

Non-Standard Forms of Labour Contract
in the *Consolidação das leis do Trabalho* (CLT)
and the Flexibility of the Brazilian Labour Market

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1. Introduction

The world economy has experienced major technological and organizational transformations in the production of goods and services, in the direction of increasing corporate flexibility, the ultimate aim of which is to make companies more competitive at confronting the rapid changes occurring internationally. Resultantly, this flexibility has caused changes in the traditional form of contracting labour towards more agile procedures for contracting and dismissing workers. In this way, the demand for more flexible production has modified current rules in force with regard to labour relations and the labour market, also in the direction of greater flexibility. In other words, the contracting of salaried workers has given way to other forms of labour relations.

From the end of the Second World War until the end of the 1970s, a model of labour relations based on the search for full employment, economic planning and the guarantee of job stability had become the standard in labour law. At the start of the 1980s, amid the emerging transformations, greater flexibility in employment contracts gained new vigour, resulting from the competition that became established in global markets. With this, different forms of non-traditional labour contracts have proliferated in response to the need to break the rigidity of the traditional contract of indeterminate length that is enshrined in current labour relations.

This theme has been discussed in Brazil from different viewpoints, both in terms of the rapid introduction of new technologies that began after the commercial opening in the 1990s, and because current labour legislation considers a cost structure, which, when the level of Brazilian labour force productivity is considered, has hindered the formal employment of salaried labour with a *carteira assinada* (official work card), exactly the kind of employment link that characterizes the traditional form of labour contract.

As a result, many analysts have pointed to the growth in non-traditional forms of employment that have responded to domestic companies' need to adjust to imposed competition.¹ From a legal point of view, i.e. within the context of the *Consolidação das Leis do Trabalho* (CLT) (consolidated employment law), the desire to change employment to more dynamic and flexible production process seems to be making use of the so called "non-standard forms of labour contract" (Chahad, 2001).²

¹ The question of the impact of flexibilization of labour relations on levels of employment, or even on the labour market, has been highly controversial for Brazil and at an international level. For some it is important for promoting employment and/or limiting the rate of unemployment growth. For others, however, this flexibilization is no more than an expedient for withdrawing labour rights, thereby seeking to satisfy the need for corporate profits, without any positive impact on the level of employment. In addition, flexibilization would tend to increase work precariousness rather than generate new jobs. See, among other sources, OECD (1994), Locke, Kochan and Piore (1995), Rodgers and Rodgers (1989), Nollen (1996), Gladstone (1991), Galin (1991), Treu (1993) and Hepple (1997) on the international scenario. Within Brazil, among those who question the flexibilization of labour, or the deregulation of labour markets as an element for promoting more jobs and/or attenuating unemployment, we would mention, among others, Pochmann (1997); Matoso and Pochmann (1995), Mattoso (1995), Crivelli (1997).

² The following discussions are different from the traditional dichotomy between formal and informal market. Here, we shall contemplate the "special modes of labour contract" that have gradually been gaining space in the field of Brazilian labour law, referring to the formal segment of the Brazilian labour market.

Based on field research this text seeks to identify, as well as quantify, the level of utilization by Brazilian companies of “non-standard forms of labour contract”, identified here as alternative forms of flexible employment in the labour market.³ This paper will not be concerned with its evolution. It will look at the degree of penetration of these modes of contract into the Brazilian labour market.

In seeking this objective, this text will be structured in the format described below. The next section presents the reasons precipitating the debate on the flexibilization of the labour market. Section 3 contains a revision of the conceptual framework, implicit in the emergence of new forms of contracting workers. Section 4 presents a typology of flexibility regarding new labour standards, emphasizing only the volume of employment and the duration of the working day. Section 5 describes the results of a broad field survey that investigated the extent of use of non-standard forms of labour contract by Brazilian companies. Section 6 compares results obtained, within existing limitations, with similar data verified internationally. Section seven presents a concluding summary of the main results.

2. The international debate on the flexibilization of the labour market and labour relations

Flexibility became an item on the universal agenda when the International Labour Organization (ILO) prioritized it in its action programme at the end of the 1980s. Labour representatives reacted immediately, considering it to be a move by international organizations towards protecting employers incapable of increasing their efficiency without redundancies, or contributing to the generation of employment while abandoning any claim to profitability. Trade unions identified the practice of flexibility as a way of cutting salaries, removing laws that protected the gains of the least qualified, weakening collective bargaining, and privatizing public services, etc.

Subsequently, at the start of the 1990s the unions recognized that something had to be done in order to expand the level of employment by stimulating new investments, and without inhibiting the adoption of new technologies. They acknowledged the need for some flexibility. Their current stance supports the discussion of adjustment and flexibility, provided that both are negotiated, i.e. are not imposed by employers or legislation, or by agreements of convenience between companies and the government.

In turn, employers tended to identify the flexibility of the labour market as a synonym for job creation, albeit always viewing it as an indispensable prerequisite of higher profitability, the driving force for the creation of new vacancies. On the one hand they demanded limits on the restrictions imposed on them by law, while on the other, they showed no sympathy with a legislation of collective negotiation that tended to freeze contractual relations. Since the increase in global competition that was established at the end of the 20th century, from the point of view of the company flexibility became an imperative for reducing unemployment, facilitating the adjustment in production and human resources within organizations, facilitating severance and curbing non-salary costs of labour. By becoming competitive, these companies believed that they are contributing to the reduction of unemployment.

³ These modes shall be specified in Section 5, where the empirical results will be presented.

Irrespective of the viewpoint taken, the discussion on flexibility aims principally to serve as a way in which unemployment is reduced and/or vacancies are increased in order to absorb surplus labour. With the advent of globalization and the rapidity of technological transformations, most countries faced rising unemployment, of both a structural and long-term nature. In addition, the productive system was unable to generate more and good jobs to meet the rising demands of an international economy.

International experience has shown that the “labour” production factor has become very expensive and relatively inflexible, especially when the state guarantees rights, the cost of which has become inviable. As a result, a considerable number of jobs have lost their profitability as a result of a perverse combination of salaries and non-salary costs (charges). In this way, the net return of workers, which determines the supply of labour by employees and the total costs that determine the demand for labour by companies, have diverged to an ever greater degree.⁴

This has resulted in an increasingly frenetic search for the rationalization of the labour force by companies in form of reducing their supply of vacancies and seeking more productive workers. At the same time, high labour costs prevent the recreation of jobs lost as a result of structural transformations and rationalization in certain niche sectors, since these face the same cost structure.

3. The conceptual framework indicating the need for flexibilization of labour relations

Available evidence, both internationally and in the case of Brazil, indicate growth in flexible forms of employment at a more rapid pace than overall employment. There are three basic kinds of explanation for this: (a) the emergence of flexible production and the need to adapt companies; (b) the response of the market to regulation imposed by the public sector and (c) the erosion of labour contracts due to negotiation “without guarantee” of stability.

First, the increase in flexible employment has its origin in the technological, organizational and economic changes imposed by the evolution of business at the international level, highlighting “flexible production”. This has become an imperative for the modern company to meet demand for goods and services in a competitive environment. The improvement in technological processes, changes in the use of production factors and even modifications in demographic structures have significantly affected the labour market, contributing to the emergence and increase of flexible employment.

