

Smarter, not more regulation will lead to better work

*Regulating the job market is necessary in order to address the inherent imbalance of power between employers and employees. But more regulation doesn't always lead to better working conditions, argues **Alan Manning**. A balanced approach to the labour market and smart, not more, regulation are the things that will lead to better work for all.*

Alan Manning will be speaking on [Better Work: Whose Business is it?](#) at the LSE Festival on Friday June 14, along with Stephen Machin, Kate Bell, and Sarah O'Connor. Kirsten Sehnbruch chairs.



A long tradition in economics says that if an employer and a worker agree a contract on any terms both parties must be made better-off or otherwise they would not have agreed to the contract in the first place. If that were true, there would then be no case for regulating the employment contract. However most countries do regulate the employment contract in many ways. There are minimum wages, guaranteed paid holidays, maternity and paternity leave, unfair dismissal laws, health and safety laws, regulations on overtime premia (though not in the UK) and on working hours.

We have these restrictions because competition between employers for workers is not strong enough to ensure a fair and efficient division of income between workers and employers. In labour markets (and some other markets) we often have a situation akin to one where a professional is interacting with an amateur; an employer typically has

experience of dealing with many more workers than a worker has experience of employers. Part of being a professional is to be skilled in getting the other party to agree to terms favourable to you but not them. That is why the state needs to step in to influence what is allowable and what is not.

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How regulation can help with power imbalance in the job market

Employers have what is sometimes called “monopsony” power because it is hard for workers to change jobs. “Monopsony” means that employers have some market power over their workers which allows them to pay wages lower than they would in a competitive market. An employer that offers worse pay and conditions than its competitors may find it harder to recruit and retain workers, but is still able to hire some. Monopsony implies there is a natural imbalance in power between employers and workers that regulation should seek to address.

But there is still some way to go from this general case for regulation to the specifics of what should be regulated and how. Here I discuss three principles; that we should be seeking an appropriate balance of power, that we need to worry about the boundaries of regulation and that regulation can be a blunt instrument.

The problems with regulation: the case of zero-hour contracts

Finding the right balance of power is important because it is possible to go too far and end up with a situation where it is workers who have too much of the upper hand. The likely consequence of that would be that employers become more cautious in who they hire with jobs becoming scarcer as a result. We have raised the minimum wage without, as yet, clear evidence of resulting job losses, but there is some limit to how high it could go. The same argument applies to rights against unfair dismissal. Grant these from day one and one risks employers being cautious about hiring but the current two – year threshold for acquiring such a right is much too long a period.

We have to police the borders of regulation. Some employers will seek to avoid the spirit of regulation while sticking to the letter of the law. There is no minimum wage for the

self-employed and some employers such as Uber will re-classify workers as independent contractors if they are allowed to do so (in Uber's case the supreme court ruled they [could not](#)).

There is legitimate concern that zero hours contracts are used to shift risk from employers onto lower-paid workers who when taking a job may know their hourly rate but not how much they are likely to earn.

Regulation also has the problem that it can be a blunt instrument as it almost always has the form of "one size fits all". Take the example of zero hours contracts. There is legitimate concern that zero hours contracts are used to shift risk from employers onto lower-paid workers who when taking a job may know their hourly rate but not how much they are likely to earn. And workers on zero-hours contracts rarely have financial reserves to absorb fluctuations in income. Yet surveys of workers on zero-hours contracts find that some [value the flexibility](#). While some have argued for a blanket ban on zero hour contracts perhaps a smarter approach would be for employment contracts to make it clear what are the minimum guaranteed earnings to make any disadvantage clear. And the flexibility of zero-hour contracts needs to be genuinely two-sided; workers should have the right to turn down hours that are inconvenient for them.

Empowering workers can overcome some other weakness of regulation.

Correcting the overreach of regulation

One way to deal with the blunt instrument problem is to use not a top-down approach to regulation but bottom-up, empowering workers either through a more supportive environment for trade unions or giving workers a louder voice on boards to negotiate what is best in the local circumstances. Such agreements between unions and employers could even over-ride regulations in selected cases. Empowering workers can overcome some other weakness of regulation. For example, minimum wages only raise earnings at the bottom end of the labour market, but the problem of employer market power is pervasive across the earnings spectrum.

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We also need steps to prevent non-competitive practices among employers such as no-

poach agreements, or non-competes. There has been what has been called a “historic imbalance” in the application of competition laws to product and labour markets. Restrictions that would be thought of as shocking in product markets are regarded as normal in labour markets. Utility regulators in the UK have actively made it easier for consumers to switch supplies of gas, electricity, water etc in the belief that this promotes competition. Yet, your employment contract probably contains a lengthy notice period that makes it harder for you to change employers. These notice periods are so normal that we do not reflect on whether they are anti-competitive.

There is change, for example in 2023 the UK Competition and Markets Authority published [guidance](#) on this, but action in this area is more active in the US where the Federal Trade Commission recently announced a wide-ranging [ban](#) on non-competes from September 2024.

Debates about labour market regulation are often reduced to whether we should have more or less. That is not helpful. Better to see regulation as smart vs. stupid rather than more vs. less. We need a balanced approach to labour market regulation that protects workers from a power imbalance with employers, but also encourages employers to be flexible and open to hiring.

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