court or tribunal									
	Regulated through:	Required/ considered by court	Govt.-funded C/M	Type of court/ tribunal	Type of judges	Pre-trial C/M	C/M outcome enforceable	Simplified procedure	Mandatory legal rep.	Burden of proof	Court charges costs	Losing party pays costs	Legal aid	Appeal court/ tribunal
Australia	CA, Leg.	No	Yes	Labour tribunal	L, P	M	No	Yes	No	Employer	Some	Vex.	No	Same
Austria	None	No	..	Special branch	L, P	V	..	No	No	Employer	No	No	Yes	Specialised
Belgium	CA	No	No	Labour tribunal	L, P	V	No	Yes	No	Employer	Yes	Yes	Yes	Specialised
Canada	Leg.	No	No	Labour adjudicator/ tribunal	L	V	Yes	Yes	No	Employer	No	No	Some	Limited
Czech Republic	CA	No	No	Ordinary court	L, P	V	Yes	No	No	Employee	Yes	Yes	Yes	Ordinary
Denmark	CA	Yes	Yes	Labour tribunal	L, P	..	..	Yes	No	Employee	Yes	Ye	No	None
Finland	CA	..	..	Ordinary court	P	V	Yes	No	No	Employer	Yes	Yes	Yes	Ordinary
France	None	No	No	Labour tribunal	L	V	No	Yes	No	Employee	..	No	No	Ordinary
Germany	CA	Some	..	Labour court	L, P	M	Yes	Yes	No	Employer	Yes	No	Yes	Specialised
Greece	Leg.	No	Yes	Ordinary court	P	V	No	Yes	No	Employer	Yes	Yes	Yes	Ordinary
Hungary	None	No	..	Labour court	L, P	M	Yes	Yes	No	Employee	No	Yes	..	Ordinary
Iceland	..	No	..	Labour court	L, P	..	..	Yes	No	Employer	..	No	Yes	None
Ireland	Leg.	Yes	Yes	Labour tribunal	L, P	None	..	Yes	No	Employer	No	Vex.	No	Ordinary
Italy	CA, Leg.	Yes	Yes	Special branch	P	M	..	Yes	Yes	Employer	No	Yes	Yes	Specialised
Japan	Leg.	No	Yes	Ordinary court	P	V	Yes	No	No	Both	Yes	No	Yes	Ordinary
Korea	Leg.	No	..	Labour tribunal	L, P	V	Yes	Yes	No	Employee	..	Yes	Yes	Specialised
Luxembourg	Leg.	No	Yes	Labour tribunal	L, P	..	..	Yes	No	Employer	No	..	Yes	Ordinary
Mexico	Leg.	No	Yes	Labour tribunal	L	Yes	Yes	Yes	No	Employer	..	..	Yes	Ordinary
Netherlands	Int. proc.	Some	No	Ordinary court	P	V	No	No	No	Employer	Yes	Yes	Yes	Ordinary
New Zealand	Leg.	Yes	Yes	Labour tribunal	L	M	Yes	Yes	No	Employer	Yes	No	Yes	Specialised
Norway	..	No	..	Ordinary court	L, P	V	Yes	Yes	No	Employer	No	Yes	Yes	Ordinary
Poland	Leg.	No	No	Special branch	P	V	Yes	Yes	No	Employer	No	Some	Yes	Ordinary
Portugal	..	..	..	Special branch	P	..	..	No	No	Employer	Yes	Yes	Yes	Ordinary
Slovak Republic	None	Yes	..	Ordinary court	P	V	No	No	No	Employee	Yes	Yes	Yes	Ordinary
Spain	CA, Leg.	Yes	Yes	Labour court	P	M	Yes	Yes	No	Employer	..	No	Yes	Specialised
Sweden	Leg.	Yes	No	Labour court	L, P	V	No	Yes	No	Employer	No	Yes	Yes	None
Switzerland	..	..	..	Both	L, P	V	Yes	No	No	Employee	Yes	Yes	Yes	Ordinary
Turkey	CA, Leg.	No	..	Labour court	P	V	..	Yes	No	Employer	No	..	..	Ordinary
United Kingdom	Leg.	Yes	Yes	Labour tribunal	L, P	V	Yes	Yes	No	Employer	No	Vex.	No	Specialised

Table 5. **Process for resolving non-discriminatory unfair dismissal disputes** *(cont.)*

Notes: .. = Information not available; C/M = Conciliation and/or mediation; CA = Collective agreement; Leg. = Legislation; Int. proc. = Internal procedures in some firms; L = Lay judges; P = Professional judges; V = Voluntary; M = Mandatory; Vex. = Loser only pays costs if case was vexatiously or irresponsibly brought. The United States is not shown because employers in most states can legally dismiss employees without providing any reason, as long as the dismissal is not discriminatory, is not based on trade union activity or the exercise of other lawful rights (*e.g.* whistleblowing) or is not in violation of an important public policy.
Country notes:
Australia: Refers to cases heard in the Australian Industrial Relations Commission (AIRC). About 2% of cases are heard in federal courts. Appeals are heard by a full bench of the AIRC.
Austria: Vienna has a specialised labour and social security court. In cases of dismissal by reason of discrimination for disabled people there is a mandatory pre-trial conciliation and the outcome is enforceable. In cases of unfair dismissal for legally inadmissible motives (trade union or works council activity) the burden of proof is on the employee.
Canada: Only three jurisdictions provide a remedy for unjust dismissals. Federal: complaints of unjust dismissal can be filed with the Labour Program of Human Resources and Social Development Canada. If mediation is unsuccessful, the Minister of Labour is to appoint an adjudicator. **Québec:** complaints can be filed with the Commission des normes du travail, which may appoint a mediator. If the complaint is not settled, it is referred to the Commission des relations du travail. Free legal assistance is provided in Québec. Complainants are expected to make use of lawyers provided by the Commission des normes du travail. **Nova Scotia:** complaints can be filed with the Director of Labour Standards for investigation and mediation. The Director may make an order for compensation and/or reinstatement. Decisions of the Director may be appealed to the Labour Standards Tribunal. Appeals: in all three jurisdictions, judicial review by ordinary courts is possible in limited circumstances.
Denmark: Apart from the Labour Tribunal, special dismissal bodies have been set up by social partners for unfair dismissal cases for parties to collective agreements. The decision can be appealed to ordinary courts. Unfair dismissal cases involving employees not covered by collective agreements are heard in ordinary civil courts. The burden of proof can lie with the employer in special cases.
Finland: Labour courts also exist, but only hear disputes relating to collective agreements. All civil courts in Finland have simplified procedures.
France: Professional judges only adjudicate a judgement when lay judges are split evenly.
Germany: the losing party pays court costs, but not the other party's legal costs. If the case is resolved in conciliation, court costs other than the initial filing fee are usually waived.
Greece: Disputes about dismissal are subject to the special labour disputes procedure in the magistrates or court of first instance with a single judge, depending on the amount involved. Parties can request that the Labour Inspectorate mediate the dispute at no cost.
Hungary: Most court costs are borne by the state. Only a few large firms have workplace-level dispute resolution processes in place.
Iceland: Decisions of the labour court can only be appealed to the Supreme Court in exceptional circumstances (*e.g.* disputes about Labour Court jurisdiction).
Ireland: Pre-court dispute resolution refers to Rights Commissioners. Court/tribunal refers to the Employment Appeals Tribunal.
Italy: Parties must attend pre-trial conciliation organised by the Provincial Labour Office or through dispute settlement procedures set out in collective agreements.
Japan: Parties can submit their claim to a Labour Dispute Adjudication Commission in a district court for mediation. If mediation fails, the LDAC will make a decision, which can be appealed to the district court. Parties can also submit a claim to a Dispute Coordinating Committee at the local Office of the Ministry of Welfare and Labour for conciliation, or file a complaint directly with the district court without using the Labour Dispute Adjudication Procedure. The employee has the burden of proof about the base facts of the case, while the employer has the burden of proof about the impeditive facts of the case.
Korea: Court/tribunal refers to the Labor Relations Commission (LRC). Disputes can also be filed in civil courts, but most are heard in the LRC because it is quicker and less costly. Complaints can also be filed with the local labor office, where a labour inspector will investigate and recommend action. All businesses with 30 workers or more must have a Grievance Handling Committee to hear employee grievances.
Luxembourg: The parties may apply to the Standing Committee on Employment within the Labour Inspectorate to conciliate an individual labour dispute. If the parties agree to the conciliated recommendation, this ends the dispute.
Mexico: An employee can make a complaint to the Public Labor Defender's Office, which will give advice and attempt to resolve the dispute amicably. If the dispute is not resolved, it can be dealt with by the Conciliation and Arbitration Boards.
Netherlands: An employee can challenge a CWI-authorised dismissal or a summary dismissal in the civil courts. There is no legally-required mediation, but courts may refuse to give a verdict if they think that the parties have not done enough to resolve the problem themselves.
New Zealand: If an agreement is not reached during Department of Labour mediation, parties can agree to let the mediator determine the outcome, which is legally binding. Otherwise, the dispute can be referred to the Employment Relations Authority (ERA). Reviews by the Employment Court are not appeals, but involve full judicial hearing of the original dispute.
Poland: The employee can request that a matter be heard by the workplace conciliation committee. If no agreement can be reached, the matter is referred to the district court.