The emergence and rapid dissemination of information technology, robotics, biotechnology, transport and means of communication allow the evaluation and execution of options and opportunities that are presented to companies and arise from the demands of society. Manufacturing processes allow companies to shift from one process, product or service to another with frightening speed. With this flexibility in the instruments of production, an analogous flexibility in the utilization of human resources, labour practices and corporate remuneration policies seem called for since this is what the same companies demand.

⁴ Readers interested in discussing the question of flexibility from the point of view of labour costs in Brazil should consult, among other sources, Funk and Knappe (1996), Pastore (1994), Ramos (1992), Schmid (1996), Relasur (1994), DIEESE (1993), Blank (1994), Hempstead (1983) and Trevisan (1993).

Flexibility becomes an end in itself, independent of the position and degree of the company's level of development.

Moreover, the increase in flexible employment has been a natural consequence of the trend among companies in response to an equally flexible behaviour of societal demand originating from consumers. Emphasis on flexibility has been facilitated by technological advances that have made it easier for companies, or temporary employment agencies, to identify individuals with particular skills, with the aim of absorbing them into eclectic teams for meeting specific demands. This procedure, fostered by technology, allows a reduction in the cost of responding to consumers, following the path of flexibility, and allowing companies to insert themselves into an environment under severe competitive pressure, surviving on the basis of new forms of utilizing human labour.

Flexible employment allows companies not only to adjust more easily to consumer demands, expanding or contracting their labour force in accordance with the needs of the moment, but also permits greater rapidity in altering the composition of their workforce, in accordance with the quality of labour required at any moment. In addition, as a company becomes more specialized, permanent employment becomes an obstacle to increasing productivity when the company needs to reallocate these workers from a sector for which demand is declining to another where it is expanding. This situation is aggravated by union action demanding a guarantee of employment, with gains for companies that use expedients that lead to more flexible employment and that are immune from the pressure of union organizations.

Second, flexible employment appears as a response to public policies that regulate the labour market. From this viewpoint, we meet with ambiguity, since at the same time the need to protect the worker is recognized. It has been detected that the abandonment of these policies may create greater efficiencies from an economic point of view. Public policies arise to protect workers against the uncertainties of the market, but in a rapidly changing environment, policies terminate by delaying the rapid growth of productivity, creating undesired results even for their beneficiaries. In addition, the guarantee of employment that results from these policies is often targeted at a select group of workers, with scant regard for the group of individuals that remains outside them. In other words, the increase in flexible labour may also be justified by the effects of public policies that are partially motivated by the desire to promote permanent stability of employment for a larger set of workers, even if without the previous levels of protection.

Historically, few markets have been as subjected to rules, regulations and other restrictions as the labour market. There are few circumstances in which a labour contract between employer and employee is free from legal restrictions. Working conditions, salary levels, the concession of benefits, severance and dismissal, etc., are all subject to rules and codes that are often contradictory. In addition, this excessive regulation invariably ends by being generalized, completely ignoring the diversities and differences between places, sectors and even circumstances of employment.

Some regulation is necessary evaluate its hidden costs. While the benefits of protection are clearly visible from the beneficiary's point of view and easily attributable to a given piece of regulation, the costs are concentrated as they take the form of lost unidentified opportunities that are extremely hard to attribute to any specific regulation. The benefits are transparent, but the costs are not.

Finally, an important element that explains the growth in flexible employment, notably in the case of the United States, is in the erosion of the doctrine of the employment contract

“without guarantee” (employment at will), arising from direct collective negotiations between employees and employers.⁵ Unions are continually applying pressure to slow free negotiations between employees and employers, supporting legislative and judicial measures against unfair or arbitrary dismissal. The result has done more to encourage the search for flexible employment than to ensure guarantees of employment.

Within the capitalist tradition, the legal aspects of the employment relationship have always been neglected in the name of freely negotiated employment “without guarantees”, albeit on the basis of the doctrine of “good faith” of the contracting parties. The employer may dismiss employees without major justifications and the employees may resign without providing a justification to the company. This system has suffered major setbacks due to the growing interference of judicial and legislative decisions. As a response, flexible employment that is open to arrangements not covered by law, but that are not necessarily illegal, has gained and is gaining force as a way of absorbing labour.

In the model of employment “without guarantees”, both the employer and government can exercise command in an abusive way. As in the case of the model of guaranteed employment, power can be concentrated in the hands of despotic public authorities. In this latter case, by exercising power on behalf of groups of workers who are protected to a greater degree by the law, the government does so with impunity and without any controlling influence. In the case of employers, by dismissing workers at any time and without due cause, they risk being penalized by the market and by society, making it increasingly expensive for them to obtain good workers. This cost tends to be higher for larger firms with larger work forces.

4. A typology of flexibility in labour relations in a corporate context⁶

There are many definitions of **organizational flexibility** of companies that are struggling to adapt to the institutional, social, economic and technological changes mentioned above (Galín, 1991; Blanpain, 1991; Ramos, 1992; Hepple, 1998; Chahad, 2001). Independently of their nature, these rest on three basic requirements.

The first relates to the search for **flexibility of internal adaptation**, referring to the capacity of companies for promoting the vertical and horizontal mobility of workers, as well as using an hour bank and temporary staff. In other words, given its labour force, a company should maximize the efficiency of utilization of human resources through internal reallocations. The second answers the question of **flexibility of external adaptation**, arising from the need for adjustment and adaptation of the organizational system that results from events outside the companies. Finally, there is the requirement of **flexibility to avoid abrupt discontinuities**, since, in addition to changes that occur continuously, and with a certain predictability and anticipation, there are discontinuities that a company must face and that

⁵ See, among others, the arguments contained in Chahad (2001), Lee (1996) and Daner (1996).

⁶ This section has a double objective. First, by moving from the generic term “flexibility” to a classification that allows us to identify the forms that this may assume in a corporate context. Second, it should also serve as a conceptual reference framework for the special modes of labour contracts that shall form the object of empirical investigation for the Brazilian case.

occur suddenly. This has been more frequent in recent times on account of the many changes in the productive process that tend to collapse labour relations rapidly. In addition, it is necessary to confront sudden changes in the labour market itself that arise from changes in the behaviour of workers.

With a view to meeting these prerequisites, different kinds of arrangement have established themselves, with these giving greater clarity to the generic concept that is frequently attributed to the term “flexibility”. The most frequently used disaggregation refers to the following types of flexible labour patterns: (a) numerical flexibility of the labour force; (b) flexibility of the duration of employment; (c) functional flexibility; (d) flexibility of labour costs; (e) flexibility regarding location of employment.⁷

4.1 Numerical flexibility

The most heated discussion on flexibility arises on account of the incapacity of organizations to adjust their labour forces during a recessionary phase of economic activity. This may occur both on account of the rigidity of labour regulations or because of enshrined practices and customs in the field of collective negotiations. Unions always consider stability in employment or any other kind of employment guarantee as a priority in collective labour agreements.

This is the context for the definition of numerical flexibility, which denotes a company’s capacity for expanding or contracting the size of its labour force, in such a way as to respond as rapidly as possible to fluctuations in demand. This largely depends on the rigidity that is imposed on procedures for dismissing and retaining workers.

In the sections below, we present some of the principal forms of ties that arise or that are already included within a company’s labour force, allowing the same to deal with the need for flexibility on the number of workers.

Temporary employment

This is a long-standing practice, which nevertheless intensified from the 1980s onwards. Initially, only manual workers were replaced, but today, individuals on temporary contracts carry out many functions within a company, requiring the widest range of qualifications and skills.

Among the reasons highlighted as fundamental for this practice, the following are of note: (a) the need for workers with a given qualification for a determined period; (b) the need for workers to complement the labour force due to a large-scale project; (c) the use of workers on a seasonal basis; (d) preventing or minimizing overtime; (e) using labour that has not been recommended by the trade union; (f) creating a segmentation of the labour force within a company so as to impose a greater degree of control over permanent workers.

⁷ Considering the nature of this paper, which concentrates on “non-standard forms of labour contract” including time of employment, which are considered in Brazilian labour legislation, this section shall only deal with points (a) and (b) mentioned above. The reader interested in expanding his/her knowledge of this topic is advised to consult the bibliography mentioned in Chahad (2001).

A characteristic of the use of temporary labour is that while the salary may be equal to permanent ones, temporary employment does not include various types of benefit, and thus implies lower non-salary costs for companies.

Part-time work

The dividing line between part-time and permanent work has become increasingly difficult to draw for two reasons: the first regards the difficulty of distinguishing between imposition of demands and the aspirations of workers themselves. The second refers to the shortening of the working week and even a daily reduction in the number of hours worked.

As a general rule, part-time workers are considered to be more efficient and productive than full-time workers. Partly because they tire less and have fewer sources of irritation than the individual who spends the whole day at the company, and also because they take jobs that are better suited to their aspirations.

From the organization's point of view, the use of part-time workers allows a company to raise the level of employment during times of peak demand, without necessarily increasing the use of overtime. This may contribute to the reduction of labour costs, both because these workers prove themselves to be more productive and because their remuneration does not include the same level of labour charges as those of permanent workers employed on a full-time basis.

Job sharing

This form of flexible employment gives two or more workers the responsibility for performing the same task, as well as for sharing the remuneration arising from the conclusion of the task. The division of labour between the two workers may be on a daily, weekly or monthly basis, depending on the type of product or service involved in the activity in question.

This kind of flexibilization makes it possible to employ qualified workers who are not interested or who are temporarily or permanently incapable of occupying a full-time position, but who do not wish to lose their skills or wish to be a future option for the company that contracts them. For the company, the practice of job sharing allows it to deal with the reduction in activity in times of crisis, whether at sector, local, national or international level, without needing to resort to dismissing workers by merely reducing their pace of activity.

Outsourcing (subcontracting)

This increasingly widespread practice entails subcontracting to companies offering workers to carry out outsourced or peripheral activities, thereby freeing the company itself to concentrate its productive efforts on its principal activity.

This expedient often allows companies to obtain qualified workers rapidly when they need to increase their production speedily. In addition, this practice has another advantage with regard to labour costs, since it is not obliged to guarantee the same benefits that it pays to its permanent staff to subcontracted workers.

Since these workers are not employees of the company but a supplier of labour, it is the latter that must bear all the labour costs relating to their utilization. In the event of a crisis

within the company, they may be dismissed without any great difficulty, even if the company subsequently recovers.

Lay-off – temporary suspension of labour contracts

In this mode of flexibility, fluctuations in demand are eased by the partial relaxation of the employment link. In other words, workers are not dismissed in the usual sense: they are only laid off temporarily, being recontracted as soon as economic activity recovers.

Certain characteristics accompany this kind of labour relationship. The first refers to the fact that it tends to occur in situations in which there is a low level of regulation of labour practices, allowing a low cost of recontracting. The second is that lay-offs tend to be facilitated by the existence of unemployment benefit or other forms of maintaining the involuntarily unemployed worker. Finally, the lay-off may be understood as a partial and selective dismissal, with the same thing occurring when the individual is rehired. As a general rule, the last to be dismissed are the first to be rehired, always taking into consideration criteria selected by the company.

4.2 Flexibility of working time

This kind of flexibility implies different forms of utilizing the worker's time, without the company modifying its production volume for variations in employment. While there may be some association, it is important to differentiate between arrangements regarding time of work and the question of a reduction in the working day, which is also an indirect expedient for flexible working time.

Flexibility of working time may take various forms, of which the principal ones are as follows:

Overtime

Historically, this has been the main form of flexibilization. It represents extra hours worked in addition to the normal working day, defined by law or by practices and customs. Overtime is frequently used by companies to complete their productive activity that cannot be completed within normal hours. As it arises in special or emergency situations, it may be considered as a flexible way of utilizing labour.

On the one hand, overtime confers advantages on the worker since it raises his/her income, although, on the other hand, it has become an undesirable practice in the sense that it has been virtually transformed into regular working hours. Any attempt to reduce overtime has met with opposition, both from workers and from the companies themselves, as this would reduce the latter's scope for rapid responses that allow normal functioning in the face of atypical or emergency situations.

Annual payments for hours worked – hour bank

The demand for goods and services is not uniform during the year, displaying seasonal patterns. As a consequence, there will be periods in which employees will be under-utilized, while on other occasions more work will be demanded from them. The principal objective in calculating hours worked on an annual basis is to improve coordination between demand for

available hours and the number of hours that are genuinely necessary at each point on the basis of production patterns imposed by demand.

One way of dealing with seasonal differences is to demand less labour at times of slack demand, compensating these with more hours at times of peak production. This leads to lower levels of overtime. The experience has shown that the annualization of hours worked has implications for the productivity of workers, both because they feel rewarded in remaining in a job, and because their productive effort is spread over time.

Flexible working day

This method of flexibility consists of a set number of hours during which the entire labour force must be present and a flexible volume of hours at determined points in the day (beginning, end or lunch break) when the worker is allowed to decide how to use this time to complete the working day that he/she is contractually obliged to work.

In this kind of arrangement, it is necessary to devise a system of settlement between workers and companies, whether on a daily, weekly, monthly, half-yearly or annual basis. This allows the worker to regulate his/her situation within the time flexibility patterns that he/she has chosen in such a way as to fulfil the quota of hours worked that has been contractually agreed with the company.

Not all companies can make use of this expedient, which depends on the technology with which they operate, the kind of client base they serve and their operational capacity using this method, when used with other forms of organizational flexibility.

Work shifts

This is an old practice that allows companies to become more flexible through the extension of the working day by the periodic replacement of workers. It does not necessarily represent a flexible time arrangement in the sense of the previous forms, but has moved in this direction to the extent that companies have adopted working shift patterns in increasing numbers, allowing them to have a permanent labour force with the guarantee of long resting periods for workers.

Shortened the working week

This is another form of absorbing labour that confers greater flexibility on companies by allowing workers to concentrate a fixed number of hours in one part of the week, using the remainder for rest. At the same time, the working week is maintained. One of the reasons for this practice is that it is a response to a recognized demand among workers for longer resting periods as part of the development of a culture of leisure.

This practice has usually been employed to a greater degree during periods of declining activity, in which a shorter working week for each worker has allowed the total volume of work to be divided among the components of the company's workforce, minimizing the need to dismiss a large number of workers.