Table 5. **Process for resolving non-discriminatory unfair dismissal disputes** *(cont.)*

Slovak Republic: The parties must attempt to settle the dispute at the workplace prior to making a complaint to the district court, but there is no institutionalised process. There is a pilot project in selected courts whereby the court will suggest mediation as an alternative to using the court. Legislation is pending to extend the mediation scheme more widely.
Spain: Administrative conciliation is compulsory before filing a claim in court and collective agreements often contain procedures for resolving disputes.*Sweden*: Individual disputes concerning employees who are covered by a collective agreement are dealt with by the Labour Court in the first instance. Where an employee is not covered by a collective agreement or the union does not want to pursue the claim in the Labour Court, the dispute must be heard in the district court in the first instance. Disputes can only be referred to a Labour Court if there has been an attempt at negotiating a resolution at the workplace level, and if that fails at the national sectoral level.
Switzerland: 13 out of 26 cantons have Labour Courts which hear all labour disputes, or labour disputes concerning amounts up to around 20 000 SFr. In the remainder (and in cantons where labour courts can only hear small claims), individual labour disputes are heard by ordinary civil courts. Labour courts generally have both lay and professional judges, except in Geneva where the court has only professional judges; ordinary courts have professional judges. There are simplified procedures and court costs are waived in small claims cases.
Turkey: Disputes about unfair dismissal can be resolved in arbitration if the parties agree or if outlined in a collective agreement.
United Kingdom: Unfair dismissal cases can also be resolved using private arbitration (~3% of cases). In doing so, parties waive their rights to be heard in the Employment Tribunal.

Source: Responses to OECD questionnaire; national labour legislation; Blanpain (2008); International Labour Organisation (2009); European Commission (2009); European Presidents and Judges of Labour Courts (2005); European Industrial Relations Observatory (2007).

35. There is some tentative evidence that the degree of specialisation is an important determinant of enforcement costs and effectiveness in labour law and dismissal cases. An indicator of the degree of specialisation can be constructed using information from Table 5, where the degree of specialisation (ranging from 0 for least to 1 for most specialised) increases when specialised rather than ordinary courts hear disputes, where lay judges are involved, where simplified procedures are in place for labour and/or dismissal cases, where the employer has the burden of proof and where appeals are heard by specialised rather than ordinary courts (see Annex B for details on how the specialisation index was constructed). Figure 4 provides prima facie evidence that specialisation tends to be associated with faster proceedings and fewer appeals (Panels A and B). Specialised courts and procedures may also be more accessible to the interested parties as a means of resolving disputes, as evidenced by a positive relationship between the degree of specialisation and the number of cases lodged (Panels C and D), although the positive correlation between the number of dismissal cases and the specialisation index is not statistically significant.[14]