5. Non-standard forms of labour contract and flexible employment in Brazil: empirical evidence from a field study⁸

With the aim of evaluating the level of flexible employment by Brazilian companies and by using the “non-standard forms of labour contract” as an indicator, this section contains an analysis of the results of a field survey carried out by the *Fundação Instituto de Pesquisas Econômicas* (FIPE), which collected information on a representative sample of companies in the formal sector. A questionnaire was designed and used for this purpose.⁹

5.1 The sample and procedures for collecting information

The questionnaire was applied to 2,002 companies between April and June 2001 in the form of telephone interviews carried out by a series of technicians specially trained for the exercise. The selection of companies was made on the basis of a wide sample constructed using registers of companies made available by FIPE, the *Federação das Indústrias do Estado de São Paulo* (Federation of Industries of the State of São Paulo – FIESP) and by MTE’s *Relação Anual de Informações Sociais* (Relation of Social Information RAIS) system. The unit investigated was the **company**, not the business conglomerate to which the company might belong. Checks on the establishment were made using the *Cadastro Nacional da Pessoa Jurídica* (National Directory of Legal Entities – CNPJ).

The sampling procedure adopted aimed to guarantee that data obtained was representative, covering every sector of economic activity to a specificity of two digits, and investigating every region of Brazil. It also considered representativeness by size of company investigated. At the same time, it should be stressed that consultations by telephone have been frequently used for collecting information. This carries a number of advantages, such as the minimization of the “attrition rate” of interviewed companies that arise when normal mail is used as a means of circulating the questionnaire. In addition, it also permits errors observed in the completion of the same questionnaire and eventual inconsistencies perceived in the tabulation of the data, to be rapidly resolved with a return call to the establishment in question.

5.2 Forms of non-standard contract investigated

The following forms of non-standard labour contract considered in Brazilian labour legislation and representing some degree of labour flexibilization were selected for investigation:

- (a) part-time working day (up to 25 hours per week)

⁸ The non-standard forms of labour contract to which this text refers, cover those kinds of contracts established in the *Consolidação Das Leis Do Trabalho* (CLT). They differ from traditional labour contracts of unspecified duration that permit the worker to be dismissed at the company’s discretion.

⁹ This field study refers to a specific moment in time. It is not possible to draw any inferences about trends in the utilization of these non-standard forms of labour contract but only about their degree of incidence at the moment of collecting information.

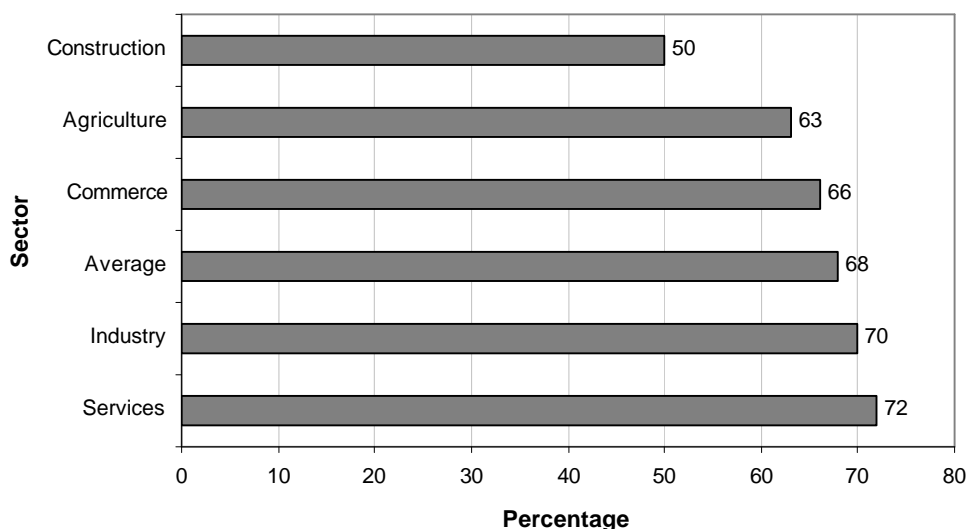
- (b) fixed-term work contract with hour bank (law N°. 9,601/98)
- (c) temporary work (law 6,019/74)
- (d) work by project or task
- (e) telework contract
- (f) outsourcing (law 6,019/74)
- (g) labour cooperative (law 5,764/71)
- (h) temporary suspension of labour contract (lay-off) (CODEFAT Resolution N°. 200/98)

These employment forms were investigated in accordance with the following classification criteria: sector of economic activity, region and size of company. The crossing of these modes with the characteristics researched provides a large data set. We present below the most important of these from the point of view of verifying the degree of penetration of these non-standard forms of employment, within the formal Brazilian labour market.¹⁰

5.3 The level of utilization of flexible labour by Brazilian companies

Observing Figure 1, around 68 per cent of companies used some special form of labour characterized as flexible employment, principally in the service and industrial sectors. In the construction sector, the penetration rates of these forms are lower than in other sectors, but still over 50 per cent. From a regional point of view, companies in the North and Centre-West make least use of labour contracts representing flexible employment (Figure 2).

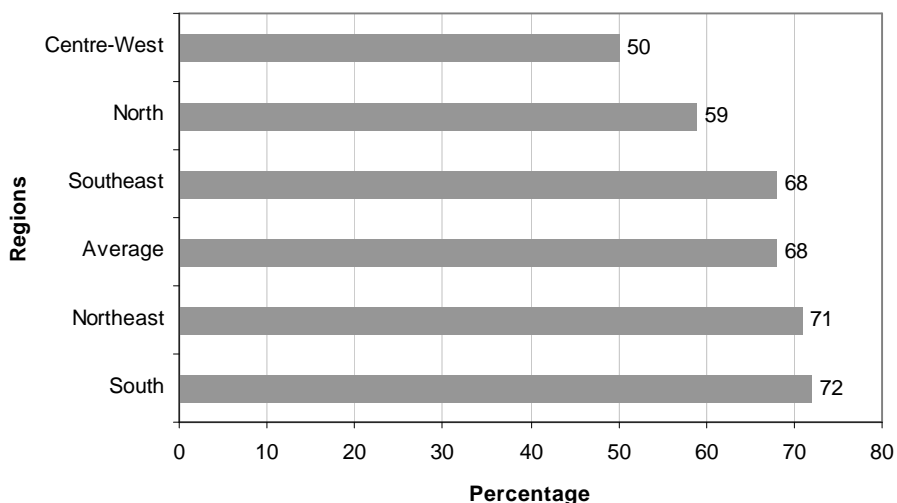
Figure 1. Companies using some form of flexible labour, by sector of economic activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

¹⁰ For the purposes of this text we have not presented results disaggregated in greater detail, either by sector of activity, region or company size. These data may be found in the original report by Chahad (2001).

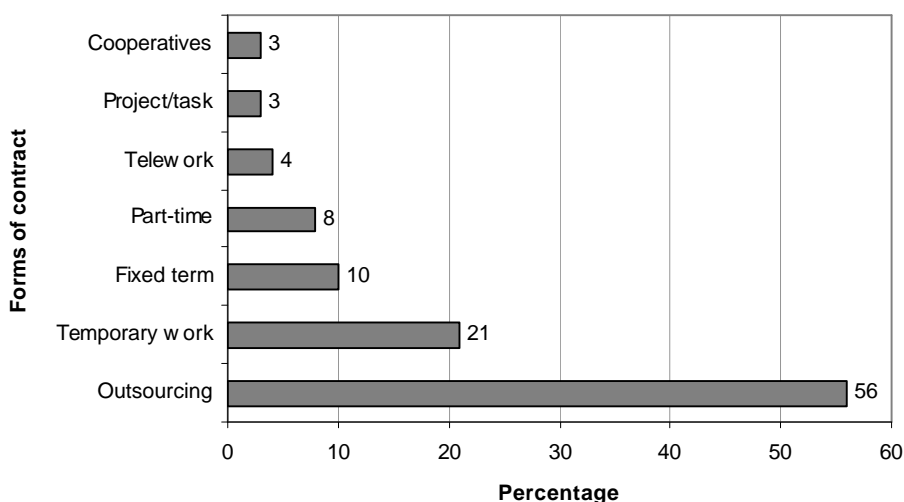
Figure 2. Companies using some form of flexible labour, by region



Source: Direct survey of companies, April-June 2001, FIPE/MTE

Figure 3 shows that the most frequently used special form is outsourcing, as 56 per cent of companies declared that they used this form of contracting workers, followed by temporary work used by 21 per cent of companies surveyed. In either case, both by sector and by region, it appears clear that companies have used non-standard forms of labour contract in a search for flexible production.

Figure 3. Percentage of companies using flexible labour, by forms of contract



Source: Direct survey of companies, April-June 2001, FIPE/MTE

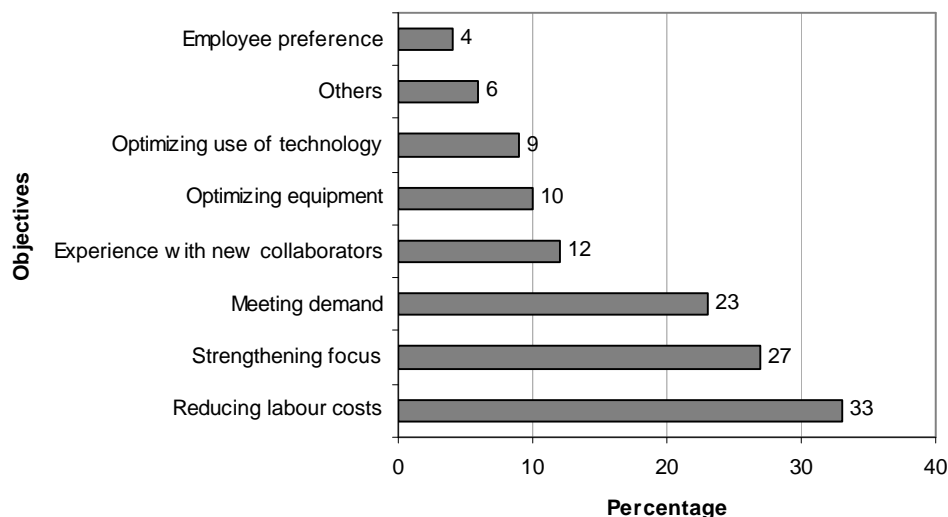
Reasons given by companies for using flexible labour

According to Figure 4, the main reason why a company opts for more flexible contracting is the need to cut labour costs, followed by a policy of strengthening its focus on production level in and adapting rapidly to fluctuations in demand.

The disaggregation of data allows us to affirm that among the motives investigated for using flexible labour, cost reduction is the most important in every sector, especially

agriculture and industry. In construction, meeting demand is almost as important as reducing costs, while in commerce, 'strengthening the focus of activity' is as important as reducing costs.

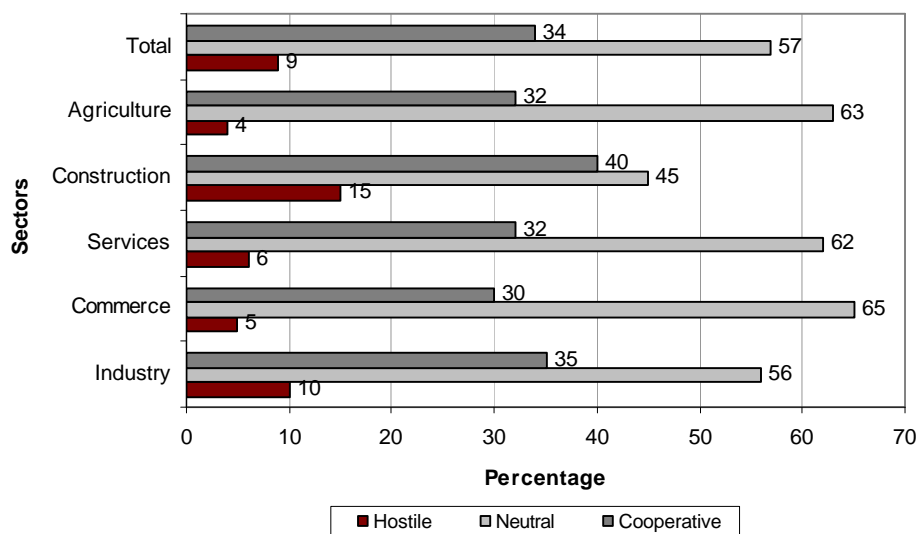
Figure 4. Corporate use of non-standard labour contracts, by objective (%)



Source: Direct survey of companies, April-June 2001, FIPE/MTE

Figure 5 reveals that in every sector of economic activity, the use of non-standard labour contracts, with the aim of more flexible employment, is supported by trade unions. Indeed, only 9 per cent of the companies consulted declared that the union maintained a hostile attitude to the use of flexible employment, while 34 per cent indicated that their unions had cooperative attitudes. The majority nevertheless indicated that the union representation of workers had taken a neutral stance regarding the non-standard forms of contracting that they were using. These results are not surprising, in so far, as the non-standard forms of labour contract represent formal labour, which is the intrinsic demand of union organizations.

Figure 5. Attitude of trade unions regarding flexible forms of contract, by sector of activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

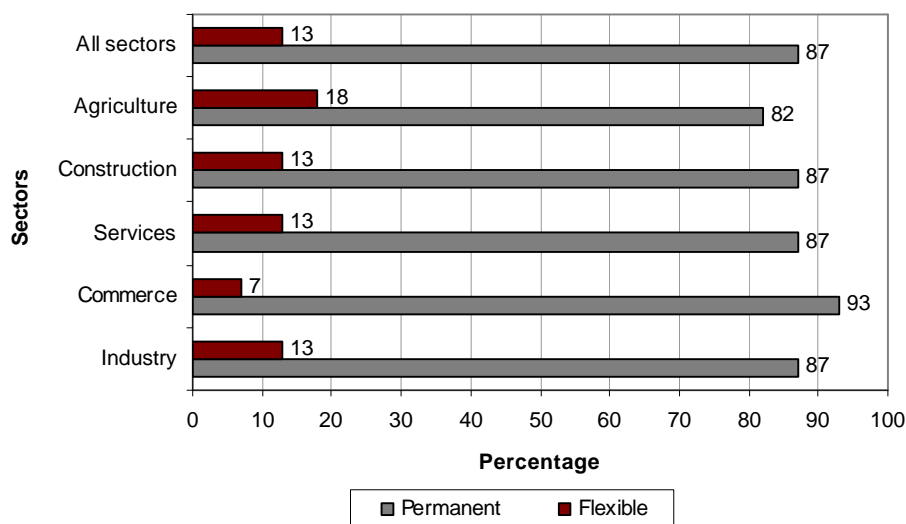
5.4 The incidence of flexible employment by number of workers contracted

Permanent employment versus flexible employment

Up to this point, results have concentrated on verifying the degree of utilization of flexible labour by companies. From here onwards, we shall highlight the proportion of workers (in percentage terms) who are involved in these forms of contracting.