Reducing the cost of resolving dismissal disputes

Resolving disputes early saves time and money

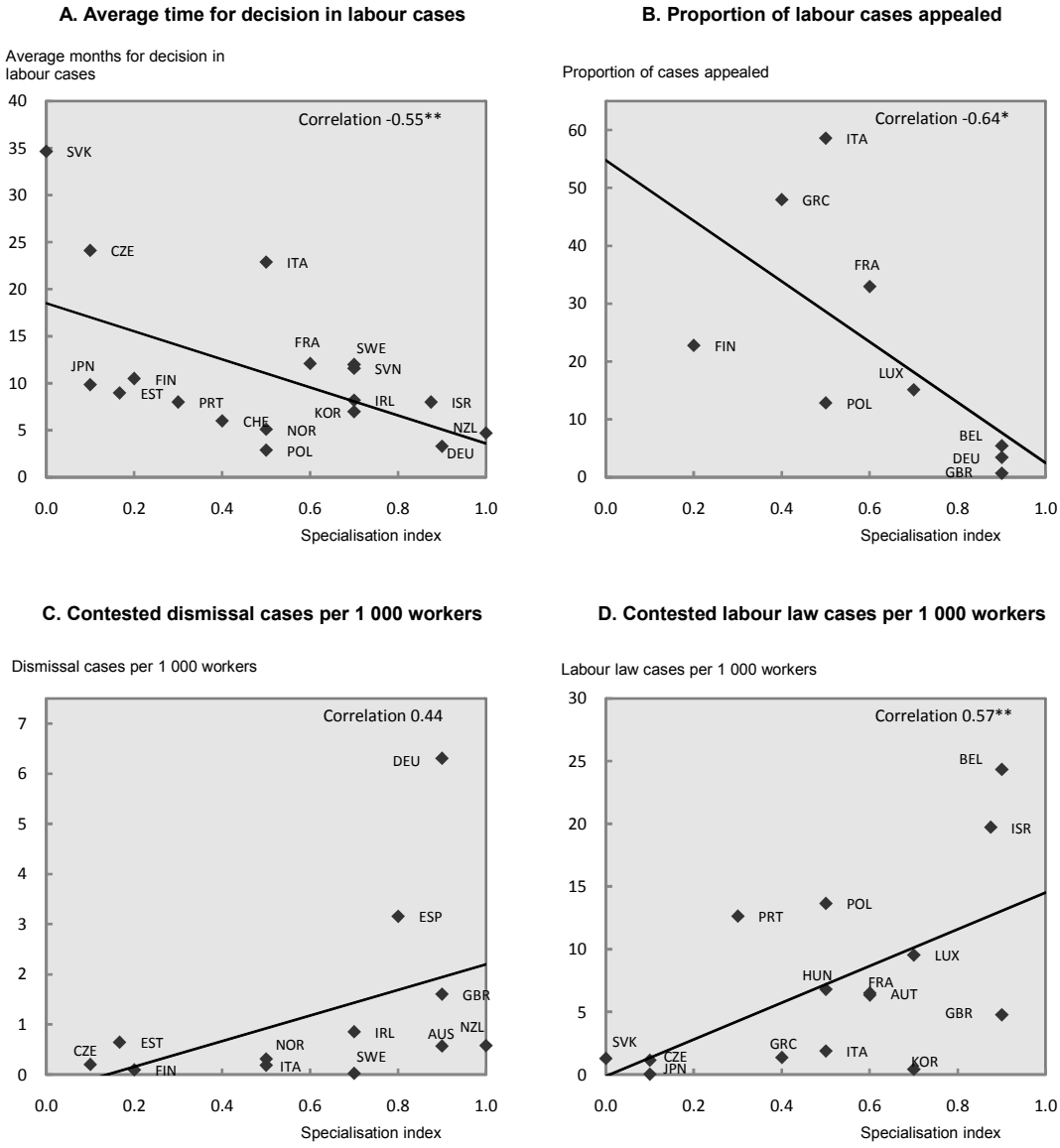
36. Early resolution of disputes saves time and money compared with waiting for a court or tribunal decision. In most OECD countries, employers are required to pay employees for the length of time between an unfair dismissal and a court ruling. Early settlement can reduce this cost component for employers who think it is likely that the court will find in favour of the employee. Equally, longer and more legalistic proceedings increase legal and other costs for both parties. For example, UK employment tribunal cases resolved by a full tribunal hearing cost, on average, more than twice as much for employers and almost three times as much for employees than cases resolved at the conciliation stage (Knight and Latreille, 2000). Three quarters of UK employers who made a settlement offer for a case before the employment tribunal did so to save time or money (Hayward *et al*., 2004). Likewise, Mexican dismissal disputes that go to court typically cost firms 50% more than those that are resolved informally (Rojas and Santamaria, 2007). A survey of New Zealand employers found that labour disputes resolved in-house cost up to 20 times less (including legal, compensation, investigation and replacement staff costs) and took one fifth of the time of disputes resolved by formal mediation (Department of Labour, 2008).[15]

37. As well as saving on monetary costs, resolving disputes early can reduce stress and improve the odds that employment relationships can be repaired and continued. Employment disputes can cause stress to those involved, reduce workplace productivity and increase the use of sick leave. These effects are multiplied when disputes are protracted or adversarial (Armstrong and Coats, 2007; Department of Labour, 2008). Less formal dispute resolution processes can result in non-monetary outcomes, such as an apology, reference or changes to workplace practices (Seargeant, 2005). Resolving disputes before they escalate can also reduce the volume of cases appearing before courts and tribunals, reducing public expenditure and leaving judges to focus on more complex cases.

14. Alternatively, simplified court procedures may mean that many cases that could otherwise be resolved informally between parties are unnecessarily formalised.

15. None of the studies mentioned controls for unobservable characteristics that affect both the likelihood that cases are included in a study and the likelihood that they are resolved early.

Figure 4. **Relationship between specialisation and court/tribunal outcomes**



Note: ** Indicates that correlation is significant at 95% level; * Indicates significance at 90% level. Correlation coefficient in Panel A is 0.40 without Slovak Republic; coefficient in Panel C is 0.42 without Germany.

Source: OECD calculations. See Annex B for details.

38. The probability that a case will be settled (rather than proceeding to a court or tribunal ruling) depends on the parties' probability of success in the court or tribunal hearing, the amount of compensation awarded if the dismissal is found to be unfair, the cost of pursing the case and the parties' relative taste for risk. An examination of the extensive literature on civil litigation shows that pre-trial settlement is more likely where the costs of proceeding to trial are high, where the loser pays litigation costs, where the defendant (in this case the employer) is relatively more optimistic about the outcome of the trial than the plaintiff (employee) or where the potential payout resulting from a trial is higher or more uncertain (see Kessler and Rubinfield, 2003, for a summary).

39. Knight and Latreille (2000) report that workers with little bargaining power (women, low-skilled, part-time or low-paid workers) are more likely to settle employment tribunal cases at the conciliation or pre-tribunal phase than proceed to a hearing, possibly at the cost of an inferior settlement. This could be because such workers are more risk-averse (and so more willing to accept a lower certain payment than a higher uncertain payment) or because of the high cost of pursuing a case decided by the tribunal. Kaplan *et al*. (2008) examine settlements in labour cases in Mexico and find that employees who exaggerate their claims – *i.e.* those with unrealistic expectations about the likelihood of success – are less likely to settle and end up with lower awards at trial.

Keeping cases out of courts

40. As shown in Table 5, many OECD countries have institutionalised procedures to encourage parties to resolve dismissal disputes before they reach court. Where pre-court dispute resolution is regulated through collective agreements rather than legislation, uncovered employees may have few formal avenues to resolve disputes other than lodging a complaint with a court or tribunal. However, of the countries where collective agreements are the only source of formal dispute settlement procedures, all with the exception of the Czech Republic have very high rates of collective bargaining coverage (see Table 2) so it is likely that most disputes are channelled through the dispute settlement process outlined in agreements. Of course, employees and employers in all countries resolve many disputes informally, regardless of the prevailing institutional arrangements.

41. While mandating dispute settlement procedures in legislation may seem attractive to encourage parties to avoid court, care should be taken to avoid simply adding another administrative step to the dispute settlement process. For example, the United Kingdom introduced regulations in 2004 making it mandatory for employees and employers to follow a three-step procedure when taking disciplinary action (including dismissal) or making a complaint about a workplace grievance. If a dismissal case is subsequently taken to an employment tribunal, there is an automatic finding of unfair dismissal by the tribunal if the procedures have not been followed. The regulations were designed to ease pressure on the employment tribunal system by encouraging parties to resolve disputes as early as possible. However, an independent review found that the regulations, while initially reducing the number of disputes heard by the employment tribunal, had unnecessarily formalised the process of dealing with workplace disputes (Gibbons, 2007). In response, the government will replace the regulations in 2009 with a code of practice alongside measures intended to encourage the use of informal dispute resolution. To maintain incentives for resolving disputes at an early stage, the employment tribunal will be able to adjust compensation awards to take into account prior dispute resolution attempts in line with the code of practice. Such adjustments were automatic under the previous regulations, but will now be at the discretion of the employment tribunal.