By taking all sectors of activity and aggregating the forms of non-standard contract into a single category, termed flexible employment, Figure 6 reveals that only 13 per cent of jobs represent flexible labour, with the remaining 87 per cent corresponding to full-time permanent labour contracts. In commercial activities, only 7 per cent of workers are employed on a non-standard basis, with agriculture (18 per cent) being the sector in which flexible labour is most widely used. It is interesting to note that both the industrial and the service sectors have values close to the overall average.

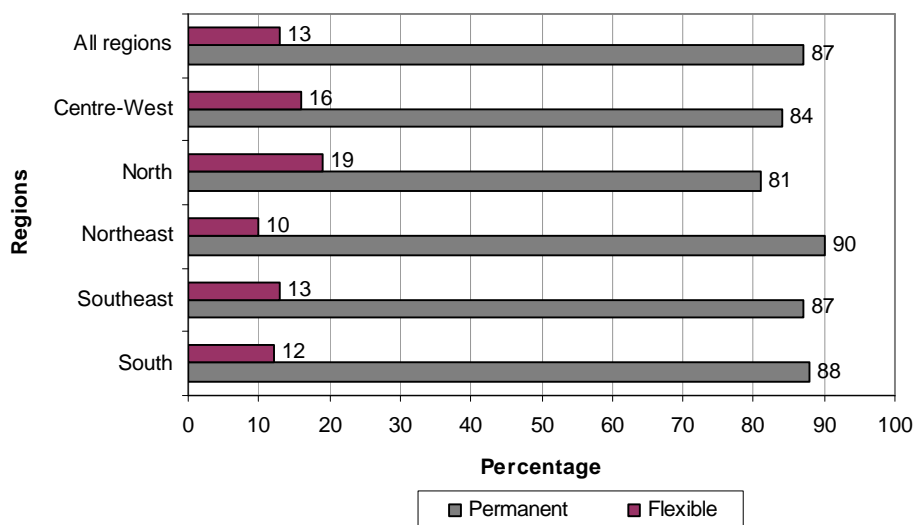
Figure 6. Distribution of employees by form of contract (permanent or flexible) used by companies, by sector of economic activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

Figure 7 shows that it is in the North region that companies absorb the greatest number of workers on a flexible contract basis, with this proportion lowest in the North-East, with only 10 per cent of employees retained on a non-standard contract basis.

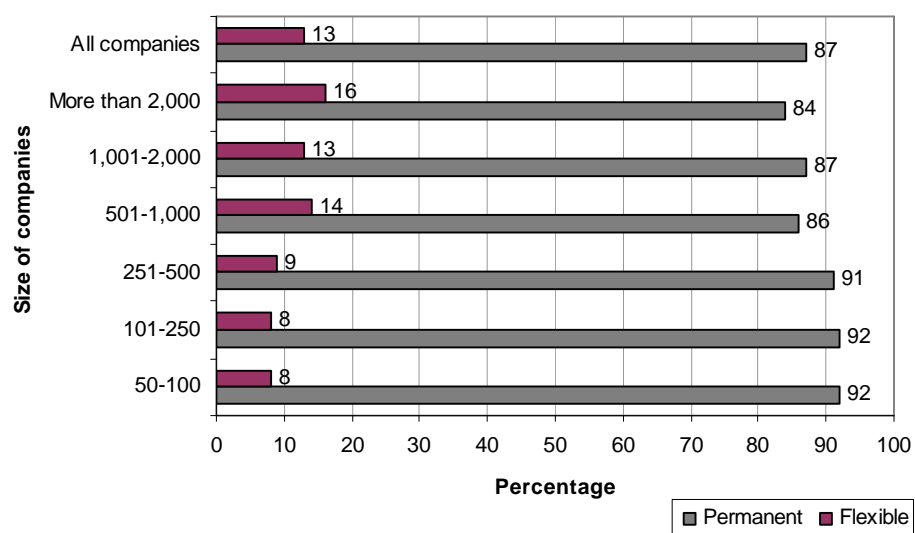
Figure 7. Distribution of employees by form of contract (permanent or flexible) used by companies, by region



Source: Direct survey of companies, April-June 2001, FIPE/MTE

Figure 8 shows an important result as it reveals that use of flexible employment tends to increase in somewhat linear proportion to the size of a company. Indeed, while companies with less than a hundred employees employ less than 8 per cent of their workforce on a flexible basis, in companies with more than 2,000 employees, workers on flexible forms of contract occupy 16 per cent of jobs.

Figure 8. Distribution of employees by form of contract (permanent or flexible), according to size of company



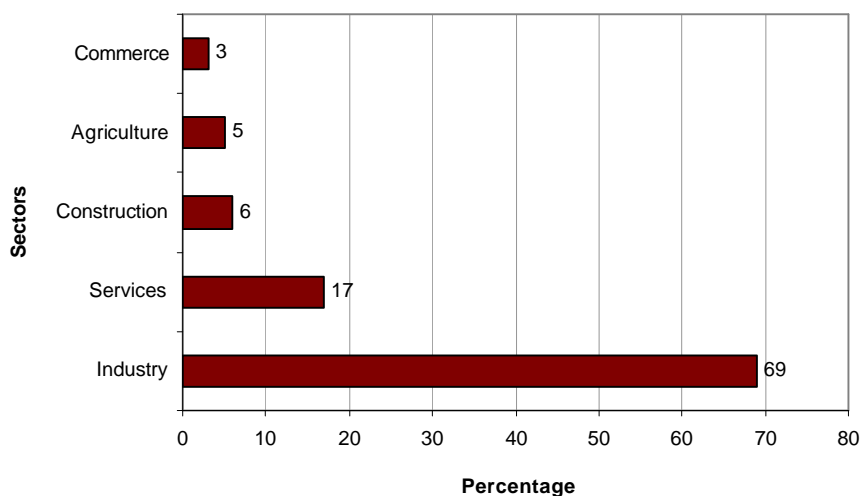
Source: Direct survey of companies, April-June 2001, FIPE/MTE

Where are workers in flexible employment concentrated?

Aggregating all of the non-standard forms of labour contract it is possible to know where they are absorbed, according to the classification criteria selected in this paper (sector of activity, region and size of company).

With regard to sector of activity, Figure 9 reveals that industry is undoubtedly where flexible labour is used to the greatest degree since approximately 70 per cent of the workers in this sector have flexible contracts. On the other hand, commerce accounts for only 3 per cent. This may be a clear indicator that the need for flexible adjustment is much greater in industry, where a large proportion of the Brazilian formal labour force is located.

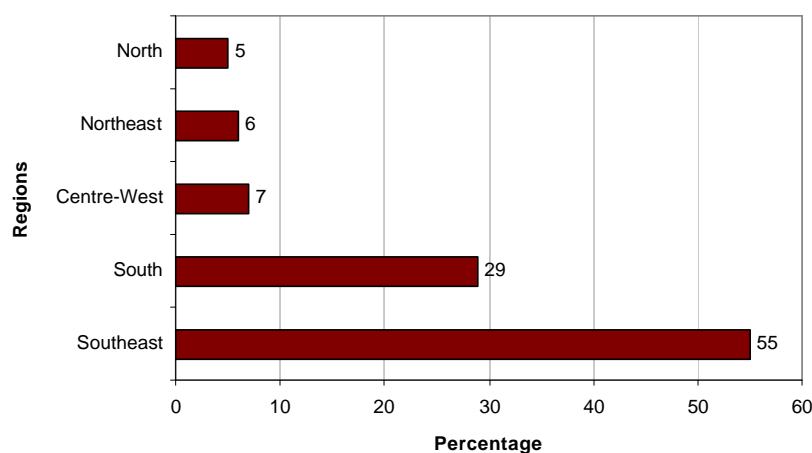
Figure 9. Percentage of employees with flexible forms of labour contract, by sector of activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

From a regional perspective, Figure 10 shows that the South-East absorbs more than half of all workers in flexible employment (55 per cent). This result corroborates the previous one, in that Brazilian industry is concentrated in this region. The North region, on the other hand, accounts for no more than 5 per cent of all workers in flexible employment.

Figure 10. Percentage of employees with flexible forms of labour contract, by region



Source: Direct survey of companies, April-June 2001, FIPE/MTE

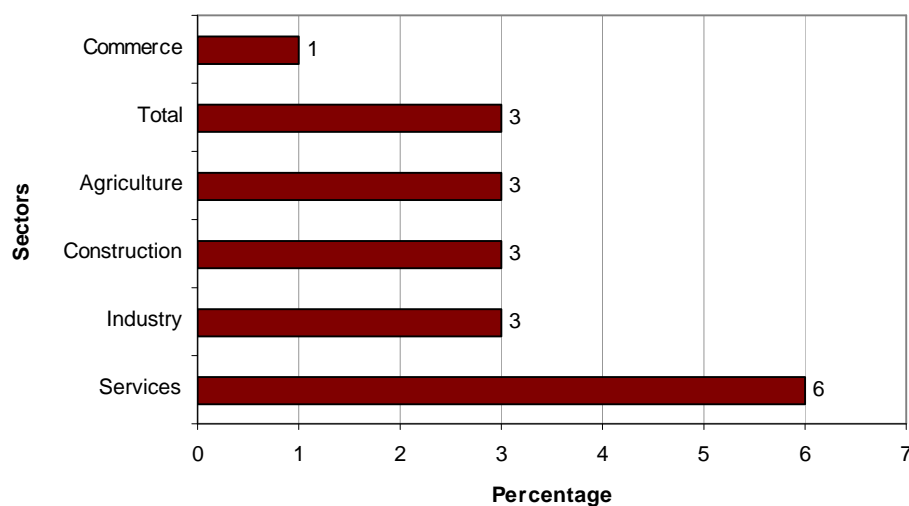
5.5 Hour banks and temporary suspension of labour contracts

Two forms of contract were recently introduced with the aim of facilitating labour relations to an even greater degree, both of which are widely used in the European and US labour markets. The first relates to law 9,601/98, which created the fixed-term labour contract, and relates to the possibility of companies adopting the so-called “hour bank”. The implementation of the same law gave a new interpretation to paragraph 2 of Article 59 of the *Consolidação Das Leis Do Trabalho* (CLT), thereby allowing companies and workers to create a new system of compensation for overtime.

The second form relates to the scope for a temporary suspension of labour contracts, whereby workers who are dismissed without due cause will have their contracts suspended, provided that they enrol in a programme or course leading to a professional qualification.¹¹

Despite being relatively recent, these forms of contract, or alternative forms of circumventing traditional labour contracts may already be considered to be procedures adopted by companies that are seeking to make their labour relations flexible. Figure 11 nevertheless indicates that only 3 per cent of Brazilian companies have made use of this even if in some areas of the service sector, the percentage is double this value. At the same time, the larger companies have already begun to make use of the temporary suspension of labour contracts, as the statistics in Figure 12 reveal: around 71 per cent of employees with temporarily suspended contracts who are receiving unemployment insurance benefits and undergoing professional training belong to companies with over 250 employees.

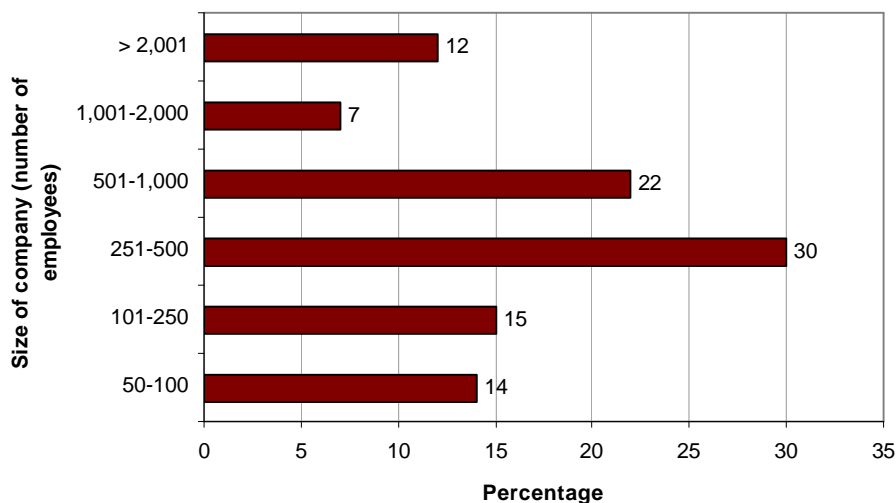
Figure 11. Percentage of companies with temporary suspension of labour contracts (lay-offs), by sector of activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

¹¹ In this case, the worker must be eligible for the unemployment insurance programme, meeting all of the requirements of law No. 7,998/90. In addition, training must be provided by the employer, with the employee enjoying the benefits of unemployment insurance.

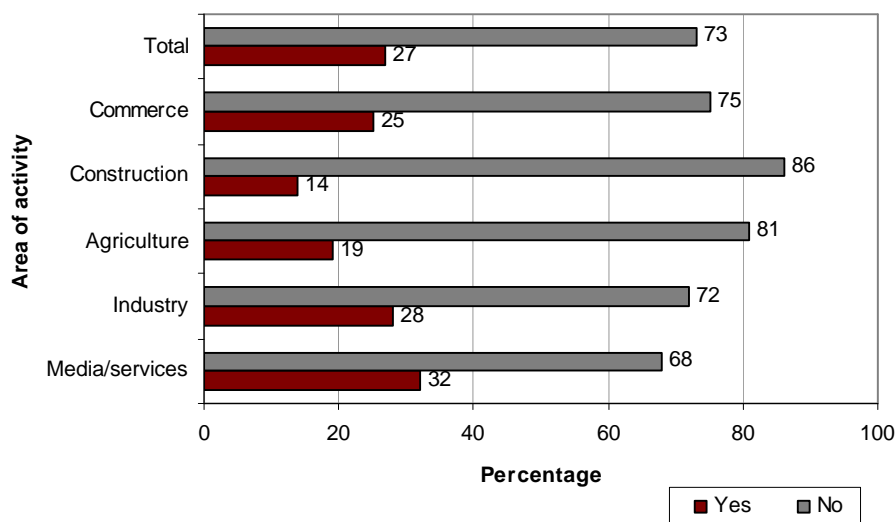
Figure 12. Percentage of companies with temporary suspended labour contracts (lay-offs), by size of company



Source: Direct survey of companies, April-June 2001, FIPE/MTE

The implementation of hour banks appears to be a form of labour practice that is rapidly establishing itself within the Brazilian labour market. Indeed, Figure 13 reveals that, after the introduction of law 9,601/98, which regulated this practice, around 27 per cent of companies adopted the hour bank as a form of dealing with demand fluctuations determined by the labour market. In any case, this practice appears to respond to the characteristics of the sector: while it appears to be rapidly penetrating the service sector, in the construction sector, where tasks and activities have a short cycle, it is more difficult to install an “hour bank”.