42. Estimates provided to the OECD by employer organisations show that where unfair dismissal disputes are settled prior to a complaint being made to a court or tribunal, by far the most likely outcome is the employee accepting the dismissal in return for an additional payment. This practice for keeping disputes out of court has been institutionalised in several countries. In Germany, an employee and employer can sign a mutual agreement whereby the employee trades their right to contest the dismissal in court against a guaranteed minimum severance payment (and the right to claim unemployment benefits). Jahn (2008) finds that German employers pay an average premium of 0.2 months' pay per year of service to avoid the uncertainty of a court case. France introduced a similar scheme in 2008 (the *rupture conventionnelle*), whereby an employer and an employee can agree to a dismissal on economic grounds. The agreement must be approved by the Labour Ministry and is subject to a cooling-off period, after which the employee is entitled to standard severance pay and unemployment benefits. However, in contrast to the German case, neither the agreement nor its official approval prevent the employee subsequently taking a case to the employment tribunal alleging that the agreement was not made voluntarily. While this change

in policy was designed to reduce the legal uncertainty associated with dismissals for economic reasons, it is not clear that it will fulfil that aim, given the new legal avenue available to employees to contest dismissals. Since 2002, Spain has allowed employers to avoid the cost of back pay during unfair dismissal disputes by effectively admitting that a dismissal was unfair from the outset and paying unfair dismissal compensation at the time of dismissal. While the initial cost of dismissal to employers can be more than double, employers seem to be willing to pay a higher price to avoid the hassle, cost and uncertainty of court proceedings: 75% of individual dismissals are now settled in this way.

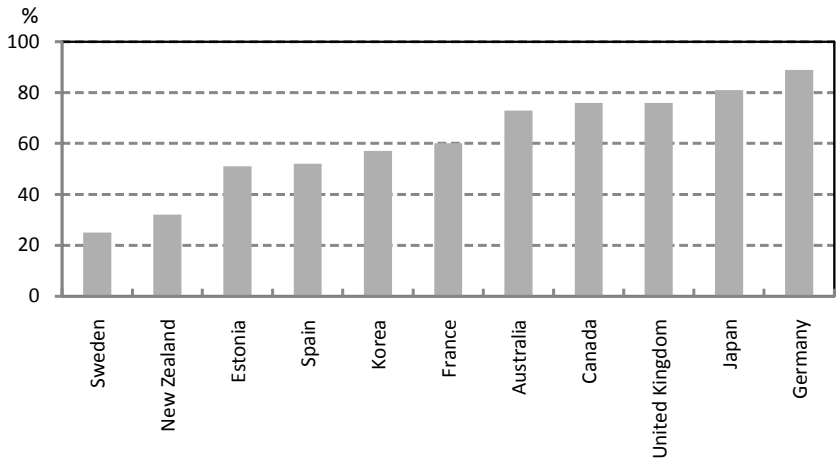
Pre-trial mediation and conciliation

43. The most widespread use of alternative dispute resolution procedures occurs after a complaint has been made to a court or tribunal. In almost every OECD country, courts and tribunals attempt to broker a compromise solution between the parties at the start of formal legal proceedings. Figure 5 shows that typically half to three quarters of cases lodged with courts and tribunals are resolved without recourse to a court decision. A strong emphasis on pre-court (as opposed to pre-trial) dispute resolution in New Zealand and Sweden may account for the relatively low settlement rates once cases reach court – those cases that cannot be resolved prior to lodging a complaint with a court are likely to be the most complicated or contentious, so least likely to be resolved before the trial.

44. Despite the widespread use of pre-court conciliation in labour law cases, there is little empirical evidence on its effectiveness. Latreille (2007) finds conciliation in the UK employment tribunal increases both the probability that an employer makes a settlement offer and the likelihood that an employee accepts the offer, possibly by helping parties to tone down their expectations about the outcomes of a tribunal ruling. A key question when examining the efficiency of pre-trial conciliation is whether cases resolved in conciliation are those that would have been settled out-of-court anyway. Almost uniformly-high settlement rates shown in Figure 5, along with a lack of correlation between the existence of pre-trial mediation and conciliation rates, suggest that formal conciliation may play only a minor role in promoting settlement. Clearly more evaluation of the impacts of pre-trial conciliation in labour law cases is needed.

Figure 5. **Pre-trial dispute resolution in selected countries**

Proportion of court/tribunal cases resolved in conciliation, settled or otherwise withdrawn



Note: Data for Canada refer to cases in the federal jurisdiction only.

Source: See Annex B.

45. Nevertheless, there may be good reasons to encourage formal conciliation to improve industrial relations and the information available to parties to disputes. Parties taking part in conciliation are usually satisfied with the process, even if they disagree with the outcome. In cases before the employment tribunal in the United Kingdom, 67% of employees and 59% of employers were quite or very satisfied when the case was decided through the tribunal's conciliation service (Hayward *et al*., 2004). Around 94% of those who had used mediation for a labour dispute in New Zealand said that they would use the service again in future disputes (Waldegrave *et al*., 2003). Almost 80% of employees and 87% of employers who used mediation in US discriminatory dismissal cases were satisfied with the fairness of the process (McDermott *et al*., 2000).

46. How can pre-trial conciliation be designed to increase the likelihood of dispute settlement? Zack (2006) argues that maintaining confidentiality (by not reporting back to the court on what is said during conciliation) is important to encourage frankness. To this end, having the same judge presiding over conciliation and trial proceedings is less preferable than maintaining a separate conciliation service, either within or external to the court, or at the least having different judges preside over conciliation and the trial. Mandatory conciliation is unlikely to be constructive if parties are particularly hostile, but mandating an initial conciliation meeting at least provides an opportunity for parties to meet outside court in a non-adversarial environment and may add pressure to resolve disputes amicably (Zack, 2006).

Reducing the cost of participating in court or tribunal proceedings

47. When disputes proceed to a court or tribunal hearing, there are a number of ways to reduce parties' costs of participating. One of the major costs for the parties is hiring a lawyer or advocate. Among OECD countries, only Italy requires mandatory legal representation in unfair dismissal disputes. Parties can usually represent themselves or be represented by a trade union, employer organisation or other advocate. Trade unions and employer organisations often provide free or subsidised advice and legal representation to members and legal aid may also be available for parties with few financial resources. Simplified procedures make it easier and less daunting for parties to represent themselves. Nevertheless, many employees and employers appearing in dismissal cases are represented by a lawyer. The limited empirical evidence available suggests that legal representation has little impact on court outcomes in labour disputes. Latreille (2007) finds that employers with legal representation are more likely to make a settlement offer in UK employment tribunal cases, possibly because legal advice reduces excess optimism about the likelihood of succeeding at trial. However, there is no impact of representation on the likelihood that employees will accept a settlement offer. Harcourt (2000) finds that hiring a lawyer in Canadian arbitration and labour board cases only helps an employee to win the case if the employer does not hire a lawyer. For employers, hiring a lawyer only prevents an employee from winning when they have hired a lawyer, but has no impact on the likelihood of winning if the employee has not hired a lawyer. If the main benefit of legal representation is in improving information to inform settlement decisions, courts and tribunals could help reduce costs by providing accurate information to parties about the likelihood and outcome of succeeding at trial to help parties make better decisions about pre-trial settlement without resorting to costly legal advice.

48. Kritzer (2008) examines the use of lawyers in civil (including employment) cases in six countries (the United States, England and Wales, Canada, Australia, New Zealand, the Netherlands, and Japan). He finds very little evidence that the probability of using a lawyer increases with income, suggesting that reasons other than affordability play a role in determining representation. Far fewer parties use a lawyer in employment disputes than in other civil disputes (*e.g.* divorce, housing), which may indicate that the simplified procedures adopted in labour disputes in most countries make it easier for parties to appear unrepresented.

49. In around half of OECD countries the losing party pays court and/or legal costs for the winning party. Such arrangements can reduce the workload of courts or tribunals by discouraging frivolous cases and encouraging early settlement (Kessler and Rubinfield, 2007). The rise in availability of contingent-fee arrangements (where lawyers are only paid if there is a payout made in the case) has raised concern about an increase in labour law complaints, but research suggests that this concern is unfounded and contingent fees may improve access to justice for low-income earners. A study by the New Zealand Department of Labour found no evidence that contingent-fee arrangements have lead to a dramatic increase in disputes, although they might slightly delay settlement in cases that use them. Lawyers are reluctant to commit much effort to meritless claims and contingent-fee arrangements play an important role in providing legal representation to low-income employees (Department of Labour, 2008). Contingent-fee cases are more common in UK employment tribunal cases where employees do not have trade union representation, or in high-value cases. In contrast to New Zealand, contingent-fee cases in the United Kingdom are more likely to be settled than pursued to a full hearing (Hammersley *et al*. 2004).

Economic conditions can influence court decisions

50. A number of studies have found that court decisions in dismissal cases are not independent of economic conditions, suggesting that the strictness of employment protection, as enforced, may vary according to local conditions and/or over the business cycle. Ichino, Polo and Rettore (2003) and Cho and Lee (2007) find that courts are more likely to find in favour of workers in unfair dismissal cases when labour market conditions are poorer in Italy and Korea respectively. Marinescu (2007) finds the same is true in the United Kingdom, but only when the former employee has failed to find another job. Among unemployed claimants, a higher unemployment rate is associated with a greater probability that the tribunal finds in their favour, while the opposite is true for workers who have found a new job. An analysis of the settlement offers made by firms suggests that most firms don't realise that judges are influenced by economic conditions: there is no significant relationship between the size of the settlement offer and labour market conditions.

6. Conclusion

51. This paper has shown that employment protection encompasses more than purely legislative provisions. Collective bargaining is an important additional source of employment protection in some countries. A range of exemptions means that some firms face significantly different dismissal or hiring costs than an initial glance at legislation suggests. Finally, the diversity of enforcement procedures means that the cost and effectiveness of enforcing regulations is likely to differ across countries.

52. So what does this mean for the accuracy of the OECD employment protection indicators as a measure of dismissal and hiring costs? Collectively-bargained employment protection provisions are incorporated as far as possible in the indicator where they are an important additional source of regulation and bargaining takes place largely outside the firms affected. While the indicator does not systematically incorporate exemptions, very few employees are exempted in most cases. Where exemptions are more widespread – notably where small firms face less regulation than large firms – incorporating these has only a modest impact on the OECD indicators, so is unlikely to be a major source of inaccuracy. Some aspects of enforcement – compensation and reinstatement following unfair dismissal and court decisions about notification procedures and renewing temporary contracts – are already incorporated into the OECD indicator. On the other hand, it is currently very difficult to measure the cost of enforcing employment protection rules on a cross-country comparable basis. Simplified court procedures, along with measures to encourage parties to resolve disputes quickly, keep costs at a minimum. However, further research is needed to establish *i)* the efficiency and effectiveness of formalised mediation and conciliation procedures; and *ii)* the average cost of pursuing or defending dismissal cases.

ANNEX A

CALCULATING SUMMARY INDICATORS OF EMPLOYMENT PROTECTION STRICTNESS

Methodology

For each country, employment protection is described along 21 basic items which can be classified in three main areas: *i)* protection of regular workers against individual dismissal; *ii)* regulation of temporary forms of employment; and *iii)* specific requirements for collective dismissals. The information refers to employment protection provided through legislation and as a result of enforcement processes. In countries where collective bargaining occurs at an industry, regional or national level and provisions for dismissal protection in collective agreements are typically more generous than those in legislation, these have been included where possible. The detailed country notes available at *www.oecd.org/employment/protection* provide more information on where collective bargaining provisions have been included in the indicator. Table A1 shows the method used to convert raw data on each item into a cardinal score on a scale of 0-6, with higher scores representing stricter regulation.

Table A1. **Quantifying the 21 basic measures of employment protection strictness**

A. Individual dismissals of workers with regular contracts

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
Item 1 Notification Procedures	Scale 0-3		Scale (0-3) × 2						
	0	when an oral statement is enough;							
	1	when a written statement of the reasons for dismissal must be supplied to the employee;							
	2	when a third party (such as works council or the competent labour authority) must be notified;							
	3	when the employer cannot proceed to dismissal without authorisation from a third party.							
Item 2 Delay involved before notice can start	Days Estimated time includes, where relevant, the following assumptions: 6 days are counted in case of required warning procedure, 1 day when dismissal can be notified orally or the notice can be directly handed to the employee, 2 days when a letter needs to be sent by mail and 3 days when this must be a registered letter.		≤ 2	< 10	< 18	< 26	< 35	< 45	≥ 45
Item 3 Length of the notice period at	9 months tenure	Months	0	≤ 0.4	≤ 0.8	≤ 1.2	< 1.6	< 2	≥ 2
	4 years tenure	Months	0	≤ 0.75	≤ 1.25	< 2	< 2.5	< 3.5	≥ 3.5
	20 years tenure	Months	< 1	≤ 2.75	< 5	< 7	< 9	< 11	≥ 11
Item 4 Severance pay at	9 months tenure	Months pay	0	≤ 0.5	≤ 1	≤ 1.75	≤ 2.5	< 3	≥ 3
	4 years tenure	Months pay	0	≤ 0.5	≤ 1	≤ 2	≤ 3	< 4	≥ 4
	20 years tenure	Months pay	0	≤ 3	≤ 6	≤ 10	≤ 12	≤ 18	> 18

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
Item 5 Definition of justified or unfair dismissal	Scale 0-3		Scale (0-3) × 2						
	0	when worker capability or redundancy of the job are adequate and sufficient ground for dismissal;							
	1	when social considerations, age or job tenure must when possible influence the choice of which worker(s) to dismiss;							
	2	when a transfer and/or a retraining to adapt the worker to different work must be attempted prior to dismissal;							
	3	when worker capability cannot be a ground for dismissal.							
Item 6 Length of trial period	Months Period within which, regular contracts are not fully covered by employment protection provisions and unfair dismissal claims can usually not be made.		≥ 24	> 12	> 9	> 5	> 2.5	≥ 1.5	< 1.5
Item 7 Compensation following unfair dismissal	Months pay Typical compensation at 20 years of tenure, including back pay and other compensation (*e.g.* for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay.		≤ 3	≤ 8	≤ 12	≤ 18	≤ 24	≤ 30	> 30
Item 8 Possibility of reinstatement following unfair dismissal	Scale 0-3		Scale (0-3) × 2						
	0	no right or practice of reinstatement;							
	1	reinstatement rarely or sometimes made available;							
	2	reinstatement fairly often made available;							
	3	reinstatement (almost) always made available;							
Item 9 Maximum time to make a claim of unfair dismissal	Months Maximum time period after dismissal notification up to which an unfair dismissal claim can be made.		Before dismissal takes effect	≤ 1	≤ 3	≤ 6	≤ 9	≤ 12	> 12