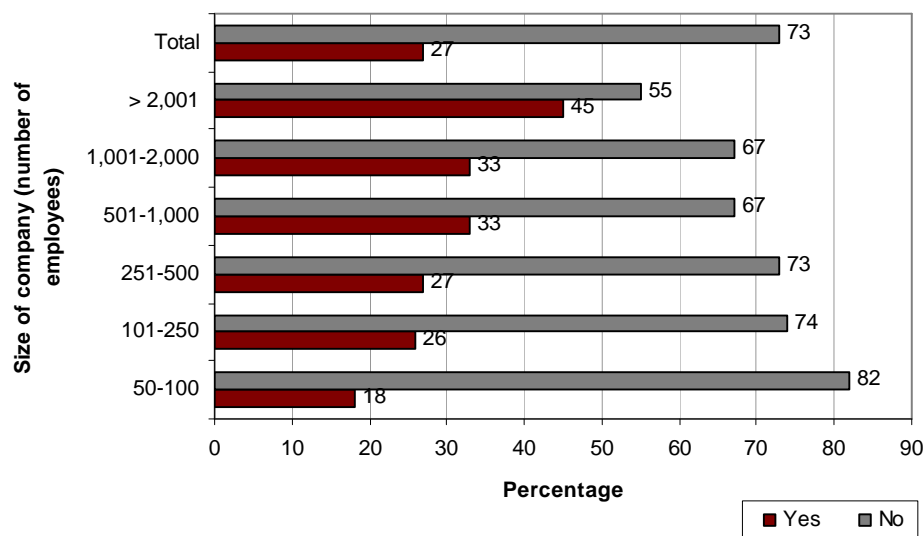
Figure 13. Existence of hour banks, by area of activity



Source: Direct survey of companies, April-June 2001, FIPE/MTE

In any case, the possibility of smoothing fluctuations in demand through the practice of an hour bank tends to benefit better structured companies, with more highly skilled labour and solid human resources departments. This is easily verifiable through Figure 14, in which some 33 per cent of companies with between 500 and 2,000 employees have introduced hour banks, and almost half of companies with over 2,000 employees have also done so.

Figure 14. Existence of an hour bank, by size of economy



Source: Direct survey of companies, April-June 2001, FIPE/MTE

6. One comparison with international flexibility statistics

This section summarizes some of the main evidence for flexible labour standards at the international level, while recognizing the enormous difficulties of cross-national comparisons, as many studies indicate. Each country faces different habits and customs, specific characteristics of the production system, substantial differences in individual and collective labour practices, specific legal systems and above all, information collecting systems, each of which relates to a specific range of ways of absorbing labour and labour contracts.

In any case, while remembering the many existing limitations, both temporal and in terms of differences in legislation and statistical definitions, some of the results obtained on flexible employment for the Brazilian case corroborate empirical evidence observed internationally, as Table 1 reveals. For example, in 1998 the Organization for Economic Co-operation and Development (OECD) Employment Outlook indicated that in the mid-1990s, according to their own system of classification, flexible labour accounted for 13.1 per cent of workers in this condition, a figure approaching that of Figure 7, mentioned above. Another example, also compared with OECD statistics relates to the fact that in 1991, the number of employees in temporary work was around 9.3 per cent, while the survey discussed here and revealed in Figure 12 reported 11 per cent (Chahad, 2001, pp. 111-112).

Table 1. Flexible employment: Comparative data for Brazil and the OECD, selected years (%)

	Flexible employment	Non-standard labour contracts	Temporary work
OECD (1995) ^b	13.1	-	9.3 ^c
Brazil (2001)	-	13.0 ^d	11.0

Source: For Brazil, see Chahad (2001) and OECD Employment Outlook, 1998

^b= Eurostat/ROA

^c= 1991

^d=Figure 7

Another possible comparison relates to the motives of companies for seeking greater flexibility in employment relations. We have seen in Figure 4 that the main reason for Brazilian companies to use more flexible labour is cost reduction, but the need for a rapid response to demand for goods and services is equally important. This bears similarities to the US experience with regard to arguments for pursuing flexible employment, as is revealed in Table 2 below.

Table 2. Reasons why companies use flexible labour (%)

Reason	Frequency
Dealing with fluctuations in demand.	81
Managing dismissals in a crisis.	48
Securing labour of a specific quality.	48
Rapid replacement of an absent worker.	42
Protecting against loss of workers.	31
Selecting candidates for future employment.	20
Controlling spending on benefits	12
Minimizing administrative tasks.	9
Other	4

Source Lenz (1996) cited in Chahad (2001)

In any case, international comparisons require more precise data and the results obtained here should be regarded as a first approximation regarding the question of flexibilization of the Brazilian labour market, by using non-standard models of labour contracts developed in countries where this discussion has been in progress for longer. New research that investigates the many aspects raised here is required for more reliable results.

7. Summary of principal conclusions

While emphasizing the limitations of the field survey that was carried out, the principal conclusions of the investigation are given below:

- ☞ Brazilian companies already make widespread use of flexible labour, both by sector and by region;
- ☞ having said this, upon calculating all workers in flexible employment, these account for only 13 per cent of all workers;
- ☞ the service sector contains the highest percentage of companies using flexible employment, with the South showing the same result in regional terms;
- ☞ the most frequently occurring form of non-standard contract is outsourcing, with 56 per cent of companies using this kind of employment, which accounts for 71 per cent of all workers in forms of employment using flexible labour contracts;
- ☞ outsourcing is most frequent in the industrial sector and in the North-East and South-East regions;
- ☞ reduction in labour costs appears to be the most frequently cited reason for companies to use non-standard labour contracts, Having said this, reasons associated with the need to adjust to fluctuations in demand exert major pressure on the search for flexibility;

-
- ∞∞ the use of flexible labour grows with increasing company size and with an extremely low percentage of workers employed by small companies on a flexible basis;
 - ∞∞ trade unions tend to maintain a neutral or cooperative attitude to the use of non-standard labour contracts;
 - ∞∞ the temporary suspension of labour contracts (lay-offs) is only used by a very small group of companies. This is restricted to large companies.

As a final message, it should be clear that at no point does this paper seek to associate flexibilization with the reduction of unemployment in Brazil. The results in Brazil merely indicate that there is a small, but already significant percentage of companies that make use of legally permitted non-standard labour contracts, such as part-time work, temporary work and cooperatives, etc. Even if these forms are increasing, it is not possible to establish a direct and immediate relationship with unemployment, the explanation for which has less to do with the workings of the labour market and more with arguments of a macroeconomic nature advanced within Brazil, especially at a time when the country has increased its exposure to the world economy, albeit without the reforms required to maintain employment levels.

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