B. Temporary employment

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
Item 10 Valid cases for use of fixed-term contracts (FTC)	Scale 0-3		6-(Scale (0-3) × 2)						
	0	fixed-term contracts are permitted only for "objective" or "material situation", *i.e.* to perform a task which itself is of fixed duration;							
	1	if specific exemptions apply to situations of employer need (*e.g.* launching a new activity) or employee need (*e.g.* workers in search of their first job);							
	2	when exemption exist on both the employer and employee sides;							
	3	when there are no restrictions on the use of fixed-term contracts.							
Item 11 Maximum number of	Number		No limit	≥ 5	≥ 4	≥ 3	≥ 2	≥ 1.5	< 1.5

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
successive FTC									
Item 12 Maximum cumulated duration of successive FTC	Months		No limit	≥ 36	≥ 30	≥ 24	≥ 18	≥ 12	< 12
Item 13 Types of work for which temporary work agency (TWA) employment is legal	Scale 0-4		6-(Scale (0-4) × 6/4)						
	0	when TWA employment is illegal;							
	1	only allowed in specified industries;							
	2	only allowed for "objective reasons";							
	3	generally allowed, with specified exceptions;							
	4	generally allowed, no (or minimal) restrictions.							
Item 14 Restrictions on number of renewals	Yes/No		-	-	No	-	Yes	-	-
Item 15 Maximum cumulated duration of TWA contracts	Months		No limit	≥ 36	≥ 24	≥ 18	≥ 12	> 6	≤ 6
Item 16 Does the set-up of a TWA require authorisation or reporting obligations	Scale 0-3		Scale (0-3) × 2						
	0	no authorisation or reporting requirements;							
	1	requires special administrative authorisation;							
	2	requires periodic reporting obligations;							
	3	both authorisation and reporting requirements.							
Item 17 Do regulations ensure equal treatment of regular and agency workers at the user firm?	Scale 0-2		Scale (0-2) × 3						
	0	no requirement for equal treatment;							
	1	equal treatment regarding pay or working conditions;							
	2	equal treatment regarding pay and working conditions.							

C. Additional regulations for collective dismissals

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
Item 18 Definition of collective dismissal	Scale 0-4		Scale (0-4) × 6/4						
	0	if there is no additional regulations for collective dismissals;							
	1	if specific regulations apply from 50 dismissals upward;							
	2	if specific regulations apply from 20 dismissals onward;							
	3	if specific regulations apply at 10 dismissals;							
	4	if specific regulations start to apply at below 10 dismissals;							

	Original unit and short description		Assignment of numerical strictness scores						
			Assigned scores						
			0	1	2	3	4	5	6
Item 19 Additional notification requirements	Scale 0-2		Scale (0-2) × 3						
	There can be notification requirements to *works councils* (or employee representatives), and to *government authorities* such as public employment offices. Countries are scored according to whether there are additional notification requirements on top of those requirements applying to individual redundancy dismissal.								
	0	no additional requirements;							
	1	when one more actor needs to be notified;							
	2	when two more actors need to be notified.							
Item 20 Additional delays involved before notice can start	Days Delays in addition to those in the case of individual dismissal		0	< 25	< 30	< 50	< 70	< 90	≥ 90
Item 21 Other special costs to employers	Scale 0-2		Scale (0-2) × 3						
	This refers to whether there are additional *severance pay* requirements and whether *social compensation plans* (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice								
	0	no additional requirements;							
	1	additional severance pay <u>or</u> social compensation plans required;							
	2	additional severance pay <u>and</u> social compensation plans required.							

After converting each item to a cardinal scale, the indicators are calculated using the weights shown in Table A2. There are three sub-indicators measuring the strictness of regulation on regular contracts, temporary contracts and collective dismissal respectively on a scale of 0-6. Three versions of the overall summary indicator are available, reflecting changes over time in the breadth of information incorporated into the indicator:

- <u>Version 1</u> is an unweighted average of the sub-indicators for regular and temporary contracts. The indicator for regular contracts does not include item 9 (maximum to make a claim of unfair dismissal) and the indicator for temporary contracts does not include items 16 (authorisation and reporting requirements for TWAs) and 17 (equal treatment for TWA workers). Annual time series data are available for version 1 of the indicator from 1985-2008 from *www.oecd.org/employment/protection*.

- <u>Version 2</u> is the weighted sum of the sub-indicators for regular and temporary contracts and collective dismissals. The indicators for regular and temporary contracts are the same as for version 1. Annual time series data are available for version 2 of the indicator from 1998-2008 from *www.oecd.org/employment/protection*.

- <u>Version 3</u> of the overall summary indicator incorporates three new data items collected for the first time in 2008 (items 9, 16 and 17) and is the main indicator of employment protection used in the paper. Data for version 3 are available for 2008 from *www.oecd.org/employment/protection*. However, it is impracticable to accurately collect information about the new items prior to 2008.

Table A2. **Employment protection summary indicator weights**

Level 1 Scale 0-6	**Level 2** Scale 0-6	**Level 3** Scale 0-6	**Level 4** Scale 0-6		**Version 1 & 2 weights**	**Version 3 weights**
OVERALL SUMMARY INDICATOR	Regular contracts (version 2 & 3: **5/12**:) (version 1: **1/2**)	Procedural inconveniences (**1/3**)	1. Notification procedures		(1/2)	(1/2)
			2. Delay to start a notice		(1/2)	(1/2)
		Notice and severance pay for no-fault individual dismissals (**1/3**)	3. Notice period after	9 months	(1/7)	(1/7)
				4 years	(1/7)	(1/7)
				20 years	(1/7)	(1/7)
			4. Severance pay after	9 months	(4/21)	(4/21)
				4 years	(4/21)	(4/21)
				20 years	(4/21)	(4/21)
		Difficulty of dismissal (**1/3**)	5. Definition of unfair dismissal		(1/4)	(1/5)
			6. Trial period		(1/4)	(1/5)
			7. Compensation		(1/4)	(1/5)
			8. Reinstatement		(1/4)	(1/5)
			9. Maximum time for claim		--	(1/5)
	Temporary contracts (version 2 &3: **5/12**) (version 1: **1/2**)	Fixed term contracts (**1/2**)	10. Valid cases for use of fixed-term contracts		(1/2)	(1/2)
			11. Maximum number of successive contracts		(1/4)	(1/4)
			12. Maximum cumulated duration		(1/4)	(1/4)
		Temporary work agency employment (**1/2**)	13. Types of work for which is legal		(1/2)	(1/3)
			14. Restrictions on number of renewals		(1/4)	(1/6)
			15. Maximum cumulated duration		(1/4)	(1/6)
			16. Authorisation and reporting		--	(1/6)
			17. Equal treatment		--	(1/6)
	Collective dismissals (version 2 &3: **2/12**) (version 1: **0**)		18. Definition of collective dismissal		(1/4)	(1/4)
			19. Additional notification requirements		(1/4)	(1/4)
			20. Additional delays involved		(1/4)	(1/4)
			21. Other special costs to employers		(1/4)	(1/4)

Revisions to 2003 estimates of employment protection

New information and slight changes in the way existing information has been interpreted led to the revision of figures for 2003 published in OECD (2004) for nine countries.

Table A3. **Revisions to 2003 published data on employment protection**

	Reason for revision	Effect of revision on indicators:		
		Regular contracts	Temporary contracts	Collective dismissal
Canada	Correction of mistake in calculation of severance pay for workers with four years of tenure in 2003 data. Revision of method for averaging different provincial provisions for notice periods for collective dismissal to improve consistency.	-	0	-
Denmark	New information that the notice period for white collar workers starts on the first day of the month following notice being received rather than immediately, increasing the average delay before the notice period starts.	+	0	0
Germany	There are no restrictions on the use of fixed term contracts without objective reasons (within first two years). This was erroneously coded in 2003.	0	-	0
Greece	Compensation for unfair dismissal was revised to remove standard severance pay component to ensure cross-country consistency in light of new information. Miscoding of number of renewals for fixed term contracts in 2003 data was corrected.	-	-	0
Italy	Maximum number of successive fixed-term contracts was revised from one to two (initial contract plus one renewal) to correct miscoding in 2003 data.	0	-	0
Japan	Revision to the way information from collective agreements and voluntary employer provision of employment protection is incorporated into the indicator. Previous estimates for Japan included severance pay estimates from workplace surveys, which have now been removed. New information shows that there are no restrictions on renewal of temporary work agency contracts. Compensation for unfair dismissal was also revised to remove standard severance pay component to ensure cross-country consistency in light of new information.	-	-	0
Poland	New information that reinstatement is possible but not often made available after unfair dismissal.	-	0	0
Portugal	New information that criteria for making collective dismissals are less strict than that for individual dismissals. This was incorporated into the indicator by allocating a score of -1 for other special costs to employers, offsetting the requirement for consultation on alternatives to redundancy and giving a total score of 0 for this item.	0	0	-
Spain	Revision of a number of items from 2003 onward to take account of new provisions to allow employers to declare a dismissal unfair from the outset and avoid paying back pay during unfair dismissal cases	-	0	0
Sweden	New information clarifying notification procedures for redundancy shows that only one additional actor must be notified for collective compared to individual dismissals.	0	0	-

Notes: + Indicates that revision increased value of indicator; - Indicates that revision reduced value of indicator; 0 Indicates that revision had no impact on value of indicator.

ANNEX B

DATA DEFINITIONS AND SOURCES

Alternative indicators of employment protection (Figure 3)

OECD indicator with equal weights

OECD indicator re-calculated as the unweighted average of the 21 sub-components.

OECD indicator with weights reflecting employment shares

OECD indicator re-calculated using following formula:

$$I = 7/12 \cdot R + 3/12\left(3/4 \cdot FTC + 1/4 \cdot TWA\right) + 2/12 \cdot C$$

where I is the overall summary indicator, R is the indicator for regular contracts, FTC is the sub-indicator for fixed-term contracts, TWA is the sub-indicator for temporary work agency contracts and C is the indicator for collective dismissals.

World Bank Doing Business ranking

Ranking of OECD countries according to Doing Business Employing Workers indicator, from *www.doingbusiness.org* for 2008.

Heckman and Pagés indicator

The indicator is calculated as the discounted sum (over a tenure profile of 20 years) of future dismissal costs for regular workers using the following formula adapted from Heckman and Pagés (2004):

$$I = \sum_{t=1}^{20}\left(\frac{1}{1+r}\right)^{t}\left(1-d\right)^{t-1} d\left(D_t + NP_t + SP_t + uC_t\right)$$

where I is the indicator of dismissal costs, t is years of tenure, r is the discount rate (8% for all countries), d is the probability that a worker is dismissed in year t (12% for all countries), D is the delay before the notice period starts, NP is the notice period, SP is severance pay, C is compensation (in addition to standard severance pay) in cases of unfair dismissal and u is the probability that a dismissal will be found to be unfair, equal to 0.5 when worker capability cannot be grounds for dismissal or transfer/retraining must be attempted prior to dismissal and zero otherwise. All costs are measured in months of salary. Data on dismissal costs are taken from country-specific information collected to compile the OECD indicators of employment protection available at *www.oecd.org/employment/protection*.

Collective bargaining (Table 1)

Unless otherwise mentioned, data are from the Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) produced by Jelle Visser at the Amsterdam Institute for Advanced Labour Studies, University of Amsterdam (version 2.1, January 2009, available at *http://www.uva-aias.net/207*).

Collective bargaining coverage

Data from ICTWSS are for "adjusted" bargaining coverage, equal to the number of employees covered by wage bargaining agreements as a percentage of all wage and salary earners in employment with the right to bargaining, adjusted for the possibility that some sectors or occupations are excluded from the right to bargain. Data are for 2007, except for Austria, Czech Republic, Estonia, Japan, Luxembourg, Norway, Poland, Portugal, Sweden, Slovenia, Slovakia, Spain and Switzerland (2006), Greece and Hungary (2005) and New Zealand (2000).

Additional data are from Lawrence and Ishikawa (2005) for Chile (2001), Korea (2001) and Turkey (2002). Data for Iceland are from Icelandic Confederation of Labour (2007) and for Israel are from Cohen *et al*. (2003) and for Russian Federation from World Bank (2003).

Principal bargaining level and multi-employer extension

Data are from ICTWSS, OECD (2004) and national sources.

Court and tribunal statistics (Figures 4 and 5)

Specialisation index

The specialisation index is the unweighted average of the following indicators from Table 3.5:

Court: equal to 0 if dismissal cases are heard in ordinary civil court; 0.5 if special branch of ordinary court; 1 if specialised court.

Judges: equal to 0 if only professional judges hear dismissal cases; 0.5 if both lay and professional judges; 1 if only lay judges.

Procedures: equal to 0 if ordinary civil procedures; 1 if simplified procedures for dismissal cases.

Burden of proof: equal to 0 if on employee; 1 if on employer.

Appeals: equal to 0 if appeals are heard in ordinary court; 1 if heard in specialised court.

Cases resolved in conciliation

	Year	Definition	Source
Australia	2006/07	Proportion of applications conciliated by the AIRC that were settled at conciliation.	OECD questionnaire.
Canada	2007/08	Proportion of federal cases settled without having recourse to an adjudicator.	OECD questionnaire.
Estonia	2007	Proportion of applications to courts that were not determined by the court.	OECD questionnaire.
France	1998	Proportion of dismissals dealt with by tribunal settled or withdrawn at conciliation	Galdon Sanchez and Guell (2000)
Germany	2003	Proportion of all dismissal lawsuits not decided by the judge.	Jahn (2008)
Japan	2006-2008	Proportion of disputes using the Labour Dispute Adjudication System that did not go on to trial.	OECD questionnaire.
Korea	2007	Proportion of cases filed in the LRC that are settled or dropped through conciliation.	OECD questionnaire.
New Zealand	2008	Proportion of unjustified dismissal cases lodged at the ERA settled. "Settled" is defined as where the case was referred to Mediation and either received a recorded settlement, was settled in mediation, or was settled outside mediation. Withdrawn cases are not included.	Department of Labour.
Spain	2005	Proportion of cases in first level social courts not resolved by a court decision.	Ministry of Labour and Immigration Yearbook 2007.
Sweden	2004	Proportion of dismissal disputes settled in judicial (pre-trial) conciliation.	Report of meeting of European Labour Court Judges.
United Kingdom	2006/07	Proportion of unfair dismissal claims accepted by the Employment Tribunal resolved by conciliation, withdrawn or otherwise struck out.	Employment Tribunal Annual Report 2006/07

Average time for decision in labour cases

	Year	Definition	Source
Czech Republic	2007	Average length of proceedings in termination of employment disputes in regional and district courts.	Ministry of Justice.
Estonia	2007	Average months for decision in court.	OECD questionnaire.
Finland	2007	Average time between opening of case and final decision in district courts.	OECD questionnaire.
France	2005	Time taken for new cases in labour tribunal to be finished.	Ministry of Justice.
Germany	2006	Average time for decision in labour court. Weighted average based on mid-points of time categories.	OECD questionnaire.
Ireland	2007	Average waiting time for an unfair dismissal case to come to hearing (unweighted average of time for Dublin and provincial areas).	Employment Appeals Tribunal Annual Report 2007
Israel	2007	Average duration of cases in labour courts from application to decision, including appeals.	OECD questionnaire.
Italy	2004	The average time from submitting the case to hearing the decision in termination of employment cases in first level courts.	ISTAT.
Japan	2007	Weighted average of labour related cases in district and summary courts as court of first instance.	OECD questionnaire.
Korea	2007	Average months for employment contract and dismissal cases settled by the civil courts.	OECD questionnaire.
New Zealand	2008	The average length of time taken for unjustified dismissal cases lodged with the ERA from the date of lodgement to the date of determination	Department of Labour.
Norway	2007	Average months elapsed between the registered incoming date and the date of the decision for EPL cases in courts of first instance.	OECD questionnaire.
Poland	2006	Average months for cases about employment relationship in district courts.	Ministry of Justice.
Portugal	2004	Average duration of cases relating to individual employment contracts in labour courts.	Ministry of Justice.
Slovak Republic	2007	Average months for labour law cases closed in district courts.	Ministry of Justice.
Slovenia	2007	Average time for decision in labour court. Weighted average based on mid-points of time categories.	OECD questionnaire.
Sweden	2007	Average duration between filing for unfair dismissal and the final decision by the Labour Court. The average duration of cases in district courts was 11.7 months.	OECD questionnaire.
Switzerland	2007	Average duration between the start of the case and the final decision in first instance courts.	OECD questionnaire.

Proportion of labour cases appealed

	Year	Definition	Source
Belgium	2006	Ratio of new cases in labour courts to new cases in labour tribunals.	Federal Public Service of Justice.
Finland	2002	Ratio of cases on termination of employment in courts of appeal to those in district courts.	EIRO (2007)
France	2004	Ratio of 2005 appeal court cases to first level cases.	Ministry of Justice.
Germany	2002	Ratio of all cases closed in higher labour courts to all cases closed in first instance labour courts.	EIRO (2007)
Greece	1997	Ratio of disputes in court of appeal to disputes in first level court.	EIRO (2007)
Italy	2004	Ratio of new termination of employment cases in appeal courts to those in first level courts.	ISTAT.
Luxembourg	2006/ 07	Ratio of new employment cases in court of appeal to new cases in employment tribunal (and labour law cases in Luxembourg).	Ministry of Justice.
Poland	2006	Ratio of labour law cases in county court to labour law cases in district courts.	Ministry of Justice.
United Kingdom	2005/ 06	Ratio of registered appeals in the Employment Appeals Tribunal to registered claims in the Employment Tribunal (all claims).	Employment Tribunal Annual Report

Contested dismissal cases per 1 000 workers

	Year	Definition	Source
Australia	2006/07	Termination of employment applications lodged in the AIRC.	OECD questionnaire.
Czech Republic	2007	Number of final decisions in district and regional courts.	Ministry of Justice.
Estonia	2007	Applications on EPL cases submitted to civil courts.	OECD questionnaire.
Finland	2007	Rulings on EPL cases in district courts.	OECD questionnaire.
Germany	2006	Dismissal cases brought before labour courts.	OECD questionnaire.
Ireland	2007	Redundancy and unfair dismissal claims and appeals lodged with Employment Appeals Tribunal.	Employment Appeals Tribunal Annual Report
Italy	2004	New termination of employment cases lodged with first instance courts.	ISTAT.
New Zealand	2008	Number of cases where unjustified dismissal was one of the complaints lodged in the ERA.	Department of Labour.
Norway	2007	Cases decided in district courts.	OECD questionnaire.
Spain	2007	Cases of dismissal settled in first instance social court.	Ministry of Labour and Immigration Yearbook,.
Sweden	2007	Cases under the Employment Protection Act brought before the Labour Court in the first instance.	OECD questionnaire.
United Kingdom	2006/07	Number of unfair dismissal claims accepted by the Employment Tribunal.	Employment Tribunal Annual Report 2006/07

Contested labour law cases per 1 000 workers

	Year	Definition	Source
Austria	2003	First instance litigation in the field of labour law.	EIRO (2007)
Belgium	2006	New cases before labour tribunals.	Federal Public Service of Justice.
Czech Republic	2007	Number of final decisions in district and regional courts.	Ministry of Justice.
Denmark	2002	Cases relating to labour market regulations in civil courts.	Ministry of Justice.
France	2005	New cases before labour tribunals.	Ministry of Justice.
Greece	2006	Individual labour disputes ruled on by a first instance court with single judge.	Ministry of Justice.
Hungary	2007	Number of cases submitted to labour courts.	Hungarian Statistical Office.
Israel	2007	Labour law cases heard by the Labour Courts.	OECD questionnaire.
Italy	2004	New labour law cases lodged with first instance courts.	ISTAT.
Japan	2007	Number of labour related cases accepted by district and summary courts as a court of first instance.	OECD questionnaire.
Korea	2007	Number of cases submitted to the LRC or employment contract and dismissal cases submitted to the civil courts.	OECD questionnaire.
Luxembourg	2006/ 07	New cases in employment tribunals (plus labour law cases from Luxembourg).	Ministry of Justice.
Poland	2006	All labour law cases lodged in district courts.	Ministry of Justice.
Portugal	2007	All new cases in labour courts.	Ministry of Justice.
Slovak Republic	2007	All labour law claims made in district courts.	Ministry of Justice.
United Kingdom	2006/ 07	Total number of claims accepted by the Employment Tribunal.	Employment Tribunal Annual Report.

